
(1998) 11 MP CK 0015

Madhya Pradesh High Court (Gwalior Bench)

Case No: Civil Revision No. 990 of 1997

Bhagwan Das

APPELLANT

Vs

Ram Charan

RESPONDENT

Date of Decision: Nov. 9, 1998

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 - Section 23A, 23D, 23D(3), 23E

Citation: (1999) 2 LJ 33 : (1999) 2 MPLJ 370

Hon'ble Judges: Tej Shankar, J

Bench: Single Bench

Advocate: H.D. Gupta, for the Appellant; K.K. Lahoti, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Tej Shankar, J.

This revision is directed against the order dated 30-6-1997 passed by the Rent Controlling Authority, Guna.

Briefly narrated facts are that the landlord-respondent filed a petition purporting to be u/s 23A of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter will be referred to as the "Act")- With the allegation that he was the owner of the house situated in Subhash Colony on Agra Bombay Road, Guna, detailed in para 1 of the petition the defendant was the tenant in the portion marked by the red lines in the map attached with the petition. He was a teacher previously and retired from service on 31-7- 1993. He wanted to carry on business of Breakfast Centre in the disputed shop in which the, present petitioner was the tenant. He had no other vacant shop with him in which he could carry on business. He gave a notice to the

present petitioner on 13-9-1993 terminating his tenancy and to vacate the shop, but no effect. He also did not pay the rent. Respondent Bhagwandas i.e. the present petitioner moved an application purporting to be u/s 23-C of the said Act for leave to contest. It was allowed. He filed a written statement contesting the claim. He however admitted that he was the tenant in the disputed shop, but claimed that the rent was Rs. 125/- p.m. instead of Rs. 150/- as claimed. He had paid the rent. The respondent i.e. the landlord was the big businessman and had a business of Scooter, Motor parts and had also a workshop and garage in which he and his son carried on business. The petition was based on wrong allegation. He had filed a suit with respect to the disputed shop as well as adjoining property for possession in the year 1989, which was compromised. As a result of that compromise, the shop in question was given to him and the remaining workshop was kept by the landlord. The landlord wanted to enhance rent from Rs. 150/- to Rs. 500/-.

Both the parties adduced evidence and after considering evidence on record and hearing parties, the learned R.C.A. allowed the petition holding that the requirement of the landlord was bona fide and directed the tenant to vacate the shop and to pay the rent. Feeling aggrieved, this petition, has been presented.

The learned counsel for the petitioner contended that the landlord has not been able to prove bona fide requirement. There is nothing on record to show that he actually wanted to carry on business. The landlord had sufficient accommodation with him in which the business of Scooter, Motor Parts as well as garage was being run. On the other hand, it has been contended that in view of the provision of Section 23-D, there is a presumption with respect to bona fide requirement in cases where the petition is moved by the landlord with reference to clause (a) or clause (b) of Section 23-A. He also urged that in revision petition, the detailed examination of evidence is not required. The powers of an appellate Court have not been conferred upon the revising Court. There is finding of fact of the learned Court below and there is nothing to show that it is perverse.

The contention of the learned counsel for the parties as well as the pleadings go to show that there is no dispute between the parties to the effect that the respondent Ramcharan landlord was a landlord within the meaning of Section 23-J. Admittedly, the respondent is covered within the landlord and as such no argument has been raised by either of the parties on this point. Now, the main contention of the learned counsel for the revisionist is that there is no material to show that the need was bona fide inasmuch as the respondent- landlord has not been able to show that he will carry on business of Breakfast Centre as claimed. There is a provision contained in Section 23-D of the Act, which provides for procedure to be followed by the R.C.A. under sub-section (3) of this section, it has been provided:

"In respect of an application by a landlord it shall be presumed, unless the contrary is proved, the requirement by the landlord with reference to clause (a) or clause (b), as the case may be of Section 23-A is bona fide."

