

(1990) 12 MP CK 0004
In the Madhya Pradesh High Court
Case No : S.A. No. 9 of 1983 (G)

Rhagwandas Pawaiya

APPELLANT

Vs

Regd. Firm Kailash Narain and Bros.

RESPONDENT

Date of Decision : 20-12-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1),
12(1)(a)

Citation : (1991) MPJR 361

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Advocate : K.K. Lahoti, for the Appellant; N. P. Mittal, for the Respondent

Final Decision : Allowed

Judgement

Dr. T. N. Singh, J.

Defendant/appellant is a tenant for whose eviction two Courts have passed decrees u/s 12(1) of the M.P. Accommodation Control Act, 1961, for short, the "Act". Trial Court found case of landlord/plaintiff (herein respondent) proved under clauses (a), (d) and (f) and not proved under clause (k) of Section 12 (1); appellate Court passed decree only on two grounds envisaged under clauses (a) and (d).

By way of preface, it is necessary to say a few words also at the outset about cross-objection of the respondent/plaintiff. The contention which is seriously pressed in the cross-objection is that the lower appellate Court acted illegally in exercising its power under Order 41, Rule 27, CPC by allowing the defendant/appellant to bring on record the subsequent event that during pendency of the appeal, alternative accommodation for business had become available to the plaintiff and, therefore, the "bona fide" requirement of the plaintiff, as claimed by him, had been fulfilled, in regard thereto it is stated that the shop which was vacated by M/s, Prasad Papers on 23-8-1982 could be used for starting sweet-

meat business of partner Kailash Narayan and the suit shop would be used for starting a restaurant, to be run by the tirrn. In the course of his argument, Shri Mittal, who appears for plaintiff/ respondent, also submitted that in any case, the suit could be also decreed in terms of clause (k) as well because the trial Court acted illegally in refusing eviction on that ground. At this stage, about that contention, suffice to say this much only that in the lower appellate Court no cross-objection was preferred in that regard.

Appellant's counsel, Shri Lahoti has rightly submitted that in view of the law declared by this Court, which was not available to the lower appellate Court in 1982 when decision was rendered in the appeal, eviction cannot be decreed, in the facts and circumstances of the case, on the ground envisaged under clause (a). During course of hearing, a statement was filed showing rent deposited on different dates in the Court below from 24-1-1980 to 9-11-1990. It is claimed that eleven months rent has been deposited in excess. That apart, he drew my attention to the order passed in this appeal on 13-11-1984 to submit that even if there had been late deposit, that had been condoned thereunder. He is right. It is recorded in the order passed in this appeal on 13-11-1984. "It is an undisputed position that the respondent was withdrawing the amount in the trial Court also that was being deposited by the appellant under Sec. 13 of the M. P. Accommodation Control Act 1961. In view of this, this application deserves to be rejected and is, accordingly, rejected," be it noted that by the same order, six I. As were disposed of. I. A. No. 4470/84 was for condonation of delay in depositing costs and 1. A. No. 4471/84 was for non-disbursal of the rent deposited as entitlement of plaintiff/respondent to receive that was disputed. Interestingly, those applications were made by defendant/appellant, but I. A. No. 4460/84, also disposed of by the same order, was preferred by the plaintiff/respondent. No objection was raised in regard to late deposit of rent in any Court below in that application. By rejecting I. A. No. 4471/84 the Court allowed the prayer of plaintiff/respondent made in I. A. No. 4460/84 for disbursement of the rent deposited. Ho claimed "benefit of the rent pendants lite". On facts, therefore, it is established beyond doubt that in terms of the provisions of Section 13 of the Act, the tenant had been depositing rent for the suit premises in the Court below and even if, at any stage there was any delay, that was either waived or condoned.

Lachhobai Rathore 1987 MPRCJ 23 : 1988 JIJ 213, it is conceded at the Bar, still holds the field. True, Shri Mittal submitted that I have a second look at the law, but that I need not do because the decision is being still followed in this Court in other eases and the law laid down therein remains unchallenged (see Phool Chand v. Chhotelal 1990 JIJ 434 . Reliance of counsel on Mrs Manju Choudhary and Another Vs. Dulal Kumar Chandra, to press reconsideration of the decision, I found misconceived.

