

(2016) 07 MP CK 0053
In the Madhya Pradesh High Court
Case No : S.A. No. 138 of 2003.

Rajkumar Chug - Appellant @HASH Dheerendra Chug and Others

Date of Decision : 28-07-2016

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)(o),
Section 12(11)

Citation : (2016) 3 JabLJ 384 : (2016) 4 MPLJ 286 : (2017) 1 RCRRent 52

Hon'ble Judges : Anand Pathak, J.

Bench : Single Bench

Advocate : Anand V. Bharadwaj, Advocate, for the Appellant; D.D. Bansal, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Anand Pathak, J. - The present appeal under section 100, Civil Procedure Code has been preferred at the instance of the defendant/tenant. The respondents/plaintiff have filed suit for eviction under section 12(1)(a)(e) and (o) of the M.P. Accommodation Control Act, 1961 (for brevity "the Act"). The suit was dismissed on the ground of section 12(1)(a) and (e) of the Act but decreed under section 12(1)(o) of the Act. Challenging the said decree passed under section 12(1)(o) of the Act, the present appellant has preferred First appeal under section 96 of Civil Procedure Code before the Appellate Court.

2. The respondents/plaintiff preferred cross-objection under Order 41, Rule 22 , Civil Procedure Code challenging the findings of the Appellate Court by which the suit was dismissed on the basis of section 12(1)(a) and (e) of the Act. The first appellant/plaintiff as well as cross-objection preferred by the respondents/defendant. In the result, the appellant suffered under section 12(1)(o) of the Act, therefore, the appellant has preferred Second Appeal under section 100, Civil Procedure Code before this Court. Respondents did not prefer to challenge the said findings.

3. This Court has admitted the appeal vide order dated 7-4-2003 on following substantial questions of law -

"Whether decree for possession can be granted without granting time for removing the possession from the portion not let out to defendant as provided under section 12(11) of the M.P. Accommodation Control Act, 1961."

4. The thrust of the arguments advanced by counsel for the appellant is that the first Appellate Court has nowhere discussed the implication of section 12(11) of the Act before passing the decree under section 12(1)(o) of the Act. Thus, according to the counsel for the appellant, while not granting any time to remove the possession as contemplated under section 12(11) of the Act, grave illegality has been caused by the Appellate Court in passing the decree therefore, the same is liable to be set aside.

5. Learned counsel for the appellant further submitted that the cross-objection preferred by respondents/defendant specifically mentioned regarding challenge under section 12(1)(a)(e) and (o) of the Act and it nowhere mentioned that the cross-objection is being preferred under section 12(1)(c) of the Act also. Therefore, on the basis of pleadings of the respondents, the cross-objection in first appeal was preferred by them was under section 12(1)(a)(e) of the Act only. Therefore, once the judgment and decree was passed under section 12(1)(o) of the Act only then mandatory requirement of section 12(11) had to be followed and non-compliance of the same vitiates the judgment and decree. To bolster his submissions, learned counsel for the appellant relied upon the judgment rendered by the M.P. High court in the matter of Motilal v. Yusuf Ali and others, as reported in 1972 M.P.L.J. 187 as well as in the matter of Pooran Chand v. Laxminarain, as reported in 1980 MPRCJ 257 and in the matter of Keshar Singh v. Mst. Sohadradevi, as reported in 1985 MPRCJ 33(N-20) and in the matter of Shankerlal v. Virendra Nath, as reported in 1984 MPRCJ 102.

6. On the other hand, learned counsel for the respondents submitted that the respondents have amended the plaint and added the pleadings in respect of section 12(1)(c) of the Act in the plaint before the trial Court and additional issues as 7(a)(b) were framed. Evidence was also led in this regard and judgment and decree under section 12(1)(c) was also drawn in favour of respondents/plaintiff. According to the counsel for the respondents, the trial Court has decreed the suit on the basis of 12(1)(o) as well as section 12(1)(c) of the Act. Learned counsel for the respondents further submitted that as per Order 6, Civil Procedure Code, pleadings in suit or written statement are to be seen and if any omission in cross-objection exists in respect of section 12(1)(c) of the Act then the same shall not be looked into and on the basis of such omission, parties cannot be put to disadvantage.

7. According to counsel for the respondents once, the decree is on two grounds like in the present case where decree under section 12(1)(c) and 12(1)(o) of the Act has been passed then compliance under section 12(1)(11) is not mandatory and the suit cannot be decreed on the basis of section 12(1)(o) of the Act. In support of his submissions, learned counsel for the respondents relied upon the judgment rendered by the M.P. High Court in the matter of Kevalchand

Puranchand v. Suganchand, as reported in 1983 M.P.L.J. 381.

