

(2011) 03 MP CK 0017

Madhya Pradesh High Court

Case No: Civil Revision No. 98 of 2010

Heeranand Murlimal Vaswani

APPELLANT

Vs

Yashwant Vijay Saxena

RESPONDENT

Date of Decision: March 31, 2011

Acts Referred:

- Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 - Section 12(1), 13, 23A, 23C, 23E

Citation: (2011) 3 MPJR 29 : (2011) 2 MPLJ 538 : (2011) 2 RCR(Rent) 461

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

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.K. Shrivastava, J.

This revision application has been filed u/s 23-E of the M. P. Accommodation Control Act, 1961 (in short "the Act") by Applicant/Defendant against the eviction order dated 4-12-2009 passed by learned Rent Controlling Authority, Bhopal in Case No. 07/RCA/2008-09 (Old No. 27/RCA/2000-01).

The landlord/Plaintiff submitted an application u/s 23-A (wrongly typed as 23-C) of the Act for eviction against the Defendant/Applicant in respect of the suit shop in which he has been inducted as tenant. According to the Plaintiff, he served the State Government as a Class-III employee and retired on 31-3-2001. It has also been pleaded in the eviction application that in his house two shops are existing on the ground floor. In one shop the Defendant/Applicant is running the business of grocery and another shop had got vacated from another tenant but Plaintiff wants to carry on the business along with his son who is unemployed and will start the grocery business in both the shops which are adjoining to each other.

After obtaining leave to file appeal u/s 23-C of the Act, written statement was filed and the parties led their evidence.

The learned Rent Controlling Authority allowed the application of Plaintiff for eviction and passed the decree against the Defendant/tenant.

In this manner this revision application has been filed by tenant before this Court.

It has been put forth by Shri Shobhitaditya, learned Counsel for the Applicant that in the eviction application the pleading of Plaintiff is that he will start the grocery business along with his son, but, when the case was listed for evidence, the nature of business has been changed in the evidence and it has been shifted to start the business of Computer Centre. Hence, it has been put forth by learned Counsel that the need should be objective and it cannot be said to be a bona fide need. In this context he has placed reliance on the decision of Supreme Court [Smt. Krishnabai Anaji Ghule and Others Vs. Nivrutti Ramchandra Raykar and Another](#), Learned Counsel further submits that it has come in the testimony of Smt. Vimal Johri who is the wife of Respondent and mother of Abhishek Saxena that his son Abhishek at present is serving in a private job, hence, learned Counsel submits that if there was any need it has come to an end and further submitted that the need should exist till the decree is executed. In support of his contention learned Counsel has placed reliance on the decision of Supreme Court [Hasmat Rai and Another Vs. Raghunath Prasad](#), and single Bench decision of this Court Gangadhar v. Shantaram Lokre 1994 J LJ 408. By placing reliance on decision of Supreme Court [Mattulal Vs. Radhe Lal](#), it has been submitted that since the plans and estimates have not been submitted by the Plaintiff in order to construct the new shop, the decree of eviction cannot be passed.

It has also been put forth by learned Counsel that although it has come in the evidence of all the witnesses of Plaintiff that he is having alternative accommodation but same has not been pleaded in the eviction application and, therefore, the need cannot be said to be bona fide. In this regard learned Counsel has placed reliance on three decisions of this Court, they are [Anant Gadre Vs. Smt. Gomtibai and Others](#), [Jernail Singh Vs. Kanhaiyalal](#), and [Vikas Kumar Onkar Prasad Gupta Vs. Radhamal Hiramal Sindhi](#), On the basis of these submissions it has been argued by learned Counsel that this revision application be allowed and the eviction order passed by learned Rent Controlling Authority be set aside and the eviction application filed by Plaintiff /Respondent be dismissed.

