

(2011) 09 MP CK 0028

Madhya Pradesh High Court (Indore Bench)

Case No: Review Petition No. 392 of 2010

Jodhraj

APPELLANT

Vs

Shri Bhuteshwar Mahadev
Mandir Trust, Mandsaur

RESPONDENT

Date of Decision: Sept. 26, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1, 151
- Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 - Section 2, 3(2)

Citation: (2012) ILR (MP) 853 : (2012) 2 MPHT 174

Hon'ble Judges: Shantanu Kemkar, J; Prakash Shrivastava, J

Bench: Division Bench

Advocate: G.M. Chaphekar and Mr. D.S. Kale, for the Appellant; A.S. Garg and Mr. G.S. Yadav, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Shantanu Kemkar, J.

By filing this review petition under Order 47 Rule 1 read with Section 151 of the Code of Civil Procedure, the petitioner is seeking review of the order dated 28-10-2010 passed by the learned Single Judge of this Court in Second Appeal No. 619/2008. In view of the fact that the learned Judge who has passed the said order has demitted the Office, the matter is placed before the Division Bench in terms of Rule 13 (1) (b) (ii) (1) of Chapter 4 of the High Court of M.P. Rules, 2008. Briefly stated, the petitioner claims to be a tenant in the suit shop let out to him by the respondent a public trust registered under the Public Trust Act, 1951. After terminating the tenancy of the petitioner, a suit for eviction was filed by the respondent/Trust, which was registered as Civil Suit No. 151-A/2000.

2. In the said suit, the respondent/Trust claimed exemption from application of the provisions the M.P. Accommodation Control Act, 1961 (for short "the Act"), in view of the notification dated 7-9-1989 issued by the State Government in exercise of its powers u/s 3 (2) of the Act. In view of the exemption, the respondent sought eviction merely on the basis of termination of tenancy of the petitioner.

3. The Trial Court decreed the suit vide judgment and decree dated 28-11-2007. Civil Regular Appeal No. 2-A/2008 filed by the petitioner against the said judgment and decree also suffered dismissal vide judgment and decree dated 5-7-2008 passed by the 2nd Additional District Judge. Mandsaur. Feeling aggrieved by the dismissal of the appeal, the petitioner filed Second Appeal No. 619/2008. The said second appeal was dismissed by the learned Single Judge vide order dated 28-10-2010, of which review is sought.

4. Shri G.M. Chaphekar, learned Senior Counsel appearing for the petitioner argued that the learned Single Judge, while dismissing the petitioner's appeal, has taken a contrary view that the view, which has been taken by another Single Judge of this Court in the case of Boolchand Vs. Atalram Sindhi Dharmashala Trust and others, 1997 MPACJ 255. He submitted that the learned Single Judge in the case of Boolchand (supra) has very categorically held that the State Government cannot exempt the registered institutions from operation of Section 3 (2) of the Act, if the whole income derived from them is not being utilized for such institutions. He contended that this judgment of Coordinate Bench has been disregarded by the learned Single Judge by observing, thus :--

After taking into consideration the factual and legal position, which emerges from the notification dated September 7, 1989, I find that the judgment relied upon by the learned Counsel for the appellant has no relevance to the controversy in question. As a matter of fact, the only question, when an exemption is claimed by the public trust has been so registered under the provisions of M.P. Public Trust Act, 1951, for an educational, religious and charitable purpose. The application of the income of the trust is totally irrelevant, once the registration of the trust is proved

(Emphasis supplied)

5. He further contended that the observations of the learned Single Judge that "The application of the income of the trust is totally irrelevant, once the registration of the trust is proved." is contrary to the earlier view taken by this Court in the case of Boolchand (supra). He argued that instead of taking a contrary view against a binding precedent, the learned Single Judge should have referred the matter to Hon"ble the Chief Justice for referring it to a Larger Bench. According to him, by the impugned judgment, learned Single Judge has overreached the earlier Single Bench judgment of this Court, and therefore, the jurisdiction of review needs to be exercised. In support of his contention, learned Senior Counsel for the petitioner has placed reliance on the judgment of this Court in the case of [Jabalpur Bus](#)

[Operators Association and Others Vs. State of M.P. and Another](#), and another Full Bench decision of this Court in the case of [Commissioner of Sales Tax Vs. Hukumchand Mills](#), and the judgment of the Supreme Court in the case of [Safiya Bee Vs. Mohd. Vajahath Hussain alias Fasi](#). He submitted that overlooking the point of law already settled by a judicial pronouncement, would inevitably suffer from an error apparent on the face of record, for which no elaborate arguments or reasoning would be required to point out such an error and it would be a good ground or review.

