

**Bashir Vs. Smt. Hussaln Bano**

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**Court :** Madhya Pradesh

**Decided On :** Feb-28-2005

**Reported in :** 2005(2)MPHT390; 2005(2)MPLJ230

**Judge :** S.K. Gangele, J.

**Acts :** Madhya Pradesh Accommodation Control Act, 1961 - Sections 12(1), 23, 23A and 23E; [Evidence Act, 1872](#) - Sections 118; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order 3, Rules 1 and 2 - Order 9, Rule 9 - Order 18, Rule 4 - Order 23, Rule 1, 1(3) and 1(4); Rent Act

**Appeal No. :** Civil Revision No. 395/2003

**Appellant :** Bashir

**Respondent :** Smt. Hussaln Bano

**Advocate for Def. :** A.P. Polekar, Adv.

**Advocate for Pet/Ap. :** Chaphekar, Sr. Adv. and ;D.S. Kale, Adv.

**Disposition :** Revision dismissed

**Judgement :**

ORDER

**S.K. Gangele, J.**

1. This is the non-applicant/petitioner revision filed under Section 23E of M.P. Accommodation Control Act (hereinafter called 'the Act') against the order of eviction dated 10-7-2003 passed by the Rent Control Authority (hereinafter called as 'Authority') on an application filed by the applicant/respondent/landlady.

2. The landlady submitted before the Authority that suit house No. 8/2, Kadwghat, Indore was rented out to the petitioner on a monthly of Rs. 325, consisting of five rooms, two on first floor, 3 on ground floor, needed for herself and her family members, son Mohammad Iqbal and grandsons Chand Mohammad, Zia-ulhasan, grand daughter Shagufta Bano. She was residing in a small room at Kadwghat and her family members in a rented premises. Her two grand sons and grand daughter were school going children. She was old lady aged about 75 years, wanted to live with her family members in her own suit house. Her husband was died, earlier she filed civil suit for eviction against the non- applicant which was dismissed in default on 13-2-2000.

3. The petitioner denied the pleadings of landlady and submitted that her need was not bonafide, she had sufficient accommodation, earlier also she filed an eviction suit which was dismissed in default. It shows that she had no genuine need and prayed for dismissal of the eviction application.

4. On the pleading of both the parties the authority framed issues with regard to bonafide need of applicant and her family members and availability of alternate accommodation and weather provisions of Order 9 Rule 9 of the Civil Procedure Code are attracted in the proceedings. After analysing the evidence, pleadings documents on record of the case the Authority has held that bonafide need of the applicant and her family members are genuine, she had no other alternate accommodation at Indore city for aforesaid purpose and provisions of Order 9 Rule 9, CPC are not attracted and passed an order of eviction in favour of landlady.

5. The learned Senior Counsel Shri Chaphekar for the petitioner has submitted that findings of the Authority with regard to bonafide need are perverse and contrary to the evidence of the case. The Authority relied on the evidence of power of attorney holder of the applicant who tendered his evidence on behalf of the

applicant. The evidence can not be admitted because he had no right to depose on behalf of applicant as per provisions of Order 3 Rules 1, 2 of the Civil Procedure Code in support of this contentions he relied on a decision of the Supreme Court in Janki Vashdeo Bhagwani and Anr. v. Indus Ind Bank Ltd. and Ors., reported in AIR 2005 SC 439. The Hon'ble Supreme Court has held as under :--

Order 3 Rules 1 and 2 empowers the holder of power of attorney to 'act' on behalf of the principal. The word 'acts' employed in Order 3 Rules 1 and 2, confines only in respect of 'acts' done by the power of attorney holder in exercise of power granted by the instrument. The term 'acts' would not include deposing in place and instead of the principal. If the power of attorney holder has rendered some 'acts' in pursuance to power of attorney he may depose for the principal in respect of such acts, but he can not depose for the principal for the acts done by the principal and not by him. Similarly, he can not depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

6. He further contended that landlady filed a eviction suit in 1985 against the petitioner which was dismissed on 13-12-2000 in non-appearance and again she filed the present application in August, 2001 which shows that she had no bonafide need and the order of the Authority is not a speaking one he only reproduce the evidence and did not decide anything and relied on AIR 1981 SC 1711.

