
(2001) 07 MP CK 0014
In the Madhya Pradesh High Court
Case No : F.A. No. 512 of 1996

State Bank of Indore

APPELLANT

Vs

Satya Narayan Bajaj

RESPONDENT

Date of Decision : 30-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 151

Citation : (2002) 1 MPLJ 227

Hon'ble Judges : V.K. Agrawal, J

Bench : Single Bench

Advocate : Wazid Hyder, for the Appellant; Ashok Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Agrawal, J.

This appeal is directed against the judgment dated 31-10-1996 in Civil Suit No. 4-A/95, by Second Additional District Judge, Murwara, decreeing the suit of the Plaintiff/Respondent for eviction and arrears of rent etc. against the Defendant/Appellant.

Undisputably the suit accommodation consists of house Nos. 96, 96/1, 99, 99/2-b, 99/3, 99/4, situate at Malviyaganj, Katni, with Carpet area of 4075 sq.ft. The father of the Plaintiff/Respondent let out the suit accommodation to the Defendant/ Appellant-bank for non-residential purpose. The tenancy of the Appellant-tenant is monthly. Current rate of rent of the suit accommodation is Rs. 6,723.75 paise, per month.

The original landlord Doongarsidas Bajaj the father of the present Respondent filed a suit for eviction of the Defendant/Appellant from the suit premises alleging that the same is required bona-fide for starting the business of his son the present Respondent, and that he has no other suitable accommodation in his occupation, for the purpose in the town of Katni. He also claimed mesne profits @ Rs. 4/ per square feet for the use and occupation of the suit premises.

The suit was resisted on behalf of the Defendant-tenant. It was averred in the written statement that the suit accommodation was not required bona-fide for the business of the Respondent. The averments of the Plaintiff landlord that he had no other alternative accommodation, was also denied. It was also averred that the Plaintiff-landlord demanded that the rent be increased. Since, the Defendant/Appellant refused to increase the rent, the present suit has been filed by the Plaintiff/Respondent. It was also averred that there was oral agreement between the parties that the tenancy of the Appellant would continue from 1-4-1990 to 31-3-1995, and therefore, the present suit filed on 8-2-1995, was prematured.

The learned trial Court framed several issues including as to whether the suit accommodation was required bona fide by the Plaintiff-landlord for starting the business of his son (the present Respondent), and that he had no other reasonably suitable accommodation for the purpose in the city of Katni and as to whether the landlord wanted to increase the rent and the suit is liable to be dismissed. Some other issues were also framed by the trial Court, which are not relevant for the purpose of this appeal.

The learned trial Court held that the Plaintiff-landlord has proved that he requires the suit accommodation bona-fide for starting his business, and that he has no other reasonably suitable accommodation in his occupation, for the purpose at Katni. Accordingly, the suit was decreed, directing eviction of the Defendant/Appellant.

The learned Counsel for the Appellant submitted that as the Defendant/Appellant was a partner in another business namely "Hotel Utsav", his plea that he requires the suit accommodation for starting his own business, could not be accepted. It has also been submitted that the Plaintiff/Respondent had alternative accommodation in Katni, and that the real purpose behind filing the suit was an intent to increase the rent by the Plaintiff-landlord. It was further submitted that the suit is premature as there was oral agreement between the parties that the tenancy will subsist till 31-3-1995 was therefore, submitted that the suit for eviction should have been dismissed.

An application under Order 41 Rule 27 read with Section 151 marked as I.A. No. 2407/97, has also been filed in this appeal praying that additional documents may be permitted to be filed to substantiate the Appellant's case.

It will be convenient and proper to deal with the said application (I.A. No. 2407/97) for production of additional evidence. It may be noticed that normally the parties are required to produce evidence in support of their case during trial. However, Rule 27 of Order 41, CPC provides for production of additional evidence in Appellate Court. In the instant case provisions of Order 41, Rule 27(1)(aa) are invoked. The said sub-rule is as below:?

The party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his

knowledge or could not, after the exercise of diligence, be produced by him at the time when the decree appealed against was passed.

It has therefore to be considered as to whether the Appellant has shown and established that it could not produce evidence in the trial Court despite exercise of due diligence.

In the above context, it may be noted that in I.A. No. 2407/97, it has been stated that the documents could not be produced earlier, because they were missing from the relevant case file of the Appellant-Bank and as they were dumped in the disposal file inadvertently. It is further stated therein that on scrutiny being made on 6-11-1996, the branch Manager of the Appellant-Bank found out those documents, and therefore, they were being produced in appeal.

