
(2002) 10 CHH CK 0002
In the Chhattisgarh High Court
Case No : Second Appeal No. 151 of 2002

Salim and Others

APPELLANT

Vs

Shakti Pictures Serkit Limited

RESPONDENT

Date of Decision : 08-10-2002

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 3(2)

Citation : (2002) 4 CGLJ 315 : (2003) 1 MPHT 19

Hon'ble Judges : Fakhruddin, J

Bench : Division Bench

Advocate : Manoj Paranjpe, for the Appellant; B.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Fakhruddin, J.—This appeal by tenant is against the judgment and decree dated 18-2-2002 passed by the Additional District Judge, Raipur in Civil Appeal No. 46-A/97 whereby learned Court below has reversed the judgment and decree passed by the Trial Court.

2. The respondent/plaintiff had filed the suit for eviction. The Trial Court has dismissed the suit on the ground that the plaintiff is not entitled for exemption u/s 3 (2) of the M.P. Accommodation Control Act, 1961. The notification is published in Part I of the "Madhya Pradesh Rajpatra", dated the 22nd May, 1964. Said notification is quoted below :--

"GOVERNMENT OF MADHYA PRADESH HOME DEPARTMENT

Bhopal, dt. 13 May, 1964 - Vaisakha 23, 1886.

No. 2087-1180-II-A-(3).-- In exercise of the powers conferred by Sub-section (2) of Section 3 of the Madhya Pradesh Accommodation Control Act, 1961 (No. 41 of 1961) the State Government hereby exempts the plot of land bearing khasra No. 280.2 in Mahal No. 2, Baijnathpara, Raipur, in the Raipur District, together with the cinema house called Kamal Talkies (now known as Amardecp Talkies) and

with the out houses, stalls and other structures, standing thereon, which is owned by Dudhadhari Shri Vaishnav Trust Fund, Raipur an Educational and Religious Institution, from all the provisions of the said Act."

Learned Lower Appellate Court while allowing the appeal has held that the appellant (respondent herein) is entitled for the exemption granted as per the notification aforesaid.

3. The appellant/defendants have preferred this appeal on the ground that the judgment and decree passed by the Lower Appellate Court is contrary to the law. Question No. 2 raised in the memo of appeal is quoted below :--

"Whether the suit premises having been situated within a limit of Municipal Corporation, Raipur. The appellant cannot be ejected from the suit premises unless any of the grounds enumerated u/s 12 (1) A-2-P of the M,P. Accommodation Control Act is pleaded and proved ?"

4. Learned Counsel for the respondent/plaintiff submits that the matter is squarely covered by the decision reported in Betibai and Others Vs. Nathooram and Others, , and a decision A.M. Qureshi Vs. M/s Shakti Pictures Circuit Limited, Amravati, Para 9 of the decision rendered in the case of AM Qureshi (supra) is quoted below :--

"Now, the notification issued under Sub-section (2) of Section 3 of the Act is confined to the immovable properties define as "accommodation" under the Act. It does not and cannot deal in terms who shall be the beneficiary of the notification. The contract of tenancy does not come into play in the context of our case. The notification is equally applicable to a lessee and sublessee because in such a case, the lessee becomes the landlord and the sub-lessee becomes the tenant under the Act. The paramount landlord, i.e., Dudhadhari Shri Vaishnava Trust Fund, Raipur may be lessor qua plaintiff in this case and by virtue of this relationship, the notification issued by the State Government exempts the accommodation belonging to the paramount landlord. It is neither here nor there to argue that sub-lessee had let out the property to him. In fact, the Act itself provides that a sub-lease can be granted only as per Section 14 (2) of the Act having obtained the consent therefore, from the paramount landlord in writing. There are elaborate provisions in Sections 14, 15 and 16 of the Act in what cases how a sub-tenant can be treated as tenant. There appears to be no valid reason to hold that a sub-lessee shall be governed by these provisions, in case where the notification exempts the accommodation mentioned in Section 3 (2) of the Act. A lessee can create a sub-lease in accordance with the general law of contract and Transfer of Property Act. It would be anomalous to hold that the exemption from the operation of the Act applies to these sections on account of the notification but it does not apply to a case where a sub-lessee files a suit to evict another sub-lessee under the general law. This Court is firmly of the view that the provisions of Section 3 (2) of the Act should be given full effect and not piecemeal effect. Section 3 (2) of the Act and notification made thereunder apply

to the accommodation alone and it is not affected by a contract between lessee and a sub-lessee. If the accommodation is exempted, then it does not matter, whether the suit is filed by a paramount landlord or the lessee against the sub-lessee, and the Act would not come into operation."

In *Beti Bai's* case (supra) the Apex Court in para 8 has held that "It may be mentioned that similar notifications issued in other States, by which Wakf and Trust properties were exempted, have already been upheld by this Court. As for example, the notification issued by the State Govt. of Tamil Nadu exempting Wakf and Trust properties, was upheld by this Court in *S. Kandaswamy Chettiar Vs. State of Tamil Nadu and Another*, . Even this decision was not brought to the notice of the learned Judges who disposed of *Manual's* case (1998 AIR SCW 3938)."

5. Having heard learned Counsel for the parties, considering the facts and circumstances brought on record and in view of the ratio aforesaid decisions in the opinion of this Court the question of law sought to be framed by the appellant has already been answered against the appellant as the matter has already been decided by the Apex Court. In the result the appeal deserves to be and is dismissed.

6. Counsel for the appellant however prays that the appellant may be granted time for few months to vacate the accommodation. Under the facts and circumstances of the case and in the interest of justice the appellant is granted time to vacate the accommodation. It is directed that the appellant shall vacate the suit accommodation on or before 28th February, 2003. He shall submit an undertaking that the peaceful possession shall be delivered to the respondent and shall deposit all arrears of rent within a month from today and shall continue to pay till vacation of the accommodation. If the appellant does not vacate the accommodation on or before 28th February, 2003, the respondent shall be at liberty to execute the decree forthwith.

Certified copy, as per rules.