

---

**(2013) 12 MP CK 0068**

**In the Madhya Pradesh High Court**

**Case No : Second Appeal No. 500 of 1997**

Smt. Sarojini Nigam and Others

APPELLANT

Vs

Laxmi Narayan Bansal and Others

RESPONDENT

---

**Date of Decision : 05-12-2013**

**Acts Referred:**

**Citation : (2013) 12 MP CK 0068**

**Hon'ble Judges : K.K. Trivedi, J**

**Bench : Single Bench**

**Final Decision : Dismissed**

---

## **Judgement**

K.K. Trivedi, J.—This appeal u/s 100 of the CPC is filed by the defendants/tenants against the judgment and decree dated 21.3.1997 passed in Civil Appeal No. 112-A/1996 by the VII Addl. District Judge, Bhopal, arising out of the judgment and decree dated 5.7.1996 passed in Civil Suit No. 139-A/1993 by the XIII Civil Judge Class-II, Bhopal, and has been admitted on the following substantial question of law:-

(i) Whether the appellants could take inconsistent and mutually destructive plea that they required bona fide the suit house for their personal residence as well as for reconstruction u/s 12(1)(h) of the M.P. Accommodation Control Act, 1961 for letting it out after reconstruction?

The respondents/plaintiffs have filed a suit for eviction against the appellants/defendants-tenants on various grounds under the provisions of Section 12(1) of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as the Act for brevity). In the plaint, it was contended that the respondents/plaintiffs have purchased the suit house by a registered sale deed. The fact relating to purchase of the house was brought to the notice of the appellants/defendants who were residing in the said house as tenants of the erstwhile owner of the house at the rent of Rs. 20/- per month. In the plaint, it was alleged that the appellants/defendants have not paid the electricity charges or the rent to the respondents/

plaintiffs in time. When a demand was made in this respect, the same was not complied with. The appellants have made an application for providing electricity connection to them, before the M.P. Electricity Board office at Bhopal, stating therein that the house in suit was belonging to somebody else, namely, Shri Laxmichand son of Ganga Prasad Nigam and that an electricity connection was to be provided to them. Thereby, the appellants have denied the title of the respondents/plaintiffs over the suit house making themselves liable to be evicted from the said demise premises under the provisions of Section 12(1)(c) of the Act. It was further contended that the house was bonafidely required by the respondents/plaintiffs for the purposes of reconstruction of the building for their own residence and shop. It was contended that for the purposes of reconstruction of the building, sanction was obtained from the Municipal Corporation Bhopal and sufficient funds were arranged by the respondents/plaintiffs. It was categorically pointed out that respondents/plaintiffs has a big family including wife and three children and since the plaintiffs No. 2 and 3 were also living jointly, having three children, sufficient accommodation was to be made for the purposes of residence. It was contended that the respondents/plaintiffs were already running shops in the adjoining part of the demise premises and for the said purposes, bonafidely the accommodation was needed. Therefore, the decree of eviction was claimed u/s 12(1)(h) and 12(1)(c) of the Act as well. It was further contended that while giving notice on 4.9.1993, the tenancy was terminated with effect from 30.9.1993, but since the vacant possession of the demise premises was not delivered, the suit was required to be filed.

2. The appellants/defendants contested the suit on various grounds. They contended that the demise premises let out to the appellants was in the ownership of the respondents/plaintiffs. It was denied that at any point of time any default was committed by the appellants in making payment of rent of the demise premises or that the electricity charges were not paid by them. They further denied that at any point of time, they made any application before the M.P. Electricity Board office at Bhopal, with respect to grant of electricity connection stating the name of somebody else as owner of the house in suit. They further contended that when they received the notice of eviction issued by the respondents/plaintiffs, they submitted their reply and stated that by changing the name respondents/plaintiffs were trying to evict the appellants. The plea of bona fide need for residence was denied. It was denied that there was any sanction granted for construction of the building in place of demise premises. It was further contended that the respondents/plaintiffs were residing with their mother jointly and as they have the sufficient accommodation to reside, only on a false pretext just to make a ground for eviction, such allegations were made in the plaint. Thus, it was claimed that the suit was liable to be dismissed.