8. Heard learned counsel for the parties and perused the record.

9. The respondents/plaintiff have preferred suit initially under section 12(1)(a)(e) and (o) of the Act and later on, amended the suit and inserted certain more pleadings purportedly in respect of section 12(1)(c) of the Act. The suit was seemingly dismissed under section 12(1)(a) and (e) of the Act but decreed under section 12(1)(o) of the Act. Being aggrieved by the findings in respect of 12(1)(o) of the Act, the present appellant has preferred appeal. Similarly, respondents/plaintiff have also preferred cross-objection under Order 41, Rule 22, Civil Procedure Code challenging the findings of the trial Court wherein the suit was dismissed in respect of section 12(1)(a) and (e) of the Act. Respondents did not prefer to challenge the appeal on the ground of section 12(1)(c) of the Act. From perusal of the cross-objection, it is evident that respondents/plaintiff have preferred cross-objection only under section 12(1)(a) and (e) of the Act. Respondents/plaintiff have not mentioned that the cross-objection has been preferred challenging the judgment of the trial Court on the basis of section 12(1)(c) of the Act also.

10. The appeal as preferred by the present appellant as well as cross-objection preferred by the respondents got dismissed by the lower Appellate Court. Now, the appellant has preferred Second Appeal before this Court. Respondents have not preferred any appeal against the order of lower Appellate Court.

Section 12(11) of the Act reads as under :-

"No order for the eviction of a tenant shall be made on the ground specified in clause (o) of sub-section (1), if the tenant within such time as may be specified in his behalf by the Court vacates the portion or portions of accommodation not let to him and pays to the landlord such amount by way of compensation as it may direct."

11. Perusal of section 12(11) of the Act makes it abundantly clear that unless an opportunity to the tenant is given to vacate the portion of accommodation not let out to him and to pay the landlord amount of compensation, the decree under section 12(1)(o) of the Act cannot be issued. The judgment of this Court in the matter of Motilal (supra) clearly mandates so, which has been relied upon by this Court in the matters of Pooranchand (supra), Keshar Singh (supra) and Shankerlal (supra).

12. When the decree under section 12(1)(o) of the Act is granted then it is the duty of the Court to pass a conditional decree, with the stipulation of time of vacate the portion, which the tenant has trespassed and to pay compensation.

13. Neither the trial Court, nor the Appellate Court has given this direction in respect of section 12(11) of the Act, therefore, it is contrary to law laid down by this Court. At present the decree is issued only on the basis of section 12(1)(o) of the Act. If the suit would have been decreed on other grounds also, then the

appellant would have to vacate the premises in his occupation, but here in the present case, no other ground for eviction is available to the respondents except section 12(1)(o) of the Act.

14. Although, learned counsel for the respondents tried to assert that the decree under section 12(1)(c) of the Act was also in existence but respondents themselves have not challenged the judgment of the trial Court in cross-objection under section 12(1)(c) of the Act. Once, respondents did not prefer any appeal against the order of the first Appellate Court, thus it can be assumed that respondents have accepted the findings of the first Appellate Court and now they cannot raise the plea which they attempted to plead orally.

15. Even respondents did not prefer any appeal against the order of first Appellate Court and accepted the findings of the first Appellate Court. Due to somewhat overlapping nature of contents of section 12(1)(c) and 12(1)(o) of the Act, respondents have taken the shelter of observations of the trial Court and tried to establish that the trial Court has passed the decree on the basis of section 12(1)(c) of the Act also. From perusal of the record, same is not established.

16. Even otherwise, this Court has framed only one substantial question of law and even during the pendency of appeal for last thirteen years, till date, no application under section 100(4) and (5) of Civil Procedure Code has been preferred by the respondents for framing any additional substantial question of law. In absence of any such substantial question of law in this regard, and looking to the fact situation of the case, such plea cannot be entertained by respondents at this juncture.

17. Appeal is continuation of suit and therefore, the pleadings as raised in the cross-objection by respondents/plaintiffs are binding over them.

18. Thus, this Court holds that the Courts below have erred in issuing decree of eviction under section 12(1)(o) of the Act without following the mandatory requirement of section 12(11) of the Act. Judgments referred (supra) by the Appellant are applicable in the present set of facts. Similarly the judgment relied upon by the respondents does not help them being distinguishable on facts and circumstances.

19. The decree for eviction was based upon section 12(1)(o) of the Act and therefore, ought to be modified. This Court directs that the appellant shall not be evicted from the tenanted portion of accommodation as per the description given in the plaint, if the appellant within a period of three months from today puts the respondents/plaintiff in vacant possession of the portion which he encroached as per the plaint description and also pays Rs. 1,00,000/- (Rs. One Lakh only) as compensation to the respondents/plaintiff within the period of three months from today. The said amount as compensation is to be given for the reason that appellant is the tenant of respondents for almost 25 years and the cause of action dates back to year 1992-93 when the appellant has encroached upon

excess area. At that time, the appellant was a tenant of respondents at monthly rent of Rs. 350/-. Therefore, compensation of Rs. 1,00,000/- (Rs. One Lakh Only) is just and proper looking to the facts and circumstances of the case. It is further clarified that if the portion shown in the plaint is vacated by the appellant and Rs. 1,00,000/- is paid to the respondents as compensation within three months from today, then he shall not be evicted from the suit accommodation on the ground of section 12(1)(o) of the M.P. Accommodation Control Act, 1961. In absence of the said compliance, appellant would render himself liable for eviction forthwith after lapse of three months from today.

20. The substantial question of law is answered accordingly. Appeal is allowed in above terms.