

**(2013) 01 MP CK 0029**

**Madhya Pradesh High Court**

**Case No:** Civil Revision No. 14 of 2013

Praveen Kumar

APPELLANT

Vs

Raghunath and Another

RESPONDENT

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**Date of Decision:** Jan. 23, 2013

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 7

**Citation:** (2013) 3 MPHT 27

**Hon'ble Judges:** A.K. Shrivastava, J

**Bench:** Single Bench

**Advocate:** Abhijeet Awasthi, for the Appellant; Rahul Rawat, Advocate for the Respondent No. 1 and Mr. Rahu Jain, Govt. Advocate for the Respondent No. 2, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

A.K. Shrivastava, J.

This revision application u/s 23-E of the M.P. Accommodation Control Act, 1961 (in short "the Act of 1961") has been filed by the tenant/applicant-Praveen against the eviction order dated 12-12-2012 passed by Rent Controlling Authority in Case No. 22-B/121/12-13. No exhaustive statements of facts are required to be narrated for the purpose of disposal of this revision. Suffice it to say that an application for eviction of the suit premises u/s 23-A of the said Act has been filed by the respondent No. 1 against the present applicant, on the basis of that he comes under the special clause of the landlord as envisaged u/s 23-J of the said Act, since he is a retired Government employee. According to the plaintiff/respondent No. 1, the applicant is a tenant in the residential accommodation of plaintiff at the rate of Rs. 1,000/- per month and because the plaintiff is a retired Government employee and despite his requests the tenant/defendant (present applicant-Praveen) did not vacate the suit premises, hence an application for eviction has been filed by the landlord.

2. On bare perusal of the impugned order dated 12-12-2012, this Court finds that after the tenant/defendant was served, he appeared and submitted an application seeking leave to defend u/s 23-C of the Act. However, later on, he did not appear on 21-1-2012, eventually he was proceeded ex parte. Thereafter, the tenant/defendant submitted an application under Order 9 Rule 7, CPC, which was allowed by the learned Rent Controlling Authority and thereafter, the arguments of the parties were heard. The factum of obtaining the suit accommodation on tenancy basis has been admitted by the tenant/defendant. The learned Rent Controlling Authority found that no ground has been raised in the application to leave the defend on the basis of which the leave to defend is to be granted and hence the application for leave to defend has been rejected and eventually the eviction decree has been passed.

3. The contention of the learned Counsel for the applicant/tenant is that the learned Rent Controlling Authority ought to have allowed the application seeking leave to defend the case, having not done so, the impugned order has been illegally passed. It has been then contended by him that even if the application for eviction of the plaintiff is to be allowed, two months time ought to have been allowed to vacate the suit premises and in this regard my attention has been drawn to Section 23-G of the said Act. Learned Counsel submits that prior to expiry of the aforesaid statutory period, on 18-12-2012, a notice was issued to the applicant by the learned Rent Controlling Authority that the suit premises be vacated within three days, which is contrary to Section 23-G of the said Act, hence it has been prayed that the impugned order of eviction be set aside and the learned Rent Controlling Authority be directed to allow the application of leave to defend and further be directed to hear the matter on merits after providing opportunity to the parties to adduce the evidence and the learned Rent Controlling Authority be also directed to deliver back the possession of the suit premises to the present applicant (defendant/tenant).

4. On the other hand, Shri Rahul Rawat, learned Counsel appearing for the respondent No. 1 submitted that without assigning any cogent ground, an application u/s 23-C of the said Act for leave to defend has been filed by the tenant/defendant, who has filed this revision application and therefore, the learned Rent Controlling Authority by the impugned order has rightly rejected the same. Since, no cogent ground has been raised in the application for obtaining leave to defend, therefore, the eviction order has been rightly passed by the said authority. The learned Counsel for the respondent further submits that he is not in a position to say whether the possession of the house in question was obtained by the plaintiff/ respondent. The learned Counsel has further submitted that a sum of Rs. 24,000/- towards rent is still not paid by the applicant and therefore, it has been directed to the tenant/present applicant to pay the said amount.

