
(1998) 12 MP CK 0017
In the Madhya Pradesh High Court
Case No : C.R. No. 2011 of 1998

Ranu Ghosh

APPELLANT

Vs

Rai Bahadur Bhootnath Dey and Others

RESPONDENT

Date of Decision : 02-12-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12, 12(1),
13(1), 13(6), 20

Citation : (1999) 1 J LJ 385 : (1999) 1 MPLJ 388

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Advocate : Alok Aradhe, for the Appellant; H.B. Agrawal, for non-applicant No. 1, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.

Shri Alok Aradhe, learned counsel for the applicant.

Shri H.B. Agrawal, Learned counsel for the non-applicant No. 1.

With the consent of the parties, the matter is finally heard.

In a suit filed u/s 20 of the M.P. Accommodation Control Act seeking eviction of the tenant, as the tenant was not depositing monthly rent and did not deposit the arrears of rent, the plaintiff moved an application u/s 13(6) requesting the Court that defence of the defendant against eviction be struck out. The defendant contested the application and inter alia pleaded that as the suit is not under any of the clauses of Section 12(1) of M.P. Accommodation Control Act neither the provisions of Section 13 are applicable nor the tenants are required to deposit the rent. After hearing the parties, the trial Court observed that the suit would be deemed to be a suit u/s 12(1)(a) of M.P. Accommodation Control Act and as such provisions of Section 13 of the Act would be applicable. In view

of the findings recorded by it, it directed the defendants to deposit the rent within a period of one month with a further order that if the rent is not deposited within the period fixed by the Court, the defence would stand struck out automatically. Being aggrieved by the said order one of the defendants has filed this revision petition.

Shri H. B. Agrawal, learned counsel for the non-applicant No. 1 submits that the revision at the instance of one of the tenant is not maintainable because the order against the other two defendants has attained finality and this Court cannot set aside the order in favour of one of the defendant only. This preliminary objection can straightway be rejected in view of provisions of Order 41, Rule 33, Civil Procedure Code. Rule 33 of Order 41 provides that the Court shall be entitled to exercise its power in a case where the appeal is only against the part of the decree or one of the defendant alone has filed the appeal. It further provides that if the contingency requires, the Court shall set aside the orders of the lower Court irrespective of the fact that some of the defendants have not chosen to file any appeal. Even if the provisions of Order 43, Rule 33, CPC in their terms may not apply to the revision, the principles underlying Rule 33 of Order 41 can certainly be applied. The objection is overruled.

Shri Aradhe, learned counsel for the applicant submits that in view of the language of Section 13 of the M.P. Accommodation Control Act, the court below was unjustified in observing that a tenant is liable to make the deposits in compliance of Section 13(1) of the Act and would be bound to suffer the penalty u/s 13(6) if he does not comply with the provisions of Section 13(6). According to him the trial Court was wrong and unjustified in observing that the present suit can be treated to be one u/s 12(1)(a) of the Act. On the other hand, Shri Agrawal, learned counsel for the non-applicant No. 1 submits that though the suit is not under any of the provisions of Section 12(1) of the Act but a tenant cannot be permitted to enjoy the property without paying the rent. According to him, pendency of the suit cannot be used as a handle by the tenant for not paying the rent to the landlord.

Plaint para 10 reads that the plaintiff is a public charitable institution and it is exempted from the application of provisions of Section 12 of the Act. According to the plaintiffs, they are entitled to evict the tenant not in their capacity as an ordinary landlord but in their capacity as a charitable trust in whose favour notification u/s 3 has already been issued by the State Government. For application of Section 12(1)(a) the said statutory requirement is that a landlord must issue a notice to the tenant demanding the arrears of rent. If the tenant despite demand does not pay the rent within a period of two months from the date of service of the demand notice then the landlord would have a cause of action u/s 12(1)(a) of the Act against the tenant. In the present case, the plaintiff has nowhere stated that before instituting the suit a notice of demand was made. The plaintiff simply says that a quit notice was issued and the defendant did not pay the arrears of rent to the plaintiff. The date of the service

of the notice has not been mentioned in the plaint. Accrual of the cause of action on 3-6-1996 cannot be related with the date of the service of notice. Even otherwise, the plaint is positive on the assertion that the suit is under the provisions of Section 20 of the Act.

Section 13(1) provides that on a suit or any other proceeding being instituted by a landlord on any of the grounds referred to in Section 12 or in any appeal or any other proceedings by a tenant against any decree or order for his eviction, the tenant shall, within one month of the service of writ of summons or notice etc. or within such further time as the Court may allow deposit in the Court or pay to the landlord, an amount calculated at the rate of rent at which it was paid, for the period for which the tenant made the default and shall deposit the monthly rent by 15th of each succeeding month.

The precondition of application to Section 13(1) is that a suit must be on any of the grounds referred to in Section 12 of the Act. If a suit is not under the provisions of Section 12 of the Act, the provisions of Section 13 would not be applicable. The Court below was not justified in observing that the present suit could be deemed to be a suit u/s 12(1)(a) of M.P. Accommodation Control Act. When the plaintiffs came with the specific case that provisions of Section 12 of the Act are not applicable and their suit is u/s 20 of the Act then the Court below was not justified in observing that the suit could be treated to be a suit u/s 12(1)(a) of the Act. The legal position is clear that a tenant in a suit u/s 20 of the Act is not obliged to comply with the provisions of Section 13(1) of the Act. In para 10 of the plaint, the plaintiff has made a categorical statement that the suit is filed u/s 20 of M.P. Accommodation Control Act read with Section 106 of Transfer of Property Act. If that is the statement of the plaintiff then the Court could not make out any case for the plaintiff.

The order passed by the Court below deserves to and is accordingly set aside.

It is however observed that a defendant who is enjoying the possession of the property should not use the pendency of the suit as an handle to defeat the rights of the landlord who otherwise is entitled to receive the rent. If advised, the tenant may deposit all the arrears and may continue to deposit the monthly rent. If it is not done the landlord shall be free to move an application before the trial Court that the tenants be directed to furnish security to the satisfaction of the trial Court for due performance of the decree which may ultimately be passed against the tenants.

The revision is allowed. No costs.