
(1977) 03 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Second Appeal No. 298 of 1976

Shyamlal Shiv Mangal Gour

APPELLANT

Vs

Kedarnath Meghanath Gupta

RESPONDENT

Date of Decision : 14-03-1977

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12, 12(1), 12(1)(a), 13(1)

Citation : (1979) ILR (MP) 718 : (1978) JLJ 448 : (1978) MPLJ 255 : (1978) MPLJ 223

Hon'ble Judges : J.P. Bajpai, J

Bench : Single Bench

Advocate : K.L. Issarani, for the Appellant; M.P. Acharya, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Bajpai, J.

This miscellaneous second appeal is at the instance of the judgment-debtor whose objection to the executability of the decree has been rejected by the Courts below.

The facts giving rise to this appeal are that the Respondent-decree-holder, being the landlord of the Appellant, brought a suit for eviction, recovery of arrears of rent and mesne profits. Ultimately, the parties entered into a compromise on the following terms:

(i) That the Defendant shall pay the arrears of rent and mesne profits from 1-10-1969 amounting to Rs. 4335.

(ii) That the Defendant agrees to handover vacant possession of the suit accommodation on or before 31-12-1973, failing which the Plaintiff will be entitled to take possession through the agency of the Court at the cost of the Defendant.

(iii) That the Plaintiff gives up the claim for costs of the suit on the condition that the Defendant shall voluntarily hand over possession of the premises on or before 31-12-1973, failing which he will also be entitled to recovery of the costs of the suit amounting to Rs. 500 plus the costs, which may be incurred in getting the vacant possession through the process of the Court.

A decree in terms of the aforesaid compromise was passed by the trial Court and was not challenged in any manner on the ground that it was not in terms of compromise or otherwise invalid. When the decree was put to execution, the judgment-debtor Appellant raised an objection that the decree was not executable for the following two reasons:

(a) That since there was no specific mention in the application for compromise that a decree be passed in terms of compromise, the decree passed by the trial Court was nullity and was not executable. According to the judgment-debtor Appellant, the terms of compromise amounted to an agreement and if the Defendant did not hand over vacant possession, the Plaintiff was required to institute a fresh suit for claiming possession.

(b) That the decree passed by the trial Court does not disclose existence of any of the grounds as specified in Sub-section (1) of Section 12 of the M.P. Accommodation Control Act, 1961.

Both the Courts below have rejected these objections and it was held that the decree was executable. I have gone through the record and find that these objections have been rightly rejected by the Courts below. From the terms of the compromise, as have been reproduced in paragraph 4 of the Order impugned, it is apparent that the Defendant agreed to suffer a decree for eviction on the terms of compromise. The only relaxation was that he was given time to vacate the premises and deliver possession of the same by 31-12-1973. It was specifically mentioned that on his failure to do so, the Plaintiff was entitled to recover possession through the agency of the Court at the costs of the Defendant. This objection on its face is absolutely frivolous and vexatious. Mere absence of the formal language that a decree be passed in terms of compromise is not material when from the terms of the compromise, it was implicit. Even after the passing of the decree, no step was taken to get the same set aside on the ground that it was not in terms of the compromise or was obtained by fraud or misrepresentation.

As regards the second objection, it would suffice to observe that the Courts below were rightly satisfied on consideration of the terms of compromise in the context of the pleadings and other material on record that the agreement to suffer a decree for eviction was lawful in as much as the ground as specified in Section 12(1)(a) of the Act, i.e. default in payment of arrears of rent was available. The facts that the Defendant was in arrears of rent and did not pay the same within two months from the date of service of the notice of demand and has also not deposited the same after the institution of the suit in compliance

with the provisions of Section 13(1) of the Act, were apparent on the face of record. It is true that there is no formal mention of any ground as contemplated by Section 12(1) of the M.P. Accommodation Control Act, 1961 in the compromise decree. But this in itself will not vitiate the same because there was sufficient material in the background of the case to satisfy the Court that the ground u/s 12(1)(a) of the Act was available to the Plaintiff. Reliance has been rightly placed on the observations of their Lordships of the Supreme Court in Roshan Lal and Another Vs. Madan Lal and Others,

No other point was pressed.

The appeal, therefore, fails and is dismissed with costs. Counsel's fee at Rs. 50, if certified.