

Jaychand Vs. Smt. Sushila Devi

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Court : Madhya Pradesh

Decided On : Apr-13-2010

Judge : U.C. Maheshwari, J.

Appellant : Jaychand

Respondent : Smt. Sushila Devi

Judgement :

ORDER

U.C. Maheshwari, J.

1. This appeal is preferred by the appellant/defendant under Section 100 of the CPC being aggrieved by the judgment and decree dated 5.7.07 passed by District Judge, Katni in Civil Regular Appeal No. 18-A/05 affirming the judgment and decree dated 16.3.05 passed by Civil Judge Class II Katni in Civil Original Suit No. 10-A/2000 decreeing the suit of the respondent against him plaintiff for eviction on the grounds enumerated under Section 12(1)(a) and 12(1)(f) of the M.P. Accommodation Control Act, 1961 (in short 'the Act').

2. The facts giving rise to this appeal in short are that respondent herein filed the suit for eviction against the appellant stating that the appellant, being his tenant @ Rs. 550/- per month, is in occupation of a shop described in the plaint and annexed map, situated in the township of district Katni for non-residential purposes. The appellant committed default in paying the rent and said

accommodation was also required by her for the business of her adult son, namely, Ritesh for which they did not have any other alternate accommodation of their own in such town. She gave a demand notice dated 28.12.99 (Ex.P/2) to the appellant to pay the arrears of rent with further intimation to vacate the premises for the aforesaid need. In spite of service of such notice, neither the rent was paid nor the accommodation was vacated for her alleged need, therefore, the instant suit was filed for eviction on the grounds enumerated under Section 12(1)(a) and 12(1)(f) of the M.P. Accommodation Control Act.

3. In the written statement of the appellant, by accepting the alleged tenancy in the disputed shop, it is denied that he has committed default in payment of the rent. The alleged requirement of the respondent regarding disputed premises is also denied. In addition it is stated that on earlier occasion, the suit for eviction for the bonafide, genuine requirement of Ratan Kumar, the husband of the respondent was also filed which was dismissed vide judgment dated 5.4.99. Besides this, after obtaining possession of some shop from the other tenant, the respondent has given the same to other persons on enhanced rent and taking the Goodwill (Pagdi). Besides that the respondent has sufficient alternate accommodation of her own for the alleged need, in such premises, the alleged need of the respondent is not bonafide. Before filing the suit the appellant was insisted by the respondent to enhance the rent from Rs. 550/- per month to Rs. 700/- per month for which the appellant was not prepared hence the instant suit is filed to put pressure on the appellant for enhancing the rent. With such averments the prayer for dismissal of the suit is made.

4. In the light of the pleadings of the parties, as many as, five issues were framed, on which the evidence was recorded. On appreciation of the same, the suit of the respondent was decreed by the trial court on aforesaid both the grounds of Section 12(1)(a) and 12(1)(f) of the Act. On filing the appeal against such decree, by affirming the same, the appeal was dismissed by the appellate court, on which, the appellant has come to this Court with this appeal.

5. Shri A.C. Thakur, learned Counsel of the appellant by referring the pleadings, evidence adduced by the parties and the exhibited documents on record, said that

the respondent has failed to prove the alleged need of the accommodation for business of his son Ritesh. According to him, Ritesh is not unemployed and is working as Teacher in some private educational institution, in such premises, the alleged need could not be deemed to be bonafide and genuine. In continuation, he said that the respondent is in possession of some alternate non-residential accommodation of her own, but such aspect was not considered with proper approach by the courts below. He also argued that after dismissal of the earlier suit filed for requirement of the husband, one shop was sold by the respondent and, thereafter, with some ulterior motive, on the false averments, the impugned suit was filed for requirement of her son. Looking to such conduct the decree passed by the courts below under Section 12(1)(f) is not sustainable. So far the decree on the ground under Section 12(1)(a) is concerned, he said that dues of the entire rent has been deposited by the appellant earlier in compliance of the order of the first appellate court and also after filing this appeal in compliance of the order of this Court. So, at present, there is no arrears of rent against the appellant and, in such premises, the decree passed under Section 12(1)(a) is not sustainable. In response of some query of the court, he fairly conceded that after receiving the demand notice within two months and also after receiving the summons of the suit, the entire arrears of the rent was not deposited within one month, the same was deposited at later stage and in compliance of the order of the first appellate court and the order of this Court. With these arguments, he prayed for admission of this appeal on the substantial questions of law proposed in the appeal memo.

