

Rajendra Kumar and ors. Vs. Smt. Kasturi Bai and ors.

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Court : Madhya Pradesh

Decided On : Jan-06-2009

Reported in : 2009(2)MPHT115

Judge : R.S. Jha, J.

Appellant : Rajendra Kumar and ors.

Respondent : Smt. Kasturi Bai and ors.

Disposition : Appeal dismissed

Judgement :

R.S. Jha, J.

1. This second appeal has been filed by the appellants/defendants being aggrieved by the judgment and decree dated 12-4-2002, passed in Civil Appeal No. 25-A/2000 by the First Additional District Judge, Damoh wherein the judgment and decree dated 14-11-1996, passed in Civil Suit No. 1-A/96 by IIIrd Civil Judge, Class II, Damoh has been affirmed and the appellants have been ordered to be evicted from the tenanted premises on the grounds mentioned in Section 12(1)(a) and 12(1)(f) of the M.P. Accommodation Control Act, 1961.

2. This appeal was admitted on the following two substantial questions of law:

(1) Whether the statutory protection provided in Sub-section (3) of Section 12 of the M.P. Accommodation Control Act was available to the appellants and as such the First Appellate Court erred in holding the ground of eviction provided under Clause (a) of Sub-section (1) of Section 12 of M.P. Accommodation Control Act, available to the respondents, for appellants' eviction?

(2) Whether the Courts below erred in not treating available alternative accommodation, suitable for the business of Mukesh, the third son of respondent No. 1?

3. In respect of the first substantial question of law, it is urged by the learned Counsel for the appellants that the Trial Court had dismissed the suit as far as the ground under Section 12(1)(a) of the Act is concerned and, therefore, the Appellate Court on the same set of facts could not have decreed the suit on that ground. Quite apart from the above, the appellants have filed an application I.A. No. 13952/2008 under Section 13(1) of the Act for condonation of delay in depositing the rent and have submitted that as no arrears of rent remain outstanding, the decree under the ground stated in Section 12(1)(a) of the Act be set aside. It is submitted that though admittedly, on the date the suit was filed by the respondents/landlords, the appellants were in arrears of rent, but, the arrears were deposited by them on various dates before the Trial Court and, therefore, though the Trial Court recorded a finding that the appellants were in arrears of rent, it rejected the suit filed by the respondents on this ground, however, the First Appellate Court, on examining the facts and documents on record, found that the appellants had been inconsistent in depositing the rent and had not been depositing the same by the 15th of each succeeding month and had not filed any application for condonation of delay as required by Section 13(1) of the Act and, therefore, allowed the suit as filed by the landlord on the ground mentioned in Section 12(1)(a) of the Act. Before this Court, the appellants have not disputed the fact that they have committed such defaults in depositing the rent and have also admitted the fact that they did not file any application for condonation of delay before the Appellate Court along with the memo of appeal. However, it is submitted by the learned Counsel for the appellants that they have filed I.A. No. 13952/08 for condonation before this Court and this Court has the power to

condone the delay and has prayed that the interim application filed before this Court for condonation be allowed and the appellants eviction under Section 12(1)(a) of the Act be set aside.

4. Per contra, the learned Counsel, appearing on behalf of the respondents, submits that the appellants have committed as many as nine defaults in depositing the rent and not complied with the provisions of Section 13(1) of the Act. It is also submitted that in spite of the fact of committing such defaults in depositing the rent, the appellants did not file any application for condonation of delay in depositing the rent before the Appellate Court and in such circumstances I.A. No. 13952/08 filed by the appellants before this Court for condoning the default committed by them since September, 1993 deserves to be dismissed and the eviction of the appellants on the ground under Section 12(1)(a) of the Act deserves to be maintained. Learned Counsel for the respondents in support of this contention has relied upon the decision of the Supreme Court in the case of *Aayeda Akhtar v. Abdul Ahad* : AIR 2003 SC2985 .

5. From a perusal of the record, it is apparent that the appellants have committed several defaults in depositing the rent as required by Section 13(1) of the Act since September, 1993 onwards. It is also admitted that in spite of commission of defaults, the appellants did not file any application for condonation of defaults in depositing the rent before the First Appellate Court nor they filed any such application along with the memo of appeal before this Court when it was filed on 16-5-2002 but have filed I.A. No. 13952/08 only on 9-12-2008 after fifteen years of committing the first default in September, 1993.

6. From a perusal of Section 12(3) of the Act, it is clear that a tenant cannot be evicted on a ground mentioned in Section 12(1)(a) for arrears of rent only in case he complies with the provisions of Section 13(1) of the Act. Section 13(1) requires that immediately on service of summons of the suit a tenant is required to deposit the rent and continue to deposit future rent by 15th of each succeeding month or in the alternative, is required to file an application seeking extension of time for depositing the rent. In the instant case, the appellants in spite of admittedly committing default in depositing the rent as required by Section 13(1), did not file

any application for extension of time before the First Appellate Court. In such circumstance, the First Appellate Court has rightly recorded a finding to the effect that the appellants were liable to be evicted on the ground mentioned under Section 12 (1) (a) of the Act.