On the other hand, Shri Rajesh Maindirectta, learned Counsel for the landlord submits that the need of Plaintiff is objective right from very beginning. By inviting my attention to pleadings of the eviction application as well as the evidence of landlord Yashwant Vijay Saxena (PW-1) it has been contended that in partition of the house, two shops on the ground floor fell in the share of Plaintiff while other two shops fell in the share of his brother Rajendra. Learned Counsel submits that one

shop which is adjacent to the disputed shop has already been got vacated from another tenant but need of Plaintiff and his son would not be satisfied from this shop as they require another shop (suit shop) also to start their business learned Counsel further submits that the need of Plaintiff as well as for his son still exists and merely because his son, for the time being, is employed in some private job, it cannot be said that the need has come to an end. According to learned Counsel cogent reasons have been assigned by learned Rent Controlling Authority allowing the eviction application and therefore, this revision application be dismissed.

Having heard learned Counsel for the parties I am of the view that this revision application deserves to be dismissed.

There is no quarrel about the proposition put forth by learned Counsel for the tenant/Applicant that the need should be objective and therefore, I should examine the pleadings of the parties and the evidence which they have led in order to ascertain whether the need is objective or not. On going through para 7 of the application of eviction this Court finds that specifically it has been pleaded by Plaintiff that one shop which is adjoining to the disputed shop has been got vacated from other tenant but it is not sufficient for him and he needs the disputed shop also because in both these shops the Plaintiff and his son Abhishek will start the business of grocery.

The eviction application was submitted near about 11 years ago on 10-7-2001. The impugned order was passed by learned Rent Controlling Authority on 4-12-2009 and if for such a long period of more than nine years during the pendency of case before learned Rent Controlling Authority, the son of the Plaintiff has procured some private job, it cannot be said that need of Plaintiff is not bona fide and it has come to an end. In this context, I may profitably place reliance on the decision of Supreme Court [Gaya Prasad Vs. Sh. Pradeep Srivastava](#), . In the case of Pratap Rai Tanwani and Anr. v. Uttam Chand and Anr. 2004 AIR SCW 6858 it was held that bona fide requirement of the landlord has to be seen on the date of filing of the eviction case and subsequent events intervening due to protracted litigation will not be relevant. The Supreme Court in this case categorically held that the crucial date will be the date on which the case for eviction was filed and therefore, the normal rule is that rights and obligations of the parties are to be determined on the date of the institution of the eviction case and that subsequent events can be taken into consideration for moulding the reliefs provided such events had a material impact on those rights and obligations. The Supreme Court further observed that it is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum, therefore, the Courts have to take a very pragmatic approach of the matter. Generally it is seen in our country that the tenant used to prolong the litigation as much as he can and therefore, the person for whose bona fide requirement the case of eviction is filed will not sit idle and therefore, according to me normally the crucial date should be

taken as on the date when the case for eviction was filed unless and until the subsequent events materially change the ground of the relief. The decision of Gaya Prasad (supra) and Pratap Rai Tanwani (supra) are relied upon by the Supreme Court in the latest pronouncement of Supreme Court Maganlal Kishanlal Godha v. Nanasaheb Uddhaorao Gadewar AIR 2009 SC 278. Apart from this, on bare perusal of the averment made in para 7 of the application of eviction this Court finds that the Plaintiff who is a retired Government servant has expressed the need of himself and also along with his son Abhishek. Hence, it cannot be said that the bona fide need of Plaintiff has come to an end.

On going through the averments made in the application of eviction, written statement and the evidence placed on record this Court finds that when the application was filed in the year 2001 the Respondent's son Abhishek became major and was undergoing his studies and therefore, at that juncture it was pleaded that Plaintiff required the suit shop to start the business of grocery. It is borne out from the testimony of Plaintiff and his wife and from the evidence of their son Abhishek that during this long period of nine years Abhishek had attained sufficient qualification and is having acquaintance with the latest technology in Computer etc. and therefore, in these facts and circumstances the evidence has been adduced that now in the disputed shop as well as the shop which is vacant, Plaintiff and his son would start the business of Computer Centre and therefore, I am of the view that in these circumstances if during the long period of nine years the Plaintiff had obtained necessary qualification of Computer education, the bona fide need cannot be said to be subjective but still it is objective and is very much existing. Certainly one cannot sit idle for a considerable long period of nine years and by taking into account this aspect of the matter the Supreme Court in Gaya Prasad (supra) Pratap Rai (supra) and Maganlal Kishanlal Godha (supra) has held that the bona fide need should be seen on the date of filing of the lis. Since the need was existing on the date of filing of the eviction application and looking to the evidence placed on record the said need is still existing. I am of the view that case of present Plaintiff is on much better footing than that of Gaya Prasad (supra), Pratap Rai (supra) and Maganlal Kishanlal Godha (supra) because if in the stop-gap arrangement Plaintiffs son Abhishek has been employed in some private job it cannot be said that bona fide need has come to an end.

