

Sai Developers Vs. Sanjay Kumar and ors.

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Court : Madhya Pradesh

Decided On : Aug-11-2003

Reported in : 2003(4)MPHT501; 2004(3)MPLJ57

Judge : S.K. Pande, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9 - Order 7, Rule 11;
Madhya Pradesh Accommodation Control Act, 1961 - Sections 38 and 45

Appeal No. : Civil Revision No. 534/2003

Appellant : Sai Developers

Respondent : Sanjay Kumar and ors.

Advocate for Def. : P.K. Mishra, Adv. for the Non-applicant Nos. 1 to 5, ;M.L. Jaiswal, Sr. Adv. for the Non-applicant No. 6 and ;Choudhary, Adv. for the Non-applicant Nos. 9 and 10

Advocate for Pet/Ap. : Z.M. Shah, Adv.

Disposition : Civil revision dismissed

Judgement :

ORDER

S.K. Pande, J.

1. This revision under Section 115 of CPC is directed against the order dated 26-3-2003, passed by ADJ, Burhanpur in M.CA. No. 3/2002.
2. Non-applicant Nos. 1 to 5 instituted C.S. No. 40-A/2002 in the Court of 3rd Civil Judge, Class II, Burhanpur for injunction seeking relief of restoration of the electricity supply and other incidental relief. Defendant applicant filed application under Order 7 Rule 11, CPC stating inter alia that the matter relates to restoration of electricity supply, therefore, the application under Section 38 of M.P. Accommodation Control Act (hereinafter referred to as the 'Act' for convenience) before the RCA alone could be filed and the jurisdiction of Civil Court under Section 45 of the Act is barred. Plaintiffs/non-applicants resisted the application. It has been stated that there is no dispute between the tenant-plaintiffs/non-applicant Nos. 1 to 5 and landlord-defendant/non-applicant Nos. 9 and 10 Hafiz Shakir Husain and Hafij Jakir Husain respectively. Due to internal dispute amongst the partners of defendant/applicant, M/s. Sai Developers Partnership Firm, one of its partner Pawan Kumar has got disconnected the electricity supply by sending the letter to Electricity Board. The Civil Judge, vide order dated 2-8-2002 allowed the application and held that under Section 45 of the Act, the suit as filed is barred. Being aggrieved the plaintiffs/non-applicant Nos. 1 to 5 preferred M.C.A. No. 3/2002 in the Court of ADJ. The appeal was allowed vide impugned order and application under Order 7 Rule 11, CPC filed by defendant/applicant has been dismissed. The Civil Judge has been directed to proceed further with C.S. No. 40-A/2002.
3. On filing application under Order 7 Rule 11, CPC by the defendant/applicant, the plaintiff/non-applicant Nos. 1 to 5 filed a reply to the effect that there is no dispute with landlord non-applicants - Hafij Shakir Husain and Hafiz Jakir Husain. Due to internal dispute, one of the partner of defendant/ applicant has sent a letter to the Electricity Board, thereupon the electric supply has been disrupted. Court below in the impugned order dated 26-3-2003 has categorically held that in essence the suit filed by the plaintiff/non-applicant Nos. 1 to 5 is against the defendant/applicant and its partner. There is no dispute with landlord Hafij Shakir Husain and Hafij Jakir Husain. In the circumstance, the Court below set aside the order passed by the Civil Judge and dismissed the application under Order 7 Rule

11, CPC.

4. Under Section 38 of the Act, no landlord either himself or through any person purporting to act on his behalf shall without just and sufficient cause cut off or withhold any essential supply or service enjoyed by the tenant in respect of the accommodation let to him. If a landlord contravenes the provisions of Sub-section (1), the tenant may make an application to the Rent Controlling Authority complaining of such contravention. Therefore, where there is a dispute inter se between the landlord and tenant as to the cutting off or withholding essential supply or service, then only Section 38 of the Act is attracted and bar under Section 45 applies. Facts of judgment Rakesh Kumar v. Ramnath, 1983 MPRCJ Note 176 are to the effect. Where there is no dispute inter se between the landlord and tenant the suit for injunction declaration as against 3rd party shall always lie to Civil Court.

5. Therefore, the order impugned passed by ADJ in M.C.A. No. 3/2002 does not suffer from any material irregularity. Revision fails and is dismissed. Parties to bear their costs.

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