

(1985) 03 MP CK 0005

In the Madhya Pradesh High Court

Case No : Civil Revision No. 620 of 1984

Smt. Rambai Saxena

APPELLANT

Vs

Smt. Jaswant Kaur Sabharwal

RESPONDENT

Date of Decision : 26-03-1985

Acts Referred:

Court Fees Act, 1870 — Section 7(xi)(cc)

Madhya Pradesh Accommodation Control Rules, 1966 — Rule 3, 6, 7

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12, 23A

Citation : AIR 1986 MP 30 : (1985) ILR (MP) 696 : (1985) JLJ 518 : (1985) 30 MPLJ 495 : (1985) MPLJ 495

Hon'ble Judges : S. Awasthy, J; C.P. Sen, J

Bench : Division Bench

Advocate : O.P. Sahai, for the Appellant; D.K. Dixit, for the Respondent

Judgement

C.P. Sen, J.

This revision along with Civil Revision No. 466 of 1984 Erode Enterprise v. Kailash Narayan and another C. R. No. 608 of 1984 Gulabrai Sethi v. Ramprakash Ahuja and C. R. No. 739 of 1984 Major Karamsingh v. Raman Kumar Sharnia have been referred to the Division Bench for opinion on the following question : --

"Whether an application u/s 23-A of the Madhya Pradesh Accommodation Control Act, 1961, as amended, the Court-fee is to be paid ad valorem or the prescribed Court-fee of Rs. 2/- as payable on application?"

These revisions arise out of the proceedings for eviction by the landlords against their tenants pending before the Rent Controlling Authority u/s 23-A of the M.P. Accommodation Control Act, 1961, (hereinafter referred to as the Act) on the ground of bona fide need. Civil Revision Nos. 620 and 739 of 1984 are preferred by the landlords against the order of the Rent Controlling Authority directing them to pay court-fee on their applications as required for eviction suits under the Court-fees Act. Civil Revision Nos. 466 and 608 of 1984 have been preferred by the tenants against the order of the same Rent Controlling Authority

overruling the objection of the tenants that the same court-fee is payable on the application u/s 23-A as is payable for eviction suits. It may be mentioned that all suits for evictions against tenants on any of the grounds mentioned in Section 12 of the Act were to be filed in civil Court. By introducing a new Chapter IIIA containing Sections 23-A to 23-I by the amending Act No. 27 of 1983, suits for eviction on the ground of bona fide need by the landlord have been deleted from u/s 12 and these sections have been added empowering the Rent Controlling Authority to decide the application for eviction on the ground of bona fide need of the landlord. However, by a further amendment by Ordinance No. 1/85 Section 23-J has been added to Chapter III-A restricting the definition of "landlord" for the purpose of this Chapter to be a retired or serving servant of any Government or of a company controlled by any Government, widow or a divorced wife and physically handicapped person requiring a house for his or her bona fide need. The learned single Judge in view of the general importance of the question raised in these revisions relating to the court-fee payable on application u/s 23-A of the Act, has referred the same for opinion of this Court.

The question is whether the court-fee is payable on an application filed u/s 23-A of the Act for eviction of the tenant on the ground of bona-fide need. Section 7(xi)(cc) of the Court-fees Act provides that in a suit between a landlord and a tenant for recovery of immovable property from the tenant, the amount of court-fee payable will be 12 months rent payable for the next year before the date of presenting the plaint. Obviously, this provision applies to suits only and not to other proceedings though they may be in the nature of suits. S. 9 of the Civil P.C. gives jurisdiction to the Civil Court to try all suits of a civil nature excepting those which are expressly or impliedly barred by any other law. So normally a suit for eviction on any ground is triable by a Civil Court unless it is expressly or impliedly barred by any other law. Under Order IV Rule 1 every suit shall be instituted by presenting a plaint. Even though dictionary meaning of "plaint" is very wide, it has in legal phraseology come to acquire more limited meaning i.e. a statement in writing of a cause of action in a suit. Every proceeding in a court is not commenced by a plaint. Order VII Rule 1 mentions the particulars to be contained in a plaint. Now a suit for eviction on the ground of bona fide need is not maintainable in a civil Court but the landlord can file an application u/s 23-A of the Act for eviction of the tenant. It is pertinent to note that in Section 23-A the word "application" is mentioned and not suit. So what is to be filed is an application for eviction of the tenant on the ground of bona fide need. However, Section 23-A mentions that the application should be signed and verified in a manner provided in Rules 14 and 15 of Order VI of C.P.C. as if it were a plaint to the Rent Controlling Authority. This is also the requirement of applications to be made before the Rent Controlling Authority under Rule 7 of M.P. Accommodation Control Rules, 1966. Rule 3 prescribes that an application under Sections 10 and 17 shall be in Form-A while under Rule 6 an application not hereinbefore specified in these rules shall, so far as may be, made in Form-A and shall state the grounds on which it is made. The form does not require the landlord to

