

Shri Ashish Sahu Vs Smt. Sushila Devi Chouhan

Court: Madhya Pradesh High Court

Date of Decision: March 27, 2008

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 47

Citation: (2008) ILR (MP) 1278 : (2008) 3 JLJ 216 : (2008) 3 MPHT 158 : (2008) 2 MPJR 310 : (2008) 3 MPLJ 383

Hon'ble Judges: K.K. Lahoti, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.K. Lahoti, J.

This revision is directed against the order dated 20-11-2007 by which the Rent Controlling Authority, Jabalpur rejected the application filed by the

petitioner under Order 47 Rule 1, CPC. During course of the argument, learned Counsel for petitioner drawn attention of this Court to the order

dated 16-11-2007, a certified copy of the order is available on record, by which petitioner's application u/s 47 of the Code of Civil Procedure,

1908 (hereinafter referred to as "the Code") was rejected by the Rent Controlling Authority on the ground that the provisions of Section 47 of the

Code are not applicable to the Rent Controlling Authority.

Against this order, petitioner filed an application under Order 47 Rule 1 of the Code seeking review of the order but this application was also

rejected on the ground that the Rent Controlling Authority was not vested with the power of review. While hearing the matter, order dated 16-11-

2007 was brought to my notice, in the interest of justice, both parties were also heard on the order passed on an application u/s 47 of the Code

filed by the petitioner before the Rent Controlling Authority.

Learned Counsel for petitioner submitted that in view of the specific provisions u/s 35 of the M.P. Accommodation Control Act, 1961 (hereinafter

referred to as ""the Act""), the Rent Controlling Authority was having jurisdiction to decide the application filed by the petitioner u/s 47 of the Code.

Per contra, learned Counsel for respondent submitted that in view of Section 36 of the Act, the Rent Controlling Authority was right in rejecting the

application u/s 47 of the Code on the ground that the order passed by the Rent Controlling Authority was final and no such application u/s 47 of

the Code was maintainable before the Authority.

To appreciate the aforesaid contention of the parties, the question arises whether the Rent Controlling Authority was having jurisdiction to consider

the application filed by the applicant u/s 47 of the Code. In this regard, relevant Sections 35 and 36 of the Act may be referred which read thus:

Section 35. Rent Controlling Authority to exercise powers of Civil Court for execution of other orders.--New Section 35 has been substituted for

the old one by the MPAC (Amendment) Act, 1983. Save as otherwise provided in