3. The learned Civil Court framed the issues and recorded the evidence. Since the respondents/plaintiffs have proved their claim, not only by oral evidence, but by producing documentary evidence, the suit was decreed. It was categorically

held by the Civil Court that the need of the respondents/plaintiffs was bona fide for reconstruction of the building and, therefore, a decree of eviction was granted against the appellants. Feeling aggrieved by the judgment and decree of the Civil Court, the appellants approached the lower appellate Court by filing the appeal which having been dismissed, this appeal is required to be filed, which is admitted on the aforesaid substantial question of law.

4. Since no assistance is available from the Bar, as none is appearing either for the appellants or for the respondents, the entire record of the Court below is seen. As has been described herein above in short, no inconsistent plea which could be said to be contradictory to each other was raised by the respondents/plaintiffs in their plaint. What in fact, the respondents/plaintiffs have contended in their suit, was that the suit premises was required for the purposes of reconstruction and reconstruction or rebuilding, was not possible without the eviction of the appellants/defendants. The provisions of Section 12(1)(h) if examined, it is to be seen that only on bona fide requirement for reconstruction or rebuilding, for which the arrangement is made, a decree can be granted by the Court in favour of a landlord. The bona fide of the respondents/plaintiffs is writ large in view of the fact that they have not only applied for grant of sanction to reconstruct the building, the plan was also sanctioned by the competent authority for the purposes of reconstruction of the building after demolition of the existing building in which the demise premises was situated. Not only a plan was prepared, but an estimate was got approved which document has also been produced and proved. Ex. P/7-C is plan duly sanctioned by the Municipal Corporation Bhopal and Ex. P/8 is the estimate produced by the respondents/plaintiffs. For the purposes of showing whether financial arrangement was made by them for bearing the expenses of the building as proposed or not, the respondents/plaintiffs have examined the witnesses and have proved the certificate that they have sufficient funds available for meeting out the expenses. Such documents are Ex. P/9 to Ex. P/11. Thus, the need as indicated by the respondents/plaintiffs for getting the suit accommodation vacated from the appellants was met out and it was rightly held by the two Courts below that they were entitled to grant of a decree of eviction u/s 12(1)(h) of the Act. The only rider prescribed u/s 12(7) of the Act is, that, the eviction of a tenant shall not be made on the ground specified in sub-clause (h) of Sub-section (1) of Section 12 of the Act, unless the Court is satisfied that proposed reconstruction will not radically alter the purpose for which the accommodation was let or that radical alteration is in the public interest and that the plans and estimates of such reconstruction have been properly prepared and that necessary funds for the purpose are available with the landlord. Undisputedly, the part of very same building where demise premises was situated, was being used for residential purpose as also in part of which non-residential activities were going on. The proposed plan submitted by the respondents/plaintiffs for rebuilding of such a premise also consists the similar provision like residential and commercial. The funds were already available with the respondents/plaintiffs as has been pointed

out herein above, therefore, the necessary requirements were fulfilled and if the decree of eviction, was granted u/s 12(1)(h) of the Act, it cannot be said that any illegality was committed by the two Courts below.

5. Now the question is whether there was any contradictory statement made in the plaint itself by the respondents/plaintiffs. The plaint as a whole nowhere indicates that any contradictory statement was made. In fact, what the respondents/plaintiffs were pointing out by such pleadings that the accommodation was being used for the purposes of residence, but commercial activities were also going on in the part of the building where demise premises was situated, therefore, if the proposal was made for reconstruction of the building for the aforesaid common or joint purpose, it cannot be said that the pleas were contradictory to each other. This itself was stated by the appellants/defendants in their written statement that in part of the building where they were residing the commercial activities were also going on, by the respondents/plaintiffs. Thus, the question whether any inconsistent pleas were raised by the respondents/plaintiffs in their plaint with respect to the grant of decree of eviction u/s 12(1)(h) of the Act, does not arise. The appeal is not admitted on any other question of law. Since the question of law framed by this Court is negatived, appeal fails and is hereby dismissed. However, the parties to the appeal shall bear their own costs in this appeal.