

(2015) 04 MP CK 0127

In the Madhya Pradesh High Court

Case No : Review Petition No. 231 of 2015

Satya Pal Anand

APPELLANT

Vs

Bal Niketan Nyas, Bhopal and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 13, 3

Citation : (2015) 2 MPLJ 694

Hon'ble Judges : A.M. Khanwilkar, C.J.;Alok Aradhe, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Alok Aradhe, J.—This interlocutory application has been filed by the petitioner in Writ Petition No. 2804/2015 which was filed under Article 226 of the Constitution of India and was dismissed by this Court on 24-3-2015 in view of the law laid down by a three-Judge Bench of the Supreme Court in Radheshyam and another vs. Chhabinath and others, 2015 (2) MPLJ (S.C.) 254 : 2015 SCC Online SC 170 and in the case of A.R. Antulay Vs. R.S. Nayak and Another, AIR 1988 SC 1531 : (1988) CriLJ 1661 : (1988) 2 Crimes 753 : (1988) 2 JT 325 : (1988) 2 SCC 602 : (1988) 1 SCR 1 Supp . This application has been registered as review petition by the Office in which the petitioner has prayed for following reliefs:

"The impugned order dated 24-3-2015 be kindly recalled to do full and complete justice to the petitioner. And, by an ex parte order, the compliance of order dated 25-2-2015 be kindly stayed and if the amount of Rs. 10,13,078/- paid as law abiding citizen, by a Cheque dated 20-3-2015 drawn in favour of the Id. Court below as was directed by it, if stands collected by now, then directions be given ex parte that the said amount be directed within seven days from the date of the order passed to meet the ends of justice. And, such other and further reliefs as deemed deserved by this victim of indisputable miscarriage of justice and travesty of justice be kindly granted to him in these public law proceedings

recalling that a VOID order could be challenged at any time in any proceedings."

In Writ Petition No. 2804/2015, the petitioner had prayed for the following reliefs:

"7. (a) In view of the submissions made above, the impugned order dated 16-12-2014 directing dismissal of the MJC No. 40/2013 be kindly be quashed by a writ of Certiorari and granting such other reliefs as deemed deserved in law exercising constitutional powers vested in this Hon"ble Court under Article 226 of the Constitution of India and by a writ of Mandamus the respondent No. 2 be directed not to re-issue any warrant of delivery of physical possession of the premises in the lawful possession of the petitioner in this own rights till the mandatory investigations are completed as per law, so that a running business of the petitioner is not disturbed abruptly in violation of his rights to have justice as per law of this land.

(b) And the amount of the compensation claimed be kindly granted as prayed or such other amount as estimated to be just upon the facts herein in the public law proceedings and the respondents be directed to make payment of the directed amount of the compensation and exemplary costs in a just time and report compliance to this Hon"ble Court within directed time.

(c) And the respondent No. 3 be kindly directed to investigate and submit his report under what circumstances such heavy Police force remained at the premises of the petitioner when it is said in the order dated 16-5-2014 that there was no judicial order passed directing the Police force to be present there during the far long time when the execution of the warrant for delivery of the physical possession was being carried out on 23-4-2014 till 2.00 p.m. and even thereafter without the authority of law and directing such action against the process servers who have made a false statement of fact that there was no police force when they had been executing the warrant under question on 23-4-2014.

(d) That the order passed in case of MJC No. 563/12 on 16-12-2014 be kindly quashed and set aside passing such order thereupon as deemed just.

(e) That Judges (Protection) Act, 1985 be kindly read down as prayed herein.

(f) That such further or additional reliefs as deemed just be kindly granted together with costs deemed just".

2. We have heard the petitioner at length. The petitioner submitted that the order dated 24-3-2015 passed in Writ Petition No. 2804/2015 deserves to be recalled in view of the law laid down in A.R. Antulay (supra). Paragraph 5 of the order passed in Writ Petition No. 2804/2015 reads as under:

"5. The petitioner filed First Appeal No. 1037/12, which was admitted by a Bench of this Court vide order dated 21-12-2012 and the execution of the decree for eviction was stayed subject to fulfillment of conditions mentioned therein. The relevant extract of the order reads as under:--

"Several contentions have been raised by appellant including vires and provisions

as envisaged under section 3 of the M.P. Accommodation Control Act to be unconstitutional and further it has been submitted that appellant never agreed to pay rent @ Rs. 15/- per square feet of the tenanted premises and therefore he is not bound to pay or deposit the rent as decided by learned trial Court in the impugned judgment. Appellant further submits that notice of enhancement of rent sent by respondents to appellant was never served upon him although it was served upon his Manager. Hence according to him, service on Manager of said notice cannot be said to be service upon appellant. It has also been submitted by him that he is ready to pay or deposit the contractual rent which is Rs. 75/- per month. Hence, it has been prayed that monetary part of the decree be also stayed along with the eviction part of the decree till the decision of this appeal.

Having heard appellant and learned senior counsel for respondents, it is directed that eviction part of the decree shall remain stayed till the decision of this appeal. However, since there will be no irreparable loss to the appellant in depositing the decretal amount and further he will not suffer any irreparable loss in case he deposits monthly rent @ Rs. 5692/- as directed by learned trial Court that part of decree is not stayed.

The objection which appellant has raised during the course of argument shall be decided at the time of final adjudication of the appeal.

Thus, the execution of eviction part of decree shall remain stayed on the following conditions:--

- (i) The appellant shall deposit decretal amount of Rs. 1,13,840/- on or before 22-12-2012 in the trial Court/Executing Court.
- (ii) he shall also deposit the monthly rent @ Rs. 5692/- strictly in terms to section 13 of the M.P. Accommodation Control Act.
- (iii) the appellant shall also deposit the cost of plaintiffs/respondents on or before 22-12-2012 as directed by the learned trial Court and
- (iv) the respondents No. 1 to 12 shall be free to withdraw the amount so deposited by appellant in the trial Court/Executing Court after furnishing security to the satisfaction of that Court.

It is however, made clear that if any of the aforesaid conditions is violated by the appellant, the respondents No. 1 to 12 shall be free to execute the decree".

3. Thus, it is evident that the petitioner is required to pay the monthly rent at the rate of Rs. 5692/- strictly in terms of section 13 of the M.P. Accommodation Control Act, 1961 and is required to deposit the decretal amount of Rs. 1,13,840/- on or before 22-12-2012 before the trial Court in view of the order dated 21-12-2012 passed in First Appeal No. 1037/2012. Therefore, no such relief in this application, as prayed for by the petitioner, can be granted. Even otherwise, the impugned order neither suffers from any error apparent on the

face of record nor any jurisdictional infirmity warranting interference of this Court in review jurisdiction. From perusal of the application, we find no ground for recall of the order dated 24-3-2015 passed in Writ Petition No. 2804/2015, is made out. In the result, the review petition fails and is hereby dismissed.