
(1985) 09 MP CK 0008

In the Madhya Pradesh High Court

Case No : Civil Revision No. 1174 of 1984

Umedchand Prakashchand (Firm) and others

APPELLANT

Vs

Sikandar and others

RESPONDENT

Date of Decision : 24-09-1985

Acts Referred:

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

Citation : (1987) JLJ 313 : (1987) MPLJ 179

Hon'ble Judges : G.L. Oza, C.J

Bench : Single Bench

Advocate : A.K. Pathak, for the Appellant; A.S. Usmani For State and M.V. Tamaskar, Dy. Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

G.L. Oza, C.J.

This revision petition has been filed by the petitioners tenants against an order passed by the Rent Controlling Authority, Dhamtari in case No. 31-A/90(8)/83-84 wherein, by the impugned order, a decree for eviction has been granted against the petitioner.

Brief facts necessary for disposal of this revision petition are that after service of summons, the present petitioners tenants submitted an application u/s 23-C of the M. P. Accommodation Act for leave to defend. The learned Rent Controlling Authority rejected this application and refused permission to defend and thereafter passed an order of eviction.

It was contended that para 3 of the order passed by the Rent Controlling Authority discloses that there were good grounds for defence in the application and the learned Rent Controlling Authority was bound, to exercise jurisdiction u/s 23-C of the Act and grant leave to defend.

It is not in dispute that what is stated in para 3 of the order is a correct

statement of facts. It is stated that the tenant defendant, in his application and affidavit, has only stated that the allegation that the plaintiff needs the premises bona fide for his own use, is denied. It is further stated by the tenant defendant that the allegation that the plaintiff N. A. has no other premises of his own in the locality, is also denied, but it is not stated as to why the requirement of the landlord is not genuine, nor is it stated that there are any other premises owned by the plaintiff N. A. and the particulars of those premises have also not been mentioned. The learned Rent Controlling Authority, therefore, came, to the conclusion that in the application for leave to defend, no facts have been stated and the affidavit also does not disclose any facts which would disclose a good defence and, therefore, the learned Rent Controlling Authority rejected the prayer for grant of leave to defend.

Learned counsel for the petitioner placed reliance on Precision Steel and Engineering Works and Another Vs. Prem Deva Niranjana Deva Tayal, . This decision only lays down that the Rent Controlling Authority is not excepted to enquire the statement made in the application for leave to contest. The question has to be decided on the basis of the affidavit of a tenant and reply of the landlord and if any affidavit is filed, that too has to be considered. This decision was under the Delhi Rent Control Act (59 of 1958). So far as the M. P. Accommodation Control Act is concerned, section 23-C(1) is as under:-

23-C. Tenant not entitled to contest except under certain circumstances-

(1) The tenant on whom the summons is served in the form specified in the second Schedule shall not contest the prayer for eviction from accommodation unless he files within fifteen days from the date of the service of the summons, an application supported by an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Rent Controlling Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or in default of his obtaining such leave, or if such leave is refused, the statement made by the landlord in the Controlling Authority shall in such a case, pass an order of eviction of the tenant from the accommodation :

Provided that the Rent Controlling Authority may, for sufficient cause shown by the tenant, excuse the delay of the tenant in entering appearance or in applying for the eviction and where "ex parte" order has been passed, may set it aside.

This section contemplates an application supported by an affidavit stating the grounds on which he seeks to contest the application for eviction.

b. Sub-clause (2) of section 23-C of the Act is as under: -

23-C (2): The Rent Controlling Authority shall within one month of this date of receipt of application, give to the tenant, if necessary, leave to contest the application, if the application supported by an affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the accommodation on the ground specified in

section 23-A.

This sub-clause lays down the circumstances under which the Rent Controlling Authority can grant leave to contest the application. It provides-

if the application supported by an affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the accommodation on the ground specified in section 23-A.

It is therefore, apparent that if the facts disclosed in the application supported by an affidavit are such which would disentitle the landlord from getting an order of eviction, then the Rent Controlling Authority is bound to grant leave to defend.

In the present case, in the application seeking leave to defend, no facts are stated except a mere denial. When it is stated that the allegation of the landlord that this is the only premises belonging to him is denied, but even no other alternative accommodation is pointed out which according to the tenant petitioner is the alternative accommodation available to the landlord N. A.. What is stated in para 3 of the order which is not disputed on facts; clearly indicates that in the application for leave to defend and in the affidavit to support the application, no facts at all were alleged, but it was only stated that what is alleged by the plaintiff was denied. Such a vague denial cannot be said to be the statement of fact which would disentitle the landlord from getting an order u/s 23-A of the Act if the facts alleged in the application are substantiated. Sub-clause (2) of section 23-C of the Act, therefore, contemplates a leave to defend only in cases where a tenant, in his application, states facts which are of such a nature which would disentitle the landlord from getting an order u/s 23-A of the Act. It is therefore, clear that in the absence of such facts, it could not be said that the learned Rent Controlling Authority committed any error in rejecting the application for leave to defend.

I, therefore, see no reason to entertain the revision petition. It is, therefore, dismissed. In the circumstances of the case, parties are directed to bear their own cost. Learned counsel for the petitioner prays for three months' time. In the circumstances of the case, as more than a year has already elapsed, it is directed that the petitioner shall vacate the premises and hand over possession to the N. A. within two months from today failing which the N. A. shall be entitled to get the order enforced in accordance with law.