
(1998) 09 MP CK 0039
In the Madhya Pradesh High Court
Case No : C.R. No. 1443 of 1998

Shakuntala Bai Sangewar and Others	APPELLANT
Vs	
Gopi Chand Gupta	RESPONDENT

Date of Decision : 29-09-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 144
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 23A

Citation : (1999) ILR (MP) 258 : (1999) 2 MPJR 65 : (1999) 2 MPLJ 112

Hon'ble Judges : Sreesh Chandra Pandey, J

Bench : Single Bench

Advocate : Alok Aradhe, for the Appellant; Y.K. Munshi, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pandey, J.

This revision is directed against the order dated 22-5-1998, passed by the Rent Controlling Authority, in Case No. 17/90(8) 89-90, whereby the applicants' application u/s 144, CPC was rejected by the Rent Controlling Authority.

The facts of the case lie in a narrow compass. The non-applicant filed an application u/s 23-A(b) of the M. P. Accommodation Control Act, 1961 (henceforth "the Act") on the ground of bona fide requirement in respect of a shop, bearing House No. 274/1, situate at Baijnath Para, Raipur. The applicants predecessor-in-title was carrying on the business of tailoring in the aforesaid shop. On 19-7-1991, the Rent Controlling Authority passed an ex parte order against the tenant and directed him to deliver possession of the suit premises. Consequently, late Ramkrishna Rao, the predecessor-in-title of the applicants, was dispossessed.

After execution of the ex parte order passed by the Rent Controlling Authority, Ramkrishna Rao filed an application on 14-6-1991 for setting aside the ex parte order under Order 9, Rule 13, Civil Procedure Code. The application was

accompanied by an application u/s 5 of the Limitation Act. Initially, the Rent Controlling Authority dismissed the application under Order 9, Rule 13, CPC on 28-10-1992. Ramkrishna Rao, thereupon, filed Civil Revision No. 575/92 against the order of the Rent Controlling Authority dated 28-10-1992. During the pendency of this revision, Ramkrishna Rao died and the applicants were substituted in his place. This court by order dated 15-11-1995 set aside the order passed by the Rent Controlling Authority and remitted the case for fresh decision in accordance with law.

The Rent Controlling Authority thereafter passed an order dated 20th February, 1997 and set aside the ex parte order of eviction against the applicants. The Rent Controlling Authority, while setting aside the ex parte order, held that the ex parte proceedings were void and had no sanctity in the eyes of law, as notice to the late Ramkrishna Rao was not served in accordance with law. The order passed by the Rent Controlling Authority became final, as it was not challenged by the non-applicant. The applicants thereafter filed an application u/s 144, CPC on 10-3-1997. The Rent Controlling Authority, after hearing the non-applicant, allowed the application u/s 144, CPC and passed an order dated 20-8-1997 and directed that the applicants be placed in possession. The order dated 20-8-1997 was challenged by the non-applicant in this court by filing Civil Revision No. 1508/97. The revision of the non-applicant was dismissed by this Court vide order dated 3-9-1997 holding that Section 144, CPC was applicable to the proceedings before the Rent Controlling Authority and it was authorised to restore possession to the applicants.

Thereafter the applicant filed another application, which is annexed as Annexure A-7 to this revision petition on 15-5-1998. In this application, the applicants claimed that they were entitled to compensation at the rate of Rs. 2,000/- per month for the period of dispossession on account of ex parte order. They also claimed that they were entitled to Rs. 5,000/- as the costs incurred in getting the decree set aside.

This application u/s 144, CPC has been partly dismissed by the Rent Controlling Authority by the impugned order dated 22-5-1998 on the ground that it cannot determine the compensation at the rate of Rs. 2,000/- per month as claimed by the applicants for the period the applicants remained out of possession, because of lack of jurisdiction. The Rent Controlling Authority was of the view that as the question of costs of Rs. 5,000/- shall be determined when the application for eviction is finally decided, as the matter of costs could be decided only after the final order was passed on the application u/s 23-A(b) of the M. P. Accommodation Control Act.

In this revision, the applicants have challenged that part of the order whereby the Rent Controlling Authority held that it had no power to grant compensation of Rs. 2,000/- per month for the period the applicants or their predecessor-in-title were kept out of possession due to execution of the ex parte order against their predecessor-in-title.

Learned counsel for the applicants argued that in view of the order dated 3-9-1997, passed by this court in C. R. No. 1508/97, between the same parties, it cannot be disputed that Section 144, CPC is applicable to the proceedings before the Rent Controlling Authority. This Court by order dated 3-9-1997 has clearly held that Section 144, CPC is applicable and the learned counsel for the non-applicant cannot dispute this fact. Therefore, it is not necessary to cover the same ground which has been covered in the order dated 3-9-1997 passed in C.R. No. 1508/97. It has already been held by this court that the CPC applies to the proceedings before the Rent Controlling Authority by virtue of Rule 16 which was made applicable along with other rules by a notification issued by the State Government u/s 50(ii) thereof. The court, therefore, comes to the conclusion that Section 144, CPC would apply and the Rent Controlling Authority was authorised to grant restitution of the suit premises to the applicants.

