

Bankimchandra Vs. Radhakishan

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Court : Madhya Pradesh

Decided On : Aug-14-1984

Reported in : AIR1985MP10

Judge : G.L. Oza, Ag. C.J.

Acts : Madhya Pradesh Accommodation Control (Amendment) Act, 1983 - Sections 12(2); Madhya Pradesh Accommodation Control Act, 1984 - Sections 12(1)

Appeal No. : Civil Revn. No. 361 of 1984

Appellant : Bankimchandra

Respondent : Radhakishan

Advocate for Def. : R.S. Garg, Adv.

Advocate for Pet/Ap. : Sujanmal Jain, Adv.

Disposition : Revision allowed

Judgement :

ORDER

G.L. Oza, Ag. C.J.

1. This is a revision petition filed by the petitioner against an order passed by Second Civil Judge Class II, Indore dt. 6-2-1984 wherein the learned Judge allowed an application submitted by the non-applicant-plaintiff for withdrawal of the ground under Section 12(1)(e) seeking permission to file a suit on that ground before the Rent Controller in accordance with the M.P. Accommodation Control (Amendment) Act, 1981 (Act No. 27 of 1983). Apparently this application was made under Section 12 of that Act and the learned Judge by the impugned order only said that the application is allowed.

2. Learned counsel for the petitioner contended that in this application prayer is made for withdrawal of the ground under Section 12(1)(e) whereas in fact in the suit itself there is no ground under Section 12(1)(e) but there is a ground under Section 12(1)(f). It was also contended that in fact the suit is filed on various grounds. Section 12(1)(f) is one of them and, therefore, in view of the scheme of the Code of Civil Procedure such a withdrawal of one ground for permission to file a separate suit could not be granted and it was also contended that such is not also the interpretation of Section 12 of the Amending Act of 1983. Learned counsel, in support of his contention, placed reliance on *Nanuram v. Pundlik* 1984 MPRCJ 184.

3. Learned counsel for the non-applicant, on the other hand, contended that the mention of Section 12(1)(e) instead of Section 12(1)(f) appears to be a clerical error. There was already an application filed earlier in which Section 12(1)(f) was mentioned. It was, therefore, contended that on this ground the order could not be said to be bad as apparently it is a clerical mistake. It is not disputed that one of the grounds mentioned in the application is Section 12(1)(f) and not Section 12(1)(e). It was also contended by the learned counsel that although in the scheme of the Civil PC splitting up of a cause of action is not permissible but Section 12(2) of the Amending Act of 1983 clearly permits this and it was contended that to this extent the view taken in the judgment reported in 1984 MPRCJ 184 on which reliance is placed by learned counsel for the petitioner does not appear to be correct and he, therefore, contended that this deserves reconsideration. According to the learned counsel, the language of Sub-section (2) of Section 12 does not refer only to suit before the Rent Controlling Authority and

the last part of the section which says 'withdraw the suit in relation to said grounds' clearly indicates that permission under Sub-section (2) could be granted for withdrawal of the suit partly pertaining to that ground only and on this ground it was contended that under Section 12(2) such a part withdrawal of the suit is permissible and as this is a special enactment, the objection on the basis of the scheme of the Civil PC will not be available to the petitioner.

4. In this revision petition the question of vires of this Act has also been raised but the learned counsel frankly conceded that in view of the interpretation of Section 12(2) if it is held that such a withdrawal could not be permitted, then the question will not arise but in case it is held that such a withdrawal is permissible, the question of vires of this Amending Act will have to be gone into.

5. It is, therefore, clear that the only question which deserves consideration in this revision petition is about the interpretation of Sub-section (2) of Section 12 of the M.P. Accommodation Control (Amendment) Act, 1983. Section 12 reads:

'12. Pending suits and proceedings in Civil Court.-- (1) Subject to Sub-section (2) all suits filed by landlords for eviction of tenants on the grounds of 'bona fide' requirement of accommodation for residential or non-residential purposes and pending on the date of commencement of (his Act shall unless the landlord withdraws the same in relation to such relief, be heard, proceeded with and disposed of by the Civil Court as if this Act has not been passed.

(2) Any landlord seeking to evict the tenant exclusively on the grounds of 'bona fide' requirement of accommodation under Section 23-A of the principal Act. may, if he has already proceeded against the tenant under Clause (e) or Clause (f) of Sub-section (1) of Section 12 of the principal Act. as it existed prior to the commencement of this Act, withdraw the suit in relation to said grounds with leave of court and proceed against the tenant in accordance with Section 23-A of the principal Act.'

A reading of Sub-section (2) of Section 12 clearly indicates that it has been clearly mentioned that if a landlord seeks to evict a tenant exclusively on the ground of bona fide requirement. It is significant that in this part of the section although the

words 'bona fide requirement' are used but there is no reference made to Section 12(1)(e) or (f) as this contemplates a suit which a landlord wishes to file for eviction on the ground of bona fide requirement and it is further stated that where such a landlord has already proceeded against the tenant under Clause (e) or (f) of Sub-section (1) of Section 12. This part of the section, therefore, clearly enacts that this Sub-section (2) of Section 12 is only attracted when a suit is filed by a landlord against a tenant on the ground under Section 12(1)(e) or (f) exclusively and it is only on those grounds that the landlord wants to seek a decree for eviction and it is in such a situation that this provision permits the withdrawal of the suit from the Civil Court with the leave of the Court and proceed against the tenant in accordance with the amended provisions. The contention advanced by learned counsel for the non-applicant that the words 'withdraw the suit in relation to the said grounds' indicate that there may be other grounds also in a suit, cannot be accepted as this Sub-section (2) starts with the term 'exclusively on the grounds of bona fide requirement' and it clearly states that it pertains to only a suit if it is pending on the grounds under Section 12(1)(e) and (f). It appears that while enacting this provision the Legislature had in view the scheme of the Civil PC where splitting of cause of action is not permissible and therefore even while amending (his Act withdrawal is permitted only where a suit is filed on these two grounds and not others. This also is the view taken by another single Judge of this Court in the decision reported in *Nannuram v. Pundlik* 1984 MPRCJ 184. In this judgment it is observed:

'Therefore, it would appear that the legislature by this Amendment Act No. 27 of 1983 in Section 12 thereof in Sub-section (2) has deliberately used the word 'exclusively' as it was well aware of the fact that a landlord can seek eviction of his tenant on any of the grounds as mentioned in Section 12(a) to (p) of the original principal Act. for which the forum is Civil Court and even now by this Amendment Act. the jurisdiction of the Civil Court is taken away only in respect of the grounds of eviction under Clause (e) and (f) of the original principal Act and in my opinion it is for (his reason that in an eviction suit pending before the Civil Court, the landlord has been given an option to withdraw his suit for eviction in relation to these grounds only with the leave of the Court and proceed against the tenant in accordance with Section 23-A of the original principal Act. This would further be

apparent from the wordings of Section 23-H of the said Amended Act. which relates to deposit of rent, pending proceedings for eviction or for revision.'

In view of the matter, therefore, I see no substance in the contention advanced by learned counsel for the non-applicant. The question of examination of vires of this Amending Act does not arise.

6. The revision petition is. therefore, allowed. The order passed by the learned court below dt. 6-2-1984 is hereby set aside. The non-applicant plaintiff, however, if so advised, may take appropriate steps for withdrawal of the whole suit. In the circumstances, parties are directed to bear their own costs.

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