It may be noticed in the above context that the impugned judgment of the trial Court is dated 31-10-1996 and this appeal was filed on 22-11-1996. As per the above application, the documents were discovered on 6-11-1996. Therefore, the documents were available with the Appellant-Bank when this appeal was filed. However, the application (I.A. No. 2407/97) and the said documents were not filed along with the appeal. In fact, the said application has been filed on 31-3-1997 i.e. after more than four months of the filing of the appeal and the discovery of the documents as alleged above. No reason for the delay as above has been assigned.

It may further be noticed that the employee of the Defendant/Appellant Ashok Mahaskar (DW/1) during his cross-examination has referred to the copy of the partnership deed of "Hotel Utsav". Clearly therefore, the said document was within the knowledge of the Appellant when the trial was in progress and the evidence was being recorded by it. However, it is pertinent to note that even that document is sought to be produced along with the said application (I.A. No. 2407/97) as would be clear from entry at Serial No. 12 of the list of documents mentioned in para 2 of the said application, as well as the list of documents accompanying in the said application. It may also be noticed that other documents produced with the application are mostly letters written by the Appellant during the period from 1989-91. It is alleged that the said letters regarding the demand of increase in rent of the tenanted premises. However, it may be noted that some letters of similar nature have been produced by the Appellant in the trial Court. It is unnatural that some of the documents of the same nature would have been retained in the file by the Appellant-Bank; while other documents of similar nature relating to substantially the same period would be thrown out and dumped in some other file, as the Appellant has stated in his application (I.A. No. 2407/97).

It may further be noticed in the above context that it is not stated in the said application as to who was responsible for maintaining and keeping of the files and what action if any, had been taken by the Appellant-Bank against erring official who had dumped the said documents into disposal file. It is also not

stated that as to who was the Bank Manager who recovered those documents from the disposal file, and as to on what date they were recovered.

In the foregoing circumstances, the averments in the application do not appear convincing and the same lacks bona fide. Therefore, it does not appear that the above documents are not within the knowledge of the Appellant or that the Appellant was unable to produce the documents during trial, despite exercise of due diligence. For the foregoing reasons I.A. No. 2407/97 is without merit and is dismissed.

The learned Counsel for the Appellant firstly contended and raised a preliminary objection that the suit is premature, as term of tenancy was extended from 1-4-1990 to 31-3-1995, as is the plea taken by the Appellant in para-C and of the additional pleadings. Learned Counsel for Appellant: in the above context also submitted that the trial Court should have framed an issue, on the above plea raised by the Defendant/Appellant. Learned Counsel for the Appellant in support of the above submission referred to offer of lease dated 8-4-1985 (Ex. D/1) by original Plaintiff/landlord Dungarsidas. It is noticed that there is no document to show that the terms of aforesaid offer were accepted in toto by the Appellant-Bank. In fact, it appears that there has been a renewal of lease thereafter and change in the terms of tenancy. There is no document or other convincing evidence to show that the term of tenancy was extended till 31-3-1995, as has been pleaded by the Defendant/Appellant.

Therefore, it is clear that the Appellant has failed to show and establish that the term of lease was to expire on 31-3-1995. Hence, the contention that the suit is premature, cannot be accepted. In view of the above, even if, no issue was framed on the said-plea, no prejudice is being caused to the Appellant.

It has also been submitted by the learned Counsel for the Appellant that since the Respondent is a partner in "Hotel Utsav", the case of bona-fide requirement of the suit accommodation as set-up by him could not be accepted. It may be noticed in the above context that there is no satisfactory evidence to show that the Plaintiff/Respondent is a partner in "Hotel Utsav". There is also no material on record to show that the Appellant was engaged in the said business to such an extent as to be incapable of pursuing any other business. Even if it is assumed for the sake of arguments that the Plaintiff was partner in the business of "Hotel Utsav". There appears to be no prohibition in his pursuing his own independent business. A person may be a sleeping partner and may therefore like to engage himself and start business of his own. Moreover, a person may be partner in several businesses and also may have his own business or businesses. There is no prohibition of a person engaging himself in several business and commercial activities. There is nothing wrong in doing so. In the circumstances, the mere allegation that the Plaintiff/Respondent is partner of "Hotel Utsav" would not by itself be sufficient to negative his need of the suit accommodation for his own business.

