
(1998) 10 MP CK 0028
In the Madhya Pradesh High Court
Case No : F.A. No. 214 of 1993

Shanti Devi Agrawal and Others

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 08-10-1998

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12

Citation : (1969) ILR (MP) 357 : (1999) 2 JLJ 185 : (1999) 1 MPLJ 615

Hon'ble Judges : A.K. Mathur, C.J.; Dipak Misra, J

Bench : Division Bench

Advocate : Ravish Agrawal and Prashant Mishra, for the Appellant; J.P. Sanghi, for the Respondent

Judgement

A.K. Mathur, C.J.

This is a reference made by the learned Single Judge holding that the question raised in the First Appeal is of an importance; therefore, it may be decided by the Division Bench, though the question of law has not been framed by the learned Single Judge. However, whenever question is referred to the Larger Bench, question of law should be framed and then it should be referred to the Larger Bench. Since the question of law was not framed by the learned Single Judge, we shall frame a proper question after narration of few necessary facts.

A suit was filed by the plaintiffs/appellants. There is a house existing on plot No. 8/1 and 9 measuring 4000 sq.ft. The suit premises was rented out by the plaintiffs to the defendant-Bank on monthly rent of Rs. 4,537.50 paise. The suit premises was previously owned by Bhagwanji Amarsi Chatwani and thereafter, the suit premises were purchased by the plaintiffs. It is alleged that the plaintiffs required the suit premises in order to start their business.

The suit was resisted by the defendant-Bank. It is alleged that the suit premises originally belonged to one Swami Bhagwanji Amarsi and it was rented out by him to the Bank in a sum of Rs. 4,125/- per month on 1-3-1982. It is alleged that

there was a condition stipulated in the rent agreement that it shall be for a period of five years and with an option to the plaintiffs to further extend the period for another five years with 10% increased rent. The increased rent was Rs. 4,537.50 paise per month for another period of five years, which was being paid by the defendant to the plaintiffs. It is alleged that another period of five years was to expire on 29-2-1992, but the suit was filed on 4-1-1991; therefore, the suit is pre-mature.

About three issues were framed and issue No. 2(b) was that as per agreement, the tenancy was to expire on 29-2-1992; therefore, the plaintiffs could not bring the suit for eviction before expiry of the tenancy period. This issue was answered by the trial Court in favour of the defendant-Bank along with other issues and dismissed the suit along with the decision on other issues with which we are not concerned.

Aggrieved against the judgment and decree dated 25-6-1993 of the trial Court, the present appeal was preferred by the plaintiffs/appellants before this Court and when it came before the learned Single Judge, the learned Single Judge by order dated 25-6-1997, looking to the importance of the issues, referred it to the Larger Bench. Hence, this appeal came before us.

On the basis of the facts which have been disclosed above, the following question of law arises, which reads as under :-

"Whether the plaintiffs can bring a suit before expiry of extended period of five years when there is a contract that the tenancy was for a period of five years with further option for another period of five years with increase of 10% rent, or not?"

There is no gainsaying. Whenever there is a contract for a period of 5 years extended for another period of 5 years, then so far as the tenancy is concerned, it cannot be disputed. But the question is whether during the contractual period of tenancy, a suit can be brought prior to the expiry of the contracted period. The tenancy in the State of Madhya Pradesh is governed by the provisions of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as the "Act of 1961" in short). Section 12 of the Act of 1961 deals with the eviction of tenants. Section 12 reads as under :-

"Section 12 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 :

xxx xxx xxx"

Therefore, when the contract of tenancy is stipulating a fixed tenure, then in that case, whether Section 12 can override such contract or not. Section 12 starts with non-obstante clause and says that notwithstanding anything to the contrary contained in any other law or contract meaning thereby that non-obstante clause

will govern so far as the eviction of tenant is concerned, and even if there is a contract to the contrary, then also the Act will prevail. Therefore, the answer to the aforesaid question is that Section 12 will govern the eviction of tenant, notwithstanding the fact that there is a fixed term of tenancy as per the agreement. Similar question has already been answered by their Lordships of Hon. Supreme Court with reference to Karnataka Rent Control Act, 1961 in the case of Shri Lakshmi Venkateshwara Enterprises Pvt. Ltd. Vs. Syeda Vajhiunnissa Begum (Smt) and Others, . In that case, similar question arose before their Lordships of Hon. Supreme Court whether the suit can be filed prior to the expiry of the contract period of the tenancy and with reference to Section 21 of the Karnataka Rent Control Act, 1961, their Lordships answered the question that plaintiff can bring the suit notwithstanding the fixed tenure provided in the tenancy. In that connection, it may not be out of place to mention that Section 21 of the Karnataka Rent Control Act, 1961, which is *pari materia* with our Act, which reads as under :-

"Section 21 (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any Court or other authority in favour of the landlord against the tenant;

Provided that the Court may on an application made to it, make an order for the recovery of possession of a premises on one or more of the following grounds only, namely : (Clauses (a) to (p) are omitted as not necessary. Clauses (a) to (p) enumerate the grounds enabling the landlord to recover possession of the premises from the tenant)."

Their Lordships after referring the aforesaid provisions and various decisions of the Apex Court, observed as under :-

"Therefore, this authority clearly holds that the provisions of Rent Control Act would apply notwithstanding the contract. However, what is sought to be relied on by the learned counsel for the appellant is the Full Bench judgment of Karnataka High Court in Sri Ramakrishna's case (*supra*). In that ruling, the decision of this Court in Dhanapal Chettiar's case (*supra*) is sought to be distinguished is one relating to the necessity for issuance of notice u/s 106 of the Transfer of Property Act. On that basis, the other ruling of this Court namely, Firm Sardarilal Vishwanath and Others Vs. Pritam Singh, is also distinguished. However, the Full Bench chose to rely on Modern Hotel, Gudur, Represented by M.N. Narayanan Vs. K. Radhakrishnaiah and Others, wherein the term "lease" was excluded from the ambit of the said Act."

Therefore, in view of the decision of their Lordships of the Hon. Supreme Court, the question no more remains *res integra* and it is answered that in such a contractual tenancy, a suit can be brought before expiry of the period of contract. However, our attention was invited to the decisions of this Court reported in 1982 MPWN 455, Sundardas v. Kamladevi and 1985 MPWN 314 wherein this Court has

taken the view that before efflux of time as provided in the contract of tenancy, the suit cannot be brought is not a good law on the subject. The view taken by this Court in the case of Panjumaal Daulatram v. Sakhi Gopal Thakurdin Agrawal 1977 MPLJ 762 is a decision in the line of the decision given by the Hon. Supreme Court in Shrilakshmi Venkateshwara's case (supra); therefore, that is affirmed. Hence, we answer the aforesaid question in the light of the above observation and remand the case back to the learned Single Judge for disposal of the matter in accordance with law.