6. Having heard, keeping in view the arguments advanced, after perusing the record along with the impugned judgment of the courts below, it is apparent that there is concurrent findings of the courts below holding that the respondent is in need of the disputed premises for the business of her adult son Ritesh Kumar for which she does not have any other alternate vacant accommodation of her own in Katni. It is also apparent that such concurrent findings of the courts below are based on appreciation of the evidence adduced by the parties and the same are given after taking into consideration the case of the appellant with respect of the available alternate accommodation with the respondent. The aforesaid findings being based on appreciation of the evidence, are findings of fact and does not give

rise to any question of law, muchless, the substantial question of law. It is settled proposition of the law that the concurrent findings with respect of the bonafide genuine requirement of the alleged accommodation, being finding of fact could not be interfered under Section 100 of the CPC as laid down by the Apex Court in the matter of Kalyan Singh v. Ramswaroop and Anr. 1996 J LJ 247. Such view of the Apex Court was followed by the this Court in the matter of Machala Bai v. Nanak Ram 2006 (2) MPLJ 484. Therefore, it is held that this appeal does not involve any substantial question of law on the aforesaid ground. Needless to say that for the purpose of reappreciation of the evidence, the appeal could not be admitted contrary to the provision of Section 100 of the CPC by framing any question of law.

7. So far the other ground of Section 12(1)(a) of the Act is concerned, it is apparent from the impugned judgment and the record that in earlier Civil Original Suit No. 9-A/90 filed by the respondent against the appellant for the need of her husband, the rent was not regularly deposited but, however, the benefit of Section 12(3) of the Act was extended to the appellant in such suit. So in such premises in the present suit on the second occasion, no such benefit, by condoning the delay in depositing the rent, could be extended to the appellant. Even otherwise no such application in this regard was filed by the appellant before any of the courts below. As per findings of the courts below, there was no dispute between the parties regarding relationship of the tenancy and the rate of monthly rent and, in such premises, after receiving the demand notice dated 28.12.99 (Ex.P/2), the appellant was obliged to pay the entire arrears of rent to the respondent within two months or in any case, he had to deposit the entire arrears of the rent within one month from the date of receiving the summons of the suit and also to pay the monthly rent in pendency of the suit in accordance with the provision of Section 13(1) of the Act. It is apparent on record that such arrears was neither deposited within two months from the date of receiving the notice or within one month from the date of receiving the summons of the suit. Even in pendency of the suit or the appeal, the rent was not deposited regularly. The same was also conceded by the appellant's counsel in response of the query of the court as stated above. Considering such circumstances, the courts below passed decree on the ground of arrears of rent. In such set of facts in view of the law laid down by the Apex Court in the matter of Jamnalal and Ors. v. Radheshyam : (2000) 4 SCC 380 such decree could not be

interfered at this stage under Section 100 of the CPC. In such premises, such ground is also not giving rise to any substantial question of law in this appeal.

8. Except the aforesaid grounds, no other ground or the question was raised before me by the counsel of the appellant.

9. In view of the aforesaid discussion, in the lack of any circumstance, giving rise to any question of law, muchless, the substantial question of law, this appeal deserves to be and is hereby dismissed at the stage of motion hearing. However, considering the difficulty of the appellant in vacating the premises immediately, on furnishing the appropriate surety to the satisfaction of the trial court within thirty days from today along with an undertaking that the appellant shall peacefully vacate the premises and hand over it's possessions to the respondent on or before 30.11.2010 then he is extended the period to vacate the premises upto 30.11.2010. The appellant shall pay or deposit the monthly rent at the rate held by the courts below within 15 days from the end of every month till vacating the premises within the aforesaid period, failing in compliance of any of the aforesaid conditions, the respondent shall be at liberty to execute the decree impugned forthwith with all aspects. There shall be no order as to the cost.