7. The learned Counsel for the respondent has submitted that order of the Authority is as per law based on evidence with reasons and can not be interfered in a revision, with regard to bonafide need a power of attorney holder who is a member of family son can depose on behalf of the landlady who was aged 80 years. The judgment of the Hon'ble Supreme Court is distinguishable because it was passed on the basis of deposition of power of attorney holder in a suit before the Debt Recovery Tribunal about transactions made by the executor of power of attorney holder. He relied on 1997 (1) Vidhi Bhasvar 280, 2004(1) Vidhi Bhasvar 115, 1994 (1) MPJR 144, 1995 II MPWN (43), 1995(2) MPLJ 410, AIR 1993 SC

1574 with regard to bonafide need he submitted that the landlady can not be forced to live in one room without her family members at the fag end of her life, it would amount to a cruelty, for this contention he relied on 1997(1) MPWN 105, 2000 M.P. RCJ 158 and further submitted that in a revision petitioner finding of fact recorded by Authority can not be reversed.

8. From the perusal of the order of the Authority which runs in to 27 pages it is clear that the Authority considered the evidence of both the parties in detail and held that applicant was the owner of the suit premises. It was needed by her and family members bonafide, she had no other alternative accommodation for this purpose in the city. The Authority also considered arguments and counter arguments of both the parties and judgments relied on both the parties in their support in such circumstances the order passed by the Authority can not be said to be non-speaking one.

9. It is clear from the evidence of Iqbal Mohd. Witness No. 1 power of attorney holder that applicant was old lady she was admitted in the hospital frequently for her ailment and being a member of her family he described the need of the family in detail. He also submitted that he was living in a rented premises alongwith his family members, the landlord served a notice of eviction on him, he wanted to live with her mother. The evidence of Iqbal supported by the evidence of his landlord Sarfaraz witness No. 4, Advocate who issued notice on behalf of Sarfaraz No. 3 and Bashir Mohd. Witness No. 5 his fellow tenant. The another son of landlady Ataulkhat witness No. 2 also deposed that her brother wanted to live with her mother. The non-applicant petition in his cross-examination in Para 20 also admitted that applicant had a need but he had a large family so he could not vacate the premises being a poor man. In such circumstances in my opinion the Authority did not commit any irregularity or illegality in holding that applicant proved her need.

10. It is noticeable that landlady is aged about 80 years she had ailments for which she was hospitalized frequently, her son living in a rented premises and his landlord also served a notice on him of eviction in such circumstances it can not be held that her need was not genuine, it would amount to cruelty to her in such

circumstances in my opinion the Authority did not commit any illegality in passing the impugned order.

11. With regard to objection of the learned Counsel of the petitioner about admissibility of evidence of his son Iqbal a Power of Attorney holder based upon the judgment of Hon'ble Supreme Court reported in AIR 2005 SC Page 439 quoted earlier the facts of the case are distinguishable. In the aforesaid case, the power of attorney holder deposed before the Debt Recovery Tribunal with regard to independent income of the executor. In such circumstances the Hon'ble Supreme Court has held that power of attorney holder can not depose about the act of appellant executor.

12. The question of tendering evidence by holder of power of attorney on behalf of plaintiff/applicant is no res integra. A Single Bench of this Court in Vimla Devi v. Dulichand, reported in 1994 (1) MPJR by Hon'ble Justice R.C. Lahoti (as His Lordship then was) page 144 held as under :--

Owner/landlady, a house wife did not enter witness box. Her husband, also a power of attorney holder appeared and deposed and few admissions by defendant and his witnesses were also there. Held non-examination of plaintiff was not fatal.

In Shiv Narayan Soni v. Smt. Parwati Bai, reported in 1997(1) Vidhi Bhasvar Page 280, has held as under :--

An attempt was also made to assail the order stating that the bonafide need of the landlady was not proved as she herself has not entered the witness box. This argument has also no force. She being a lady had executed general power of attorney in favour of her son who entered the witness box to prove her case. There is no law that the bonafide need can be proved only by the evidence of the landlady. It can also be proved through other witnesses. She can also be proved through other witnesses. She being a lady and she having executed a power of attorney in favour of her son it was not compulsory for her to enter the witness box. Her husband was a Government servant and was occupying a Government accommodation. He retired and thereafter died. The eviction case was instituted in 1984 and till this date the landlady has not been able to get the possession of the

accommodation because of the untenable defences raised on behalf of the tenant. The revision is, therefore, dismissed with costs. Counsel's fee Rs. 500/- is certified.

In Shanti Devi Agrawal v. V.H. Lula, reported in 2004(1) Vidhi Bhasvar Page 115, again learned Single Judge has held as under :--

The plaintiff has assailed the order also on a ground that the Rent Controlling Authority has misconstrued and misapplied the provisions of Order 3 Rule 2 of the Code and of Section 118 of the Evidence Act. The said provisions of Order 3 Rule 2 of the Code of re-production read as :--

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