
(2010) 12 MP CK 0036
In the Madhya Pradesh High Court
Case No : C.R. No. 474 of 2010

Shri Pratap Raghavji Bhagwan Virajman Mandir
Vs

APPELLANT

Krishna and Others

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1), 18, 18(3)

Citation : (2011) ILR (MP) 1063 : (2011) 4 MPHT 308 : (2011) 2 RCR(Rent) 176

Hon'ble Judges : U.C Maheshwari, J

Bench : Single Bench

Judgement

U.C. Maheshwari, J.—This revision is directed on behalf of the applicant/Plaintiff/decree holder against Respondent /judgment debtor/ Defendant u/s 115 of the CPC being aggrieved by the order dated 27.9.2010 passed by Civil Judge Class-I Tikamgarh in MJC No. 4/2010. The same also appears to be filed against the order dated 21.10.2010 as stated in para-8 and 9 of the revision memo whereby the application filed on behalf of the Respondents u/s 18(3) of the M.P. Accommodation Control Act, 1961 (for short "the Act") for their re-entry in the newly constructed premises in compliance of the judgment and decree dated 31.7.07 passed by the District Judge Tikamgarh in Civil Regular Appeal No. 37-A/06 arising out of judgment and decree dated 31.7.06 passed by the Addl. Civil Judge to the Court of Civil Judge Class-I Tikamgarh in Civil Original Suit No. 29-A/06 has been allowed and pursuant to that to deliver the possession of the newly constructed premises to the Respondents, a warrant of possession has been directed against the applicant herein.

2. The facts giving rise to this revision in short are that the applicant herein on or about 20.9.1999 instituted a civil suit against the Respondents for their eviction from the premises comprising two rooms of House No. 40 situated at Ward No. 80, Khasra No. 226/1, Rajmahal Road, Tikamgarh also described and marked in the map annexed with the plaint on the grounds enumerated u/s 12(1)(a) and (h) of the Act. The same was contested on behalf of the Respondents. After

holding the trial on appreciation, the same was decreed by the trial court in Civil Original Suit No. 29-A/06 vide judgment dated 31.7.06 for eviction on aforesaid both the grounds i.e. Section 12(1)(a) and (h) of the Act. On challenging such decree by the Respondents herein in the above-mentioned appeal, the same was allowed in part and by setting aside such decree in part till the extent of Section 12(1)(a) of the Act, the same was affirmed on the ground u/s 12(1)(h) of the Act with some terms and conditions in which the right of re-entry to the Respondents after making out the new construction of the premises was also included. It is noted that at the instance of the applicant herein, a second appeal against the aforesaid judgment and decree of the appellate court is pending in this Court as S.A. No. 1669/07 in which against the execution of said decree no stay has been granted as such stay application was withdrawn on behalf of the applicant herein vide dated 12.3.2010 in such appeal.

3. As per further case of the parties, subsequent to decision of the aforesaid first appellate court, in compliance of the terms of the decree, the vacant possession of the disputed premises was handed over by the Respondents to the applicant for making the new construction within the prescribed period, thereafter the Respondents had carried-out the same. As per case of the Respondents they have complied with all the terms of the decree passed on the ground u/s 12(1)(h) and, therefore, in such premises, they are entitled to re-enter in the premises after its re-construction. But the possession of the same was not being given to them by the applicant herein, on, which, they filed the impugned application u/s 18(3) of the Act with a prayer to make available them the vacant possession of the newly constructed shop from the applicant in compliance of the decree. The averment of such IA was disputed on behalf of the applicant/Trust by filing its reply, on which, after holding the preliminary inquiry, the aforesaid application of the Respondents were allowed by the executing court vide dated 21.10.2010. I would like to mention here that initially according to the reply of the applicant the requisite rent of the agreed period was not deposited by the Respondents, therefore, they are not entitled for re-entry in the premises. But the executing court vide order dated 21.10.10, by holding that such entire rent has been deposited by the Respondents and in such premises, the warrant of possession to make available the alleged shop to the Respondents, has also been directed, on which, the applicant has come forward to this Court with this revision.

4. Shri Pranay Verma, learned Counsel for the applicant, after taking me through the averments of the revision memo as well as the papers placed on the record said that undisputedly the decree has been passed in favour of the present applicant and against the Respondents u/s 12(1)(h) of the Act by extending the right of re-entry in favour of the Respondents but subsequent to such decree its terms and conditions were not complied with by the Respondents by depositing the rent of the disputed accommodation regularly and, therefore, the Respondents have lost their right to re-enter in the premises but the executing court without taking into consideration such aspect with proper approach has

passed the impugned order and, in such premises, prayed for admission of this revision. He also argued that subsequent to vacating the possession, the Respondents had got some alternate accommodation in the same locality, therefore, in such premises also they do not deserve to get re-entry in the disputed premises and prayed for setting aside the impugned order and rejecting the application of the Respondents filed u/s 18(3) of the Act by allowing this revision.

5. In response of some query, he fairly conceded that in the aforesaid pending S.A. No. 1669/07, no stay order has been passed against execution of the impugned decree. The same is also stated in para-5 of the revision memo.

6. Having heard the counsel, in order to consider his submission, I have carefully gone through the averments of the revision memo as well as the papers placed on the record. Undisputedly, the eviction suit of the applicant herein was decreed by the trial court on the grounds enumerated u/s 12(1)(a) and (h) of the Act. On filing the appeal at the instance of the Respondents, the same was allowed in part and the decree passed u/s 12(1)(a) of the Act was set aside while the decree passed u/s 12(1)(h) of the Act, subject to provision of Section 18 of the Act, with some direction, has been affirmed by the appellate court vide judgment dated 31.7.07 in Civil Appeal No. 38-A/06 as evident from Annexure A-3. It also appears from the papers placed on the record that in compliance of such decree, the premises was vacated by the Respondents herein thereafter, the same has been constructed by the applicant. But in compliance of the decree, in accordance with provision of Section 18 of the Act when the possession of newly constructed premises was not handed-over to the Respondents then they filed the impugned application u/s 18(3) of the Act and after holding the inquiry, the executing court has come to this conclusion that the Respondent herein complied with the terms of the decree and, in such premises, they are entitled to get the possession of the premises in the reconstructed house from the applicant and in such premises, the warrant of possession has been directed to be issued against the applicant with respect of the alleged premises.

7. In the aforesaid premises, it is apparent that the Respondents herein filed an application u/s 18(3) of the Act in compliance of the decree and as per findings of the executing court, in the impugned order, the requisite sum of the rent has also been deposited by the Respondents and, in such premises, I am of the considered view that the executing court has not committed any error in allowing the aforesaid application of the Respondents and in directing the warrant of possession to make available the alleged premises to the Respondents from the applicant.

8. Besides the above, I am of the considered view that in any case after passing the decree at the stage of its execution, the executing court cannot go behind the terms of the decree as laid down by the Apex Court in the matter of V. Ramaswami Ayyangar and Others Vs. T.N.V. Kailasa Thevar, and Onkar v. Heeralal- 1982 MPWN 225. In such premises also the applicant did not have any

authority or right to deprive the Respondents from getting the fruits of the impugned decree whereby the right of re-entry in the premises has been extended in their favour.

9. In the aforesaid premises, I have not found any perversity, infirmity or irregularity in the order impugned requiring any interference under the revisional Jurisdiction of this Court. On the contrary, such order appears to be passed by the executing court in its vested jurisdiction and, therefore, in view of the law laid down by the Apex court in the matter of The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, , the impugned order does not require any interference at this stage. Resultantly, this revision being devoid of any merit, is hereby dismissed at the stage of motion hearing.