6. In reply to the aforesaid submissions, Shri A.S. Garg, learned Senior Counsel placed reliance on the judgment passed by the Supreme Court in the case of [Parsion Devi and Others Vs. Sumitri Devi and Others](#). He submitted that merely if an erroneous view, if at all, is taken, this itself would not be a ground to invoke the jurisdiction of review.

7. Having considered the submissions of the learned Senior Counsel for the parties, in our considered view, the observations as referred to above, by the learned Single Judge runs contrary to the earlier view taken by Single Bench of this Court in the case of Boolchand (supra).

8. In the case of Jabalpur Bus Operators Association (supra), a Special Bench of five Judges of this Court while considering the question of precedent has observed that a Single Bench of High Court is bound by the decision of another Single Bench. In case he does not agree with the view of the other Single Bench, he should refer the matter to the Larger Bench.

9. The Supreme Court in the case of Safiya Bee (supra), in Paragraph 27 has held thus :--

27. However, even assuming that the decision in W.P. No. 35561 of 1998 did not operate as res judicata, we are constrained to observe that even if the learned Judges who decided W.P. No. 304 of 2011 did not agree with the view taken by a Co-ordinate Bench of equal strength in the earlier W.P. No. 35561 of 1998 regarding the interpretation of Section 2 (c) of the Act and its application to be petition schedule property, judicial discipline and practice required them to refer the issue to a Larger Bench. The learned Judges were not right in overruling the statement of the law by a Co-ordinate Bench of equal strength. It is an accepted rule or principle that the statement of law by Bench is considered binding on a Bench of same or lesser number of Judges. In case of doubt or disagreement about decision of earlier Bench, well accepted and desirable practice is that later bench refer case to a Larger Bench.

10. Full Bench of this Court in the case of Commissioner of Sales Tax Vs. Hukumchand Mills (supra), considering the question about failure to take notice of the decision of the Supreme Court observed that overlooking a point of law already settled by a judicial pronouncement of the Supreme Court, if a contrary view is taken

by the High Court, it results in non-application of law and the decision would inevitably suffer from an error apparent on the face of record, for which no elaborate arguments or reasoning would be required to point out such an error and it would be a good ground for review.

11. Applying the principle of judicial discipline laid down by the Supreme Court in the case of *Safiya Bee* (supra) and keeping in view the observations of the Full Bench in the case of *Commissioner of Sales Tax Vs. Hukumchand Mills* (supra) and in the case of *Jabalpur Bus Operators Association* (supra), in our considered view, the failure to take notice of a binding precedent by a Co-ordinate Bench of the High Court would also be an error apparent on the face of record, warranting invocation of jurisdiction of review. It is not merely an erroneous view as argued by learned Senior Counsel for the respondent by placing reliance on the judgment of Supreme Court in *Parsion Devi and others* (supra), but it is a case of failure to take notice of the earlier view which was a binding precedent.

12. In our considered view, if the learned Single Judge was of the view that the judgment passed in the case of *Boolchand* (supra), was not correct, it was desirable for him as per the well accepted practice and in view of the law laid down by the judgments referred to above to have referred the matter to Hon"ble the Chief Justice for constitution of Larger Bench instead of observing against a view taken in *Boolchand* (supra), which was having binding precedent that "the application of the income of the trust is totally irrelevant, once the registration of the trust is proved". Thus, having not referred the matter for constitution of Larger Bench, in our considered view, the order passed by the learned Single Judge is liable to be reviewed. Accordingly, we allow this review petition and recall the order dated 28-10-2010 passed in S.A. No. 619/2008. The second appeal is ordered to be restored to its original number. It be listed before the appropriate Bench.