The learned Counsel for the Appellant also urged that the Plaintiff/Respondent had alternative accommodation for his business. It is noticed that the Defendant/Appellant has not specified any particular premises which is alleged to be the alternative accommodation. Learned Counsel for the Appellant however, in the above context drew my attention to the statement of Ramesh Chand (PW/2). The said witness Ramesh Chand during cross-examination in para 5 has admitted that he is a partner of a business being carried out by the son of the Respondent, under the name and style of "Pooja Minerals". He has also stated that the accommodation in which business of "Pooja Minerals" is being carried out is in occupation of the said business for the last about 10 years. However, it may be noticed that the above statement does not indicate that the Plaintiff/Respondent himself was in occupation of the alternative accommodation. Moreover, it is not established that the said accommodation is of the ownership of the Plaintiff/Respondent. Again, since the said accommodation is not vacant and was in occupation of the said business of "Pooja Minerals" for the last about 10 years, i.e. much prior to the time when the need of the Plaintiff/Respondent. Therefore, it is not established that the Plaintiff was in occupation of alternative accommodation of his own.

It may also be noticed that the Plaintiff/Respondent could not be forced to start his business at a particular place instead of the suit accommodation. It was the sole discretion of the Plaintiff to choose a suitable place of his convenience for starting his business; unless it can be positively established, that the suit accommodation was much inferior to the other accommodation of the landlord in his occupation and available with him. The landlord is the sole arbiter of his choice and cannot be forced by the tenant to occupy other accommodation.

In the above context it may be noted that in *Prativa Devi Vs. T.V. Krishnan*, it was observed that the landlord is the best judge of his residential requirement and has complete freedom in the matter. Similarly, in *Ragavendra Kumar Vs. Firm Prem Machinery and Co.*, it was observed that, it is settled position of law that the landlord is the best judge of his requirement for residential or business purposes and he has got complete freedom in the matter.

It may further be noticed that in *Kamalkishore v. Narayandas*, 1972 MPLJ 137 it has been laid down that the Court cannot replace its own opinion for that of the landlord in regard to his requirements. What the Court has to see is that the landlord is not actuated by an ulterior motive. The Court is not the rationing authority for house accommodation under the Act.

Thus, the instant case the Defendant/Appellant has miserably failed to plead and prove that the Plaintiff/Respondent has any other reasonably suitable accommodation of his own, in his occupation for the purpose of starting his business.

The learned Counsel for the Appellant also contended that in view of the correspondence between the Appellant and the father of the Respondent, it is

clear that he wanted to increase rent of the suit accommodation, and therefore, the need as pleaded by him could not be treated as genuine or bona-fide. Learned Counsel for the Appellant in the above context drew my attention to letters (Ex. D/2, Ex. D/3 and Ex. D/4). However, perusal of the above letters would indicate that they were written by the father of the present Respondent long back during the period from 1985 to 1987 i.e., much prior to the filing of the suit in the year 1995. Moreover, the request made by them is for payment of reasonable rent of the suit accommodation, in view of the financial crisis being suffered by the landlord. It may also be noticed here that the other correspondence which is sought to be filed along with application under Order 41 Rule 27 of CPC Code, also relates to a period much prior to the filing of the suit and the said letters were also written by the father of the Respondent. Hence, the letters as above, would also have no bearing on the issue of bona-fide requirement involved in the present suit.

The fact that the letters abovementioned were written during the period from 1985 to 1987, while the suit was filed after about 8 years in the year 1995, would clearly indicate that there was no nexus between the request as above and the need of the suit accommodation, as pleaded. Hence, the letters as above, would not indicate that the real purpose and intent of filing the suit was to increase the rent of the suit premises. Consequently, the above contention of the learned Counsel for Appellant also does not deserve to be accepted.

It is clear that the Plaintiff/Respondent has stated that he requires the suit accommodation bona-fide for starting his own business of garments. He has also stated that he has no other suitable accommodation for the purpose at Katni. The above statement has virtually remained uncontroverted and is corroborated in all material particulars by the statement of Ramesh Chand (P.W. 2). The statements as above were rightly relied upon by the trial Court. Since there is no allegation that the Plaintiff/Respondent has any independent business of his own, and he has not been shown to have some ulterior motive, the finding of the learned trial Court that the suit accommodation is required bona fide by the Plaintiff/Respondent for his business and that he has no other suitable accommodation of his own appears to be wholly justified and is affirmed.

Consequently, this appeal has no merit and is accordingly dismissed, and the judgment and decree of the trial Court is affirmed. However, if the Plaintiff/Appellant has paid/deposited any rent, the same shall be adjustable from the amount payable under the impugned judgment and decree. The learned Counsel for the Appellant has submitted that the Appellant Bank is a nationalised Bank and would require some reasonable time for searching out and shifting it to a suitable accommodation, hence, sometime may be granted to it for vacating the suit accommodation. It is, therefore, directed that on the Appellant furnishing an undertaking in the trial Court within two months from today that he shall abide by the impugned judgment and decree, the same shall not be put to execution, so far as it relates of delivery of possession, till the end of 31-1-2001.