Interpreting Section 12 (1) (a) in the context of Sections 13 and 12 (3) of the Act, this Court held that the power to allow the tenant to make payment/deposit of rent "within such further time" would suggest that the tenant may be allowed

to either pay rent to landlord even when execution of decree is levied or to deposit rent in the Executing Court itself in the course of execution proceedings. The tenant has a right to pay and stay in the suit premises and Section 12 (1) (a) does not create in the landlord an indefeasible right to get his eviction. I have no doubt, therefore, that the decree passed by two Courts below on the ground envisaged u/s 12 (1) (a) of the Act is not sustainable in law. In view of the undisputed fact noted above hold that the tenant is not in default in regard to payment of rent.

The next question to be examined now is, if the decree passed by the lower appellate Court under clause (d) of Section 12 (1) is sustainable in law. To appreciate the legal position in that regard, it is necessary to extract relevant portions of Section 12 (1):

Restriction on eviction of tenants:-

(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only namely ;

(c) that the tenant or any person residing with him has created a nuisance or has done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation or which is likely to affect adversely and substantially the interest of the landlord therein :

Provided that the use by the tenant of a portion of the accommodation as his office shall not be deemed to be an act inconsistent with the purpose for which he was admitted to the tenancy :

(d) that the accommodation has not been used without reasonable cause for which it was let, for a continuous period of six months immediately preceding the date of the filing of the suit for the recovery of possession thereof;

(f) that the accommodation let for non-residential purposes is required bonafide by the landlord for the purpose of continuing or starting his business or that of any of his son major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned;" Clause (e) is not directly relevant to the controversy that is mooted. Provision similar to clause (f) is made therein contemplating recovery of possession by the landlord of "accommodation let for residential purposes (when that) is required bonafide by the landlord for occupation as a residence for himself or for any member of his family".

Admittedly, the suit was filed on 7-1-1978. Lower appellate Court relied only on the evidence of D. W. 2 Sahab Singh and Ex. P/2 in holding that the plaintiff had established his entitlement to a decree under clause (d) of Section 12 (1). D. W.

2 deposed that defendant had wine business, but for 4 or 5 years, that was stopped. Then, defendant started dealing in refrigerators and for 2 or 3 years, he was dealing in Gaylord Ice Cream. The witness deposed on 16-1-1982. On that basis, the Court below held that it could be assumed that since 1979, the defendant was doing business of Ice Cream in the suit-shop as he has adduced no satisfactory evidence in regard to his doing business "f refrigerators prior to that. He found no cogent evidence to decide the Allwyn refrigerators. Learned Judge further held that it was the burden of the defendant to adduce evidence in that regard. He relied on Pleader's notice sent to defendant by the plaintiff (Ex. P/2) is 1975 and on the recital therein that defendant's business was stopped. Ho faulted the defendant for no replying to the notice and he reached the conclusion consequently that for a period of 2 years before institution of the suit, the wine shop of the plaintiff remained closed and that remained vacant.

It is contended by Shri Lahoti that without any pleading and evidence, the Court below recorded the perverse finding about the suit shop lying vacant for a period of 2 1/2 years prior to institution of the suit. He further submitted that the Court below erred in law in shifting the plaintiff's burdon to the defendant to prove that the accommodation had not been "used" for a continuous period of six months immediately preceding the date of filing of the suit "without reasonable cause" by misappreciating the law. In this context, therefore, reference is necessary to the pleadings. At para 4, plaintiff stated shat the suit shop was let out for business-purpose, but for more than two years, the business was stopped and the house was kept locked. Beyond that, nothing else was pleaded. Defendant denied the averment and stated that business was carried on in the shop of various agencies, refrigerators, machineries and electrical goods though originally, he had wine-business and Office of that business was functioning in the premises. He also stated that the suit shop was being used for Office and store and the shop was opened daily and accommodation was kept clean and duly maintained.

Of the two witnesses whom plaintiff examined, P. W. 2 gave evidence on 15-1-1981 that the suit shop was closed for last 3/4 years. He also deposed that the plaintiff firm required that accommodation for starting restaurant business. Evidently, he merely dittoed what P. W. 1 Krishna Narayan, one of the partners of (he plaintiff firm, stated in his evidence. Both witnesses admitted that they were not residents of Patankar Bazar where the suit shop was situate. In his evidence, P. W. 1 stated that 3 or 4 years ago, defendant eaised some damage to the suit shop and oral protest was made against that action. On evidence and also on pleadings, it has not been established evidently that at any time, the suit shop was vacant or kept vacant. Another noteworth feature of the case is that although plaintiff could exercise as lessor his right to claim inspection of the accommodation let, in terms of Section 108 (m), T. P. Act; it is neither pleaded nor proved that inspection was sought and that was denied. V. Dhanapal Chettiar Vs. Yesodai Ammal, is authority which ordains that even a statutory tenancy under Rent Control Act is regulated by the provisions of T. P. Act, except to the

extent derogated therefrom expressly under special statute. In the Act, the right of inspection of landlord is not taken away and that could be validly exercised to establish that the suit shop was kept vacant and was not used. It could also be established, on inspection, that the premises was not used for office purpose or for storage purpose in connection with the business which the defendant claimed as being continued in that premises.