The presumption provided under sub-section (3) referred to above shows that a person mentioned therein as landlord if moves an application for eviction of tenant on the ground of bona fide personal requirement, the requirement has to be presumed to be bona fide unless contrary to it. It has been specifically laid down in [Ratanbai Vs. Chetandas](#). Thus, once it is not disputed that the respondent is the owner and landlord within the meaning of the said provision and he has filed a petition u/s 23-A of the Act, the presumption has to be drawn as contended by the learned counsel for the landlord-respondent. Sub-section (3) of Section 23-D relieves the landlord from the burden of proving with the requirement of accommodation bona fide. Of course, he has to prove his requirement. The presumption attached to the fact is that the requirement is bona fide. In the present case, the landlord claimed that he required the accommodation for carrying on business of Breakfast Centre. The learned R.C.A. has discussed in detail the entire evidence adduced by the parties and after discussing the evidence came to the conclusion that the landlord required the accommodation for carrying on business of breakfast centre, which is a finding of fact.

The Revisional jurisdiction conferred upon this Court u/s 23-E of the Act cannot be availed of as an appellate jurisdiction. The legislature has not conferred the appellate powers but has conferred revisional jurisdiction. If we peruse the provision of Section 23-E of the Act, we find that it has been specifically provided therein that no appeal lies against any order passed by the R.C.A. under Chapter III-A. In this view of the matter, the intention of the Legislature was to take away the right of appeal and instead it has conferred revisional jurisdiction upon this Court. Sub-section (2) of Section 23-E confers the Revisional jurisdiction. If we peruse this provision, we find that under the revisional jurisdiction conferred under this sub-section, the record can be called for and examined with respect to pending case or a disposed of case of the R.C.A. and any order can be passed which is thought fit. There is also a specific provision that the High Court shall, as far as may be, exercise the same powers and follow the same procedure as this Court possesses for disposal of revision u/s 115 of the Code of Civil Procedure. In this view of the matter, to my mind, it can safely be said that the powers conferred on appellate Court have not been conferred on the Revising Court and the powers conferred upon this Court in revision are shorter than that of appeal. Not only this, as far as may be, the High Court shall exercise the same powers and follow the same procedure as it does for disposal of a revision u/s 115 of the Code of Civil Procedure. It can further be said that the powers conferred u/s 23E may be slightly wider than u/s 115 CPC for the simple reason that no appellate powers have been conferred against the order passed by the R.C.A. In other words, a duty is cast upon this Court to see the regularity of the proceedings before the R.C.A. and to the legality, propriety or correctness of any order passed by it. However, I may say at the cost of repetition that appellate powers have been specifically negated by this very section. While examining the correctness of the findings, this Court cannot act as a Court of appeal

and reappreciate evidence to come to its own conclusion vide 1986 MPLJ 80 :1986 JIJ 145, Mahendra Kumar v. Dharamchand. I may also observe that it cannot be contended that the High Court cannot reappreciate the evidence at all. To my mind, if the findings of the learned R.C.A. are against the provisions of law or against the record or based upon some evidence, which is not admissible, under law or some material evidence has been omitted, this Court can certainly scrutinise the evidence while exercising the revisional jurisdiction. As said earlier, the finding of the learned R.C.A. that there was a requirement of the landlord is a finding of fact. Once the requirement is found and the finding in that regard has not been assailed on account of the fact that some evidence has been ignored or some inadmissible evidence has been taken into consideration, the finding of requirement cannot be questioned. This Court cannot, therefore, reassess the evidence and come on a different conclusion in the case in hand. I have also said above that there is a presumption of bona fide requirement u/s 23-A. In this view of the matter, the contention of the learned counsel for the petitioner that the bona fide requirement has not been proved, cannot be accepted and I repel it.

Apart from what I have stated above, I may also mention that admittedly, the respondent-land lord is the retired servant and is a landlord within the meaning of Chapter III-A. The mere fact that his son is carrying on business, cannot deprive him to carry on his own business if he desires to carry on business after retirement. There cannot be any law restraining him from carrying on a business. On the other hand, in Chapter III-A, special definition of "landlord" has been given therein covering all such cases. If a person desires to carry on business after retirement, it cannot be said that he has no requirement merely on the ground that his sons are working and carrying on business.

In view of what has been stated above, I do not find any substance in the revision petition. It is accordingly dismissed with costs.