mention as to when the cause of action arose or the court-fee payable. Obviously, therefore, an application filed before the Rent Controlling Authority cannot be a plaint, though for a limited purpose it should be signed and verified in a manner provided for a plaint. This requirement would not make an application a plaint. Otherwise also, the application u/s 23-A is to be disposed of by an order against which a revision lies. If it were a plaint, then it must be followed by a judgment and decree and normally appeal would lie, though u/s 35 Rent Controlling Authority has been given powers of civil Court for execution of any of its order under Chap. III-A as a decree of a civil Court. But this can not make the order of Rent Controlling Authority a decree. On an application presented to civil, criminal or revenue Court, or to Collector or any revenue officer, or to any Magistrate in his executive capacity, and not otherwise provided for, a court-fee is payable under Clause (6) of Article 1(b) of Schedule II of the Court-fees Act and according to us this Article will cover the question of payment of court-fee on an application u/s 23-A of the Act also.

However, reliance has been placed by the learned counsel for the tenants on a Division Bench decision of this Court in Hayatkhan and Others Vs. Mangilal and Others, wherein it has been held that a claim petition u/s 110-A of the Motor Vehicles Act is a petition which for all material purposes is like a plaint pertaining to the dispute ordinarily triable in Civil Court. Therefore, if the claimant is minor on the date of the accident, he will be entitled to benefit of Section 6 of the Limitation Act. In that case, the claim petition was filed beyond the period of limitation but since some of the claimants were minors they invoked Section 6 of the Limitation Act in order to bring it within the period of limitation. That section provides that where a person is entitled to institute a suit or make an application for execution of a decree, he can institute a suit or make an application within the same period after his disability has ceased. So the question in that case was whether the claim petition can be said to be a suit for giving benefit of Section 6 of the Limitation Act. Relying on the decision of the Bombay High Court in Khairunnissa v. Municipal Corporation, Bombay 1966 ACJ 37 that the word "suit" is capable of having very wide connotation and may include any legal proceeding commenced by one person against another in order to enforce a civil right, this Court held that in this context also it cannot be disputed that an application u/s 110 of the Motor Vehicles Act is a suit falling within the scope of the word suit used in Section 6 of the Limitation Act. In that decision, this Court held that only for the limited purpose for invoking provisions of the Limitation Act, a claim petition u/s 110 of the Act is a suit. It may be mentioned that the member of the Claims Tribunal is to be a Judge or a person who is qualified for appointment as a Judge of the High Court or a District Judge. u/s 110-B, the Claim Tribunal has to give an award. The award of the Claims Tribunal is not enforceable as a decree but as arrears of land revenue by revenue authorities. Under M.P. Motor Accident Claims Rules, 1959, fixed court-fee is payable both on the claim petition and also in appeal preferred u/s 110-D to the High court. So this case is of no assistance to the tenants in support of their contention that an application u/s 23-A is a

plaint and the proceedings before the Rent Controlling Authority are nothing but a suit.

We, therefore, answer the question by saying that no ad valorem court-fee is payable on an application u/s 23-A of the M.P. Accommodation Control Act, 1961 and only the court-fee prescribed in Clause (6) of Article 1(b) of Schedule II is payable i.e. Rs. 2/- on such an application.