

Dr. Jogendra Singh Vs. Virendra

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Court : Madhya Pradesh

Decided On : Sep-27-2007

Reported in : 2008(1)MPLJ584

Judge : Viney Mittal, J.

Appellant : Dr. Jogendra Singh

Respondent : Virendra

Disposition : Petition dismissed

Judgement :

Viney Mittal, J.

1. Tenant is the petitioner before this Court, who has challenged an order dated May 16, 2006, Annexure P-5 passed by the trial Judge, whereby an application filed by the respondent-landlord seeking amendment of the plaint for adding new grounds of eviction under Sections 12(1)(d) and 12(1)(i) of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter referred to as Act), has been allowed.

2. A suit for eviction of the tenant Dr. Joginder Singh was filed by landlord Virendra Shah on March 23, 2005. The eviction of the tenant was sought by pleading a ground under Section 12(1)(f) of the Act by claiming that the building in question

had been let out for non residential purpose and was required bonafide by the landlord for the purposes of starting his own business and that he was owner of the property in question. The suit filed by the plaintiff is being contested by the tenant.

3. While the proceedings in the suit are pending before the trial Court, an amendment application was filed by the plaintiff on April 8, 2006. A permission was sought from the trial Court to add two more grounds of ejectment. A ground available under Section 12(1)(d) of the Act and the second ground under Section 12(1)(i) of the Act, were sought to be introduced. The aforesaid application was contested by the tenant. However, the learned trial Judge vide impugned order, has allowed the amendment application and permitted the landlord to introduce the aforesaid two grounds of the ejectment also.

4. It is in these circumstances that the tenant-petitioner is before this Court through the present petition. Shri V.K. Jain, learned Counsel for the tenant-petitioner has vehemently argued that the eviction under Section 12(1)(d) of the Act can only be sought by a landlord only if, at the time of filing of the suit, the said ground had already become available and therefore, since as per the averments made in the amendment application itself, it had been pleaded by the landlord that the accommodation in question had not been used by the tenant w.e.f. May 1, 2005 i.e. after filing of the suit on March 23, 2005, therefore, since the said ground was not available to the landlord at the time of filing of the suit, the said ground could not be introduced by way of amendment later on. To support the aforesaid argument, the learned Counsel has relied upon a full bench decision of this Court in the case of Chhotelal Bhailal Patel v. Akbar Ali and Anr. 1982 MPLJ 754 and has drawn my attention to para 6 of the judgment.

5. I have duly considered the contention raised by the learned Counsel but find myself unable to agree with the same.

6. At the outset it may be relevant to notice that the observations made by the Full Bench in para 6 of the judgment in Chhotelal's case are as under:

It was, however, urged on behalf of the defendant by Shri Waghmare that the language of Section 12(1) of the Act, rules out induction of additional ground for eviction after the institution of a suit for eviction. The contention cannot be upheld. Section 12(1) of the Act merely provides that no suit shall be filed for eviction except on a ground specified in that section. This restriction on the right to institute a suit for eviction only emphasises that if a suit for eviction were to be brought without disclosing a ground specified in Section 12(1) of the Act, then in that case, the plaint would be liable to be rejected for failure to disclose cause of action. There is nothing in the language of Section 12(1) of the Act, which forbids addition of a ground for eviction in a suit for eviction already instituted in accordance with the provisions of Section 12(1) of the Act. It may be that in some cases, the requirement of a particular ground specified in Section 12(1) of the Act is such as cannot be fulfilled unless that ground has come into existence prior to the filing of the suit, as in the case of a ground specified in Section 12(1)(d). But tenability of a ground sought to be added by way of amendment, does not affect the jurisdiction of a Court to permit that amendment. It may be that in such a case, it would be a sound exercise of discretion by the Court, if leave to amend is refused inasmuch as, a decree for eviction cannot be passed on such a ground. But as already observed, this aspect of the matter has no impact on the question of jurisdiction of the Court to permit the plaintiff to amend the plaint by adding a new ground for eviction. Any observation to the contrary which can be read in 1961 MPLJ 7 (supra) or 1980 MPLJ 182 (supra) does not, in our opinion, lay down correct law.

7. A perusal of the aforesaid observations made by the Full Bench clearly indicates that the question before the Full Bench was with regard to the jurisdiction of the trial Court to permit the amendment sought by a landlord of the events which had happened during pendency of the suit. As a matter of fact, the Full Bench has answered the question by taking a view in favour of the jurisdiction of the trial Court and by holding that a trial Court always possess a jurisdiction to permit the amendment to take into consideration the subsequent events. However, the Full Bench has also noticed that certain grounds of eviction as per language used in the Act, were required to exist at the time of filing of suit as a pre-condition and as such it was required to be shown by the landlord that the aforesaid ground existed prior to the filing of the suit. Even in such a situation, the Full Bench has

observed that the jurisdiction of the trial Court to permit the amendment was not affected but only the availability of the ground to a landlord was to be examined by the Court at the time of passing the decree.

8. In the present case, the trial Judge has merely allowed the amendment application. Two grounds of eviction have been permitted. The correctness of the facts stated in the aforesaid two grounds, could neither have been gone into by the trial court nor the said fact can be examined by this Court in the present petition. The written statement to the said amended plea has yet to be filed by the tenant. While filing the written statement, the tenant can always raise an objection with regard to the availability of the aforesaid grounds, which has been introduced by the landlord by way of the amendment. If any such objection is raised by the tenant, the trial Court is bound to examine the said objection and adjudicate the same. The jurisdiction of the trial Court, to allow the amendment, remains unquestioned.

9. However, It would be open to the tenant, while filing a written statement to the amended pleas, to take all objections and raise all pleas, which are available to him in accordance with law, including the availability of the added grounds to the landlord. The trial Court, of course, shall adjudicate the aforesaid objections in accordance with law.

10. Before parting with the present order, it may be noticed that Shri Jain has also argued that since the landlord had himself claimed that the building in question was non- residential therefore, the amendment qua the ground available under Section 12(1)(i) of the Act, could not have been allowed. In view of the observations made in earlier portion of the present order, even the said objection can be raised by the tenant, while filing a written statement to the amended petition.

11. Consequently, I do not find any merit in the present petition. The same is dismissed.