On bare perusal of the provision 23-A(b) of the Act, nowhere it is gathered that the nature of the business is required to be pleaded by the Plaintiff and if that is the position even if in the application of eviction the nature of business "grocery" is pleaded while in the evidence business to start Computer Centre is stated, it cannot be said that the need of Plaintiff is not bona fide. In this context, I may place reliance on the latest pronouncement of Supreme Court Babulal and Ors. v. Sharikar Lal and Ors. (2008) 17 SCC 638 wherein while interpreting Section 12(1)(f) of the Act which is similar to Section 23-A(b) of the Act, it has been held by the Supreme Court that in the pleadings nature of business is not required to be pleaded and if it is not

pleaded, it cannot be said that need of Plaintiff is not bona fide. In these state of affairs I am of the view that the decisions placed reliance by learned Counsel for the Applicant/tenant are quite distinguishable.

So far as the plea of having alternative accommodation is concerned, suffice it to say that in very specific terms the evidence of Plaintiff is that on the ground floor there are four shops and out of them two have fallen in the share of his brother in the partition and remaining two shops fell in his share. At the cost of repetition, I may again state here that there is overwhelming material on record that possession of one shop is with the Plaintiff but the need of Plaintiff and his son is of two shops and therefore, there is no other alternative suitable vacant accommodation available with the Plaintiff. By twisting the facts in cross-examination this position is not somersaulted that the Plaintiff is the owner of two shops only out of which he got possession of one shop and in another shop which is the disputed shop, tenant/Defendant is running his business. Hence, decisions placed reliance by learned Counsel for the Applicant on this point are quite distinguishable.

I have also gone through the reasonings assigned by learned Rent Controlling Authority allowing the eviction application of Plaintiff and I find those reasonings to be cogent as they are based on correct appreciation of evidence. The findings are pure finding of fact and cannot be assailed in this revision application within the scope of Section 23-E of the Act. Hence, order impugned is hereby affirmed.

At this juncture, Shri Shobhitaditya, learned Counsel for the Applicant submits that since the tenant/Applicant is carrying on the business for last four decades some breathing time be given so that he can shift his business elsewhere.

Although this prayer is opposed by Shri Maindiretta, learned Counsel for the landlord, but, looking to the facts and circumstances, this Court thinks it proper to provide some breathing time. The time to vacate the suit premises is granted on the following conditions:

- (I) the Applicant/tenant/Defendant shall vacate the suit shop on or before 30th April, 2012;
- (II) the Applicant shall deposit the cost of the Court below as well as of this Court on or before 30-6-2011 before the Rent Controlling Authority;
- (III) if any amount of rent is due upon the tenant/Applicant the same may be deposited with the Rent Controlling Authority on or before 30-6-2011;
- (IV) the tenant shall continue to deposit the monthly rent in terms of Section 13 of the Act;
- (V) the Plaintiff/landlord shall be free to withdraw the cost and the amount of rent which shall be deposited by the tenant/Defendant;
- (VI) the tenant shall not create any third party interest in the suit shop; and.

(VII) a usual undertaking in this regard be submitted by the tenant/Defendant before the learned Rent Controlling Authority on or before 30-6-2011.

It is, however, made clear that if any of the aforesaid condition is violated by the tenant/Defendant, the Plaintiff/landlord shall be free to get decree of eviction executed prior to 30-4-2012.

This revision application is hereby dismissed with costs. Counsel fee of Rs. 2000/-, if pre-certified.