
(1976) 08 MP CK 0021
In the Madhya Pradesh High Court
Case No : S.A. No. 600 of 1971

Sakina Br and others

APPELLANT

Vs

Shambhoo Bai and another

RESPONDENT

Date of Decision : 12-08-1976

Acts Referred:

Madhya Pradesh General Clauses Act, 1957 — Section 7
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12, 12(1)
(a), 12(3), 13

Citation : (1977) ILR (MP) 332 : (1977) JLJ 98

Hon'ble Judges : J.P. Bajpai, J

Bench : Single Bench

Advocate : C.K. Sharma, for the Appellant; P.P. Dubey, for the Respondent

Final Decision : Allowed

Judgement

J.P. Bajpai, J.—This second appeal is at the instance of the defendant-tenant against whom the decree for eviction from the suit premises has been passed by the lower appellate Court.

2. The claim of the plaintiff landlord for eviction of the defendant-tenant has been decreed by the lower appellate Court on the ground u/s 12(1)(a) of M.P. Accommodation Control Act, 1961 by denying protection u/s 12(3) because according to the lower appellate Court one of the monthly deposits of amount equal to the amount of monthly rent during the pendency of the suit before the trial Court was made on 16-2-1970 instead of 15-2-1970. It was not disputed that on 14th February and 15th February, 1970, the Courts were closed the dates being gazetted holidays, and 16-2-1970 was the opening day. It was also not disputed that the deposit was made on 16-2-1970. The lower appellate Court was of the view that the deposit on the opening day could not be treated as regular and even if 15th February, the last day prescribed for payment, was holiday, the defendant-tenant should have paid the amount directly to the plaintiffs-landlords or should have taken care to deposit the same on 12th or

13th, which were working days. The lower appellate Court, therefore, declined to give benefit of section 7 of the M.P. General Clauses Act and accordingly held that due to the aforesaid default, the defendant was not liable to protection against eviction as provided for in sub-section (3) of section 12 of the Act.

3. It was contended on behalf of the appellant that the aforesaid conclusion of the lower appellate Court was erroneous. According to the appellant, the benefit of section 7 of the M, P. General Clauses Act was available to the defendant-tenant and since 15-2-1970 was a holiday, the deposit of the amount equal to monthly rent made on the opening day i. e. 16th February was in compliance with section 13 of the M, P. Accommodation Control Act. I find that there is force in this contention. The provisions of section 13 of the Act provide that the tenant may either pay the rent to the landlord or may deposit the same in the Court by 15th of each succeeding month. There is nothing in the Act to suggest that the provisions of section 7 of the M. P General Clauses Act cannot be applied in such circumstances. The making of deposit in Court is an act and the provision that the deposit should be made by 15th of each succeeding month is a prescription that the act of deposit should be made within the specified period and therefore, the conditions of applicability of section 7 are satisfied. Since the tenant has made a deposit on the opening day, he will get the benefit of section 7 of the M.P. General Clauses Act and it will be held to be in due compliance of section 13 of the M.P. Accommodation Control Act.

4. For the reasons stated above, the defendant-tenant was entitled to the protection given under sub-section (3) of section 12 of the Act and accordingly no decree for eviction could be passed against him on the ground envisaged in section 12(1)(a) of the same.

5. It was contended on behalf of the respondents that since the defendant-tenant died during the pendency of this appeal, his heirs brought on record could not avail of the protection u/s 12(3) inasmuch as after the determination of contractual tenancy, the right to remain in occupation of the premises was a personal right of the tenant. To meet this objection, reliance was placed by the learned counsel for the appellant on the decision of their Lordships of the Supreme Court in *Damdilal and others. v. Parasram & others* 1976 M P L J 526 (S C) (C.A. No. 884 of 1968, dated 7-5-1976). In the aforesaid judgment, it has been observed that despite determination of the contractual tenancy by a quit notice, the tenant retains the possession of the premises as a statutory tenant and the said interest was heritable and the heirs were entitled to contest the claim of ejectment on all such grounds on which the statutory tenant could rely. In the case cited above, the facts and circumstances were similar inasmuch as the defendant-tenant against whom the decree for eviction was passed by the lower appellate Court died during the pendency of second appeal and his claim to avail of the protection given to statutory tenants was upheld. Thus, the legal position stands settled and the earlier view expressed in the decisions of this Court reported in *M.P. Wakf Boards Bhopal v. Siraj Bai & others* 1974 M P L J

807 : 1975 J L J 225 (S B). and Mohanlal v. Basanti Bai 1975 J L J 44 (S B) cannot now be relied to contend that the right of the statutory tenant to remain in possession after the determination of the contractual tenancy was personal and not heritable. The aforesaid decisions cited above were given by relying on the observations made in Jagdish Chander Chatterjee and Others Vs. Shri Kishan and Another, . The aforesaid case has been dealt and discussed by a larger Bench of the Supreme Court in the Civil Appeal referred to above. But since a contrary view has been taken by a larger Bench of the Supreme Court,, the earlier view will not prevail. As the question stands concluded by the decision of the Supreme Court, it will also not be necessary for me to refer this question to a larger Bench of this Court. It is, therefore, held that the Legal Representatives of the appellant-defendant can avail of the protection given u/s 12 of sub-section (3) of M.P. Accommodation Control Act.

6. No other point was pressed.

7. The appeal, therefore, succeeds and is accordingly allowed with costs. The judgment and deceree of the lower appellate Court are set aside and the decree of the trial Court dismissing the claim of the plaintiffs for eviction is restored. Counsel''s fee at Rs. 50, if certified.