I have no hesitation, therefore, to hold that the finding recorded in the impugned judgment of the accommodation in question being vacant during the relevant period is perverse as that is not supported by pleadings or evidence or indeed, any material on record. Besides, I am also inclined to hold that the evidence of the two witnesses examined by the plaintiff being not accepted by the Court below, it is difficult to reach the conclusion on the basis of evidence of D. W. 2 and Ex. P/1 that during relevant period, namely, for a continuous period of six months prior to institution of the suit the accommodation was not being used for "non-residential" purpose. According to me, for reasons to follow, it was the primary burden of the plaintiff to prove that requirement; and then the burden shifted to the defendant to prove that the default in that regard was condonable by proving "reasonable cause" for the accommodation not being used during the relevant period for the purpose for which it was let out. The notice, Ex. P/1, being issued in 1975, was a piece of irrelevant evidence that unfortunately entered lower Court's consideration resulting in crucial finding being tainted. Indeed, in the plaint also, there is no categorical averment that for a period of six months continuously, prior to institution of the suit, the accommodation was not being used for the purpose for which it was let out. This aspect has already been commented upon.

The Rule of Strict Pleadings, I have already held in *Lalta Prasad* 1986 MPRCJ 248 : 1986 J LJ 713, is the Rule which must govern actions instituted to enforce statutory rights under Special Statutes; the landlord is bound to plead and prove his entitlement within four corners of the statutory provision invoked to enforce right pleaded. In any case, the scope of the entitlement contemplated under clause (d) also bears critical analysis. To entitle him to decree for eviction of the tenant under clause (d) the landlord has to plead and prove that the accommodation had not been "used" for the purpose for which it was let out and that the non-user was continuous for a period of six months immediately preceding the date of institution of the suit. When has duly established that requirement, contemplated under clause (d), onus will shift to the tenant to establish that his default which rendered him liable to eviction was condonable by the Court because that had a "reasonable cause". The word "used" which occurs in clause (d) is relatable evidently to the purpose as is indicated by the expression -"for which it was let" directly following it, save for interposition of the expression "reasonable cause". Although in clause (d) the word "purpose" does not figure, the intention of the legislature was to limit the disqualification with reference to "residential" and "Non-residential" purposes because those two expressions are used in clauses (e) and (f) which immediately follow clause (d).

The importance of user with reference to "purpose" is also indicated by the proviso to clause (c); whether let out for residential or non-residential purpose, partial use of the accommodation for "Office" is made permissible thereunder. The necessity of interpreting clause (d) in its context and setting is obvious and for that reason, the inter-relation of clauses (c), (d), (e) and (f) cannot be overlooked. Under all those four clauses, under different circumstances, tenant's eviction is contemplated on fulfilment of the requirements separately and specifically prescribed respectively under those clauses. Circumstances pertaining to user of a premises may indeed be various: no particular or single test can be conclusive of the disqualification.

The object of clause (d), in particular, evidently deserves primacy in consideration, because that is directly traceable to the purpose and object of the Act itself. Like other Rent Control Acts, the M. P. Act also is a measure interdicting on the one hand the evil of rent-racking and on the other hand, aiming at fair distribution of available accommodation to meet housing-shortage. If that object is kept in view, landlord's entitlement claimed under clause (d) has to be so construed that he does not make unjust gain by replacing a poor tenant by a rich tenant. The provision should not be allowed to be used as a tool to exploit a poor tenant who could not, for "reasonable cause" use the accommodation for the specified period. True, when it is proved that any accommodation let out, whether for residential or nonresidential purpose, is kept vacant during the specified period the claim of the landlord may be deemed ipso facto established treating the tenant to be not in "need" of the accommodation unless "reasonable cause" for keeping it vacant is established by him. It would be imperative for the landlord to establish that the accommodation has not been "used" during the specified period till the date of institution of the suit for the purpose for which it was let out by pleading and establishing specific facts indicative of "need" of the tenant ceasing to exist. The object of the requirement is to make available the unused accommodation for allotment or for being let to other deserving tenant.

Recently, in the case of M/s. Babu Ram Gopal and others Vs. Mathra Dass, similar provision of East Punjab Urban Rent Restriction Act came to be construed at the Summit level. The phraseology used therein was different. Even so, the language used, "the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause", was construed to indicate burden being laid on the plaintiff/landlord to establish that immediately preceding the institution of the suit, the building remained unoccupied despite those words, unlike clause (d) of Section 12(1) of the Act being absent. In taking that view, the Court held that the provision was to ensure that accommodation in towns being scarce it was contemplated that any accommodation let out "do not remain unused at the instance of tenants who do not actually need them". (Emphasis added). Thus, tenant's partial "use" as an "Office" of the accommodation rented to him for "non-residential" purpose may not be a case of non-user to attract clause (d).

13-A. Other similar provisions in other Rent Control Acts were cited for the consideration of their Lordships and I am, therefore, of the view that even while construing Section 12 (1) (d) of the Act, the Court is required to keep in view the fact that evidence brought before the Court is of such nature that it precludes "need" of the present tenant of the accommodation to hold him liable for eviction, in other words, the tenant would be required by the decree passed to discontinue misuse of the accommodation by depriving other prospective tenants to fulfill their needs. Finding has to be recorded by the Court in regard to the landlords proof of tenant's default and of the latter's failure to prove "reasonable cause" for the default before decree is passed for his eviction on ground envisaged u/s 12(1)(d) of the Act. Landlord's right to claim eviction under clause (d) on the ground of non-user is evidently not absolute and that is hedged by restrictions expressly contemplated and his duty to satisfy the Court that he had overcome those restrictions on facts established is exonerable.

Joginder Nath Sood Vs. Jagat Ram Sood, is a decision of a learned Single Judge who found tenant's non-contumacious use of electricity sufficient to hold landlord's entitlement established for tenant's eviction under a similar provision namely, Section 14 (2) (v) of H. P. Urban Rent Control Act. Shri Mitthal's implicit reliance on the decision is definitely well-meant, but I have found myself unable to subscribe to the view expressed in the decision cited. In any case, on facts, two cases are distinguishable as that was a case of an accommodation being let out for residential purpose comprising of one room and a kitchen. Reliance is also placed on a short-noted decision of a learned Single Judge of this Court, Brij Bhushan v. S. S. Motilal 1976 MPLJ SN 41. but no benefit of holding of the Court in that decision accrues to the instant plaintiff/respondent. That was rather a case of Section 42 which contemplates termination of tenancy of a person who has been allotted an accommodation by virtue of his Office when he ceases to hold that office, on account of his transfer, retirement or otherwise.

For the reasons aforesaid, I am constrained to hold that the Court below erred in law in passing decree of eviction against the defendant/appellant on either grounds, contemplated under clauses (a) and (d) of Section 12 (1) of the Act. I have held earlier that decree could not be passed under clause (a) and I hold now that under clause (d) also the plaintiff/respondent failed to make out and prove his case for eviction of defendant/appellant.

The main question that survives now, for consideration is, whether the Court below rightly rejected claim of the plaintiff/respondent holding that decree could not be granted to him under clause (f) of Section 12(1). That question must be decided to dispose of the cross-objection. I do not think it is necessary on facts to reappreciate evidence to test the validity of finding of the lower appellate Court in denying the entitlement of plaintiff/ respondent, based on clause (f) despite averment in the cross-objection that the subsequently available accommodation during pendency of the appeal is to be utilised for a different purpose. Hasmat Rai and Another Vs. Raghunath Prasad, was also a case u/s 12

(1) (f) of the Act. Their Lordships held that where recovery of possession for tenant is sued for personal requirement, that requirement must not only exist on the date of action, but must subsist till the final decree or order for eviction is made. They further held that if the tenant is in a position to show that the need or requirement or more exists because of subsequent event, the appellate Court has to examine the contention and adjudge tenant's defence even at that stage.

In a later decision *Amarjit Singh Vs. Smt. Khatoon Quamarain*, their Lordships laid emphasis on the plaintiff's duty to establish his "bona fide" in claiming eviction on ground of personal requirement and that when subsequently accommodation is available to the landlord, after institution of the suit, his professed need in regard of suit premises cannot continue to be bona fide. *Shri Lahoti* cited two short-noted decision of this Court. *Brijballabh 1987 (1) MPWN 147* and *Laxman Singh v. Navelmal 1987 MPRCJ (N) 62*. Defendant/appellant's plea founded on *Hashmatrai (supra)* was accepted in *Brijballabh* in second appeal on the subsequent event pleaded u/s 12 (1) (f) of the Act chiming that need of the plaintiff/respondent had vanished. Similarly, in *Laxman Singh*, remand was made for subsequent event to be enquired into by the trial Court in regard to plaintiff's claim made for defendant/appellant's eviction u/s 12(1) (b) of the Act.

In the instant case, there is no scope for remand because that exercise *Lalia Prasad (supra)* interdicts. It has been held that the need to tie the landlord to his "requirement" pleaded at the time of institution of the suit, follows from the imperative requiring him to prove that his requirement was "bona fide". If the landlord is allowed to change in any manner the purpose of the beneficiary, that would tantamount to providing him a leverage. In the instant case, in the plaint, the case set up was that the partnership firm required the suit premises lot running a restaurant, to the cross-objection in this appeal, it is stated that the accommodation which became available to the plaintiff firm on 23-8-1982 (during the pendency in the Court below of the appeal) would not be utilised by the firm. Reason given is curious and statutorily untenable. It is not disputed that the said accommodation was "reasonably suitable" for the purpose of starting restaurant business for which the requirement was pleaded in the suit. It is also not disputed that, that accommodation too is of the ownership of the partnership firm. The plea now taken is, that would be used for starting sweet-meal business of partner *Kailash Narayan*. It was not the case of the plaintiff/respondent that partner *Krishna Narayan* was also in need of accommodation to do his separate sweet-meat business. In any case, the plaintiff firm can plead only its own requirement and not the requirement of any of its individual partners to claim a decree for eviction under clause (f) of Section 12 (1). The change in stand taken in the cross-objection is untenable in law and as such, it is not necessary to have an enquiry on facts for adjudicating that new case which the plaintiff/respondent has set up in this Court.

Sri Ram Pasricha Vs. Jagannath and Others, and *Kanta Goel Vs. B.P. Pathak and Others*, *Shri Mittal* cited to support plaintiff/respondent's case u/s 12 (1) (f) in

terms of the cross-objection. Right of a co-heir to institute eviction proceeding was the issue considered in Kama Goyal; the issue was not one of a co-heir to evict a tenant on the ground of his personal requirement. Maintainability of an eviction suit figured in Shriram Pasricha while that question is not germane to the controversy raised in this appeal u/s 12 (1) (f).

A few words now to deal with the argument of Shri Mittal that in this appeal, it is still open to the plaintiff/respondent to press for a decree on clause (k) of Section 12(1) even though no cross-objection against trial Court's refusal to decree the suit on that ground was filed in the lower appellate Court. The entitlement of respondent contemplated under Rule 22 of Order 41 CPC is, in opinion, to support a decree in respect to the right enforced and while going so, he may challenge any finding that may be reached in the Court below against him. In the instant case, no finding is recorded by the lower appellate Court in regard to plaintiff/respondent's claim for eviction founded on clause (k). It cannot also be said that the Court below was under any obligation to record suo motu its finding in regard to each and every ground of eviction in respect to which the suit was instituted. Evidently, each of the different clause of Section 12(1) of the Act provides separately and independently different causes of action for eviction and even if a claim for eviction is founded correlatively on several of them, the Court can pass decree in respect only of such grounds in regard to which entitlement is found duly established. It is not the business or duty of the Court to consider sua motu plaintiff's claim and entitlement; it is plaintiff's duty to enforce his independent and separate right founded on each of the clauses of Section 12 (1). That he can do by preferring cross-objection in regard to the part of decree dismissing his claim founded on any one or more clauses of Section 12 (1). I found, therefore, no substance at all in the contention of Shri Mittal that there is scope for remand of the matter to the Court below for re-examining plaintiff's case in respect of his entitlement under clause (k). Plaintiff must blame himself for his default in not preferring cross-objection in the lower appellate Court challenging trial Court's decision against him in respect to his claim founded on clause (k).

In the result, appeal succeeds and is allowed. The judgment and decree passed by the Courts below are set aside. The suit stands dismissed. No order as to costs.