7. As far as the application for condonation of delay filed by the appellants is concerned, the Supreme Court in the case of Aayeda Akhtar v. Abdul Ahad (supra), has held that the application for condonation of delay cannot be entertained after lapse of a long period of time of committing the default in the following terms, in Paragraph 9:

9. The High Court in its impugned judgment did not point out as to how the Court of appeal committed an error of records in arriving at the said finding. Admittedly, there had been two defaults, i.e., rent for the month of November, 1985 and rents for the months of May and June, 1988. The High Court purported to have recorded that the appellant had applied for condonation of delay in payment of rent on 5-2-1990 in relation to default to deposit rent for the month of November, 1985 and for the months May and June, 1988. An application for condonation of delay could not have been entertained on 5-2-1990 for commission of default in depositing the rent. We, therefore, are of the opinion that the High Court was not correct in interfering with the findings of fact arrived at by the First Appellate Court.

In view of the aforesaid facts and circumstances, the first substantial question of law on which the appeal was admitted, does not arise in the present appeals as no fault can be found with the conclusion of the First Appellate Court in this regard.

8. In respect of the second substantial question of law, it is submitted by the learned Counsel for the appellants that both the Courts below have failed to take into consideration the fact that the respondents landlord had alternative suitable accommodation available with them for business of Mukesh son of plaintiff No. 1 while ordering the eviction of the appellants on the ground mentioned under Section 12(1)(f) of the Act. It is submitted by the learned Counsel for the appellants that in fact the landlord was already in possession of one shop in which Ashok General Stores was being run, another shop in which his other son was running the business in the name of Nayak Plastic and two godowns and another

shop vacated by Roopam Studio. It is submitted that while he made some averments in relation to the shop in which Ashok General Stores and Nayak Plastic were being run, he failed to make any averment in the plaint regarding the other alternative accommodation available to him and in absence of such averment the eviction of the appellants on the ground under Section 12(1)(f) of the Act is unsustainable and the findings recorded by both the Courts below suffer from perversity.

9. On the other hand, the learned Counsel appearing for the respondents landlords submits that the landlords respondents did make specific averment in the plaint to the effect that they had no other reasonably suitable accommodation available with them in the city and the accommodation in which Ashok General Stores were being run was not in their possession while his other son was utilizing the other accommodation for running the business in the name of Nayak Plastic. It is further submitted that the landlord in his evidence has clearly stated that the godowns and the shop vacated by Roopam Studio were not on the main road and were in a lane and not suitable for starting the business of his other son Mukesh and, therefore, no alternative suitable accommodation was available with the respondents landlords and both the Courts below have taken into consideration all the aforesaid facts while recording a concurrent finding in this regard against the appellants.

10. From a perusal of the record, specifically the statement of the landlord plaintiff Roopchand (P.W. 5), who has died during the pendency of the present appeal, specifically Para 14 of his evidence, it is clear that the landlord has specifically made a statement and clarified the position in respect of all the accommodations available with them and has specifically stated and established that the said accommodations are not suitable for starting the Hotel of his son which has to be established on the main road near the cinema hall. It is also clear from Paragraph 17 of the evidence of the appellant (D.W. 1) that the godowns situate in the lane open into the disputed accommodation and are, therefore, also not suitable for the purpose of starting the hotel and are at present being utilized as store room wherein coal and other material are stored while part of it is utilized as a Barat Ghar.

11. The First Appellate Court in Paragraph 27 of the judgment has discussed the aforesaid evidence of the landlord plaintiffs as well as the appellant in detail and affirmed the finding recorded by the Trial Court to the effect that the accommodation available with the landlord respondents are not suitable for the purposes of starting the hotel business and, therefore, the landlords need for the tenanted premises is bonafide for starting the business.

12. As far as the contention of the learned Counsel for the appellants to the effect that there is no mention in the plaint regarding the godowns and the shop vacated by the Roopam Studio and, therefore, the Courts below could not have taken into consideration the evidence of the landlord in that regard in the absence of pleading, is concerned, it is submitted by the learned Counsel for the respondents by placing reliance on the decision of the Supreme Court in the case of Ram Narayan Arora v. Asha Rani : AIR 1998 SC3012 , that even if the pleadings are lacking or vague but if both parties have understood the issue involved and in that respect have placed material before the Court and, therefore, there is no prejudice, caused to any of them, no fault can be found with such absence of pleading, in the following terms in Para 11:

11. There cannot be a pedantic or a dogmatic approach to the matter of analysis of pleadings or of the evidence adduced thereto. It is no doubt true that if the pleadings are clearly set out, it would be easy for the Court to decide the matter. But if the pleadings are lacking or vague and if both parties have understood what was the case pleaded and put forth with reference to requirement of law and placed such material before the Court, neither party is prejudiced. If we analyse from this angle, we do not think that the High Court was not justified in interfering with the order made by the Rent Controller.

13. In view of the aforesaid facts and circumstances, as both the Courts below have examined the evidence in detail and findings recorded by them do not suffer from any material irregularity or perversity and as finding in respect of the bonafide requirement of accommodation for non-residential purpose is a concurrent finding by both the Courts below, I do not find any ground warranting interference by this Court. In view of the aforesaid, the second substantial question of law also does

not arise in the present appeal.

14. The appeal filed by the appellants being meritless is accordingly dismissed. The judgment and decree passed by both the Courts below are hereby maintained.

15. In the facts and circumstances of the case, the parties shall bear their own costs.

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