5. Having heard the learned Counsel for the parties, I am of the view that this application deserves to be allowed in part. On bare perusal of the application

seeking leave to defend, it is gathered that no ground has been stated or on what ground the tenant is seeking leave to defend the case. At this juncture, it would be condign to quote the aforesaid provisions, which reads thus:--

23-C. Tenant not entitled to contest except under certain circumstances.-- (1) The tenant on whom the summons served in the form specified in the Second Schedule shall not contest the prayer for eviction from the accommodation unless he files within fifteen days from the date of service of the summons, an application supported by an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Rent Controlling Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or in default of his obtaining such leave, or if such leave is refused, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant. The Rent Controlling Authority shall in such a case pass an order of eviction of the tenant from the accommodation:

Provided that the Rent Controlling Authority may, for sufficient cause shown by the tenant, excuse the delay of the tenant in entering appearance or in applying for leave to defend the application for eviction and where ex parte order has been passed, may set it aside.

(2) The Rent Controlling Authority shall, within one month of the date of receipt of application, given to the tenant, if necessary, leave to contest the application, if the application supported by an affidavit filed by the tenant discloses such fact as would disentitle the landlord from obtaining an order for the recovery of possession of the accommodation on the ground specified in Section 23-A.

6. If the aforesaid provision is kept in juxtaposition to the application seeking leave to defend (Annexure A-2, dated 28-3-12) and both are considered in proper prospective, it would reveal that no ground, much less than cogent ground has been stated in the application. For better understanding, it would be germane to quote the application seeking leave to defend which reads as under:--

The purpose of quoting the interim application is that nothing has been stated in the application on the basis of which any leave to defend the case has been granted and therefore, I am of the view that the learned Rent Controlling Authority did not err in rejecting the application seeking leave to defend and eventually passing the eviction decree by allowing the application u/s 23-A of the Act of the landlord/respondent.

7. On bare perusal of the impugned order dated 12-12-2012, it is gathered that the tenant/defendant has been directed to vacate the suit premises, failing which it may be vacated by police force and Tehsildar, Multai has been directed to do accordingly. Further on bare perusal of Annexure A-7, dated 18-12-2012, issued by the Sub-Divisional Officer, Multai, this Court finds that three days time was given to the defendant to vacate the suit premises. To me, this is totally in derogation and de

hors to Section 23-G of the said Act. Indeed, the Rent Controlling Authority ought to have granted two months time to vacate the suit premises. This revision application has been filed on 7-1-2013, within few days of passing of the impugned order, on 12-12-2012, thus, prima facie, there is some substance in the contention of the learned Counsel for the tenant/defendant, who is applicant in this revision that against the law the possession has been obtained. However, the learned Counsel for the landlord/respondent is not in a position to say whether the possession of the suit-premises has been obtained by the landlord or not.

8. On bare perusal of the impugned order, it is gathered that the tenant/ defendant has not paid to the landlord or deposited the rent at the rate of Rs. 1,000/- per month with effect from 1-1-2011 in the Court, which comes to Rs. 24,000/-. On bare perusal of the application seeking leave to defend, the rate of rent has also not disputed by the present applicant and there is no whisper in the application that he is not in arrears of rent and therefore, it can be inferred that the tenant has to pay a sum of Rs. 24,000/- to the landlord. Thus, because prior to the expiry of two months, the possession of the suit premises has been obtained by the landlord/respondent, he is liable to pay compensation of Rs. 24,000/- to the tenant/applicant. Since, I have held that tenant is in arrears of rent of Rs. 24,000/- the respondent/landlord shall not be entitled to recover the same and that amount of Rs. 24,000/- be adjusted towards the compensation, if possession of the suit premises has been obtained contrary to Section 23-G of the Act.

9. The learned Counsel for the applicant further submits that certain material is lying in the house in question, but the same has not been returned to the tenant, however, no detail of the said items has been stated in the revision application and, therefore, since Shri Rawat, learned Counsel for the respondent is not in a position to say anything in this regard. If necessary application is filed by the tenant before the Rent Controlling Authority and if the factual aspect is disputed by the landlord, the learned Rent Controlling Authority shall hold an enquiry in this regard and pass a suitable order by passing an order to return the articles of tenant, if any lying in the suit premises. With the aforesaid observations, this revision application is hereby allowed in part. The eviction decree passed by the learned Rent Controlling Authority is hereby affirmed. The parties are directed to bear their own costs.