The precise question for determination in this revision is, whether the applicants can claim compensation for the period of dispossession u/s 144, Civil Procedure Code, as it applies to the proceedings before the Rent Controlling Authority in view of Rule 16 (*ibid*).

The provisions of Section 144, CPC are applicable to the proceedings before a civil court. There is a tacit presumption under the enactment that it can apply to a civil court of plenary jurisdiction. However, the Rent Controlling Authority exercising power under Chapter III-A of the Act is a court of limited jurisdiction. Chapter III-A was engrafted into the Act in order to expedite eviction of tenants of certain categories, on whom the Legislature in its wisdom, conferred the privilege of getting an eviction under the aborted procedure. Such persons have been defined in Section 23-J of the Act. Instead of getting an eviction under a regular civil suit, they can file an application before the Rent Controlling Authority which is conferred with the power of eviction on the ground of bona fide requirement of residential or non-residential purpose, for the aforesaid persons. The Rent Controlling Authority is not supposed to act as a court of law under the CPC and follow the elaborate procedure when it takes up eviction proceedings u/s 23-A(a) or 23-A(c) of the Act. It has been provided that the Rent Controlling Authority was required to follow the procedure followed by Small Cause Courts including that of recording of evidence. It has also been provided that hearing of the applications shall be from day to day. The Rent Controlling Authority is also required to pass an order within a period of six months from the date of institution of the application. Thus an abridged procedure is being followed by the Rent Controlling Authority for eviction of the tenants. It is curious to note that besides the power of eviction u/s 23-A(a) and 23-A(b) of the Act, the Rent Controlling Authority has not been clothed with any other power. It has not been given specifically the power to pass any formal order regarding the payment of money, although, there is a provision u/s 23-H that during the pendency of the proceedings before the Rent Controlling Authority, the tenant is required to deposit the rent before the Rent Controlling Authority and the provisions of Section 13 of the Act have been made applicable *mutatis mutandis*

to the proceedings before the Rent Controlling Authority. There is no specific power given by the Legislature to the Rent Controlling Authority to pass an order for recovery of arrears of rent under Chapter III-A. It is clear from the language of Section 13(1) of the Act that deposit in the court is merely an alternative way of tendering it to the landlord. The tenant can directly pay to the landlord and can claim compliance of Section 13 of the Act. The Rent Controlling Authority by releasing the amount deposited in favour of landlord does what tenant could himself do. This does not imply that the Rent Controlling Authority has been conferred power to enforce the liability of payment of arrears. Non-payment of arrears would not authorise the Rent Controlling Authority to pass an order for recovery of rent. It has no such substantive powers apart from Section 23-H of the Act. That apart, it lacks machinery for implementing the order of recovery of arrears of rent. The Rent Controlling Authority cannot be said to possess power to pass an order whereby it can direct recovery of the arrears of rent under Chapter III-A. In fact, the Rent Controlling Authority is the court of very limited jurisdiction i.e. only for the purpose of eviction of a tenant either u/s 23-A(a) or 23-A(b) of the Act. If this be the purpose for which the court of limited jurisdiction was constituted, it is difficult to understand as to how can a Rent Controlling Authority grant compensation in terms of money when it cannot pass even an order of recovery of arrears of rent. This court is of the confirmed view that the Rent Controlling Authority is not constituted for the purpose of passing an order for recovery of money. Therefore, it cannot grant restitution u/s 144, Civil Procedure Code. The initial jurisdiction of the Rent Controlling Authority is limited. It cannot be enlarged by application of Section 144, Civil Procedure Code. Section 144, Civil Procedure cannot confer that power which the Legislature in its wisdom has not conferred upon the Rent Controlling Authority. Section 144, CPC is being applied to the proceedings before the Rent Controlling Authority by way of reference in view of Rule 16 framed u/s 50 of the Act. Rule 16 made u/s 50 of the Act is a subordinate legislation. This rule cannot confer the substantive power to any court of limited jurisdiction by way of reference. The scope of application u/s 144, CPC is limited to the acts which the Rent Controlling Authority itself is authorised to do. The Rent Controlling Authority is not authorised to pass any order for recovery of money dues.

The remedy of the applicants, if any, lies in filing a civil suit. Such a suit would not be barred for the reason that this court has come to the conclusion that Section 144, CPC would not apply for recovery of compensation during the period the applicants were out of possession pursuant to the ex parte order passed by the Rent Controlling Authority.

There is another reason why the application u/s 144, CPC is liable to be dismissed. It is not in dispute that the applicants had moved one application u/s 144, Civil Procedure Code. They could have included the claim for compensation in that application itself. However, they did not do so and filed a fresh application. It is well-established that this purpose cannot be achieved for the same cause of action. A man cannot be vexed twice for the same cause. The "applicants, having

failed to claim compensation in the earlier application, cannot be permitted to raise the ground in another application u/s 144, Civil Procedure Code. The principle of estoppel by conduct, on which Order 2, Rule 2 of CPC is based, would apply.

For all these reasons, there is no merit in this revision petition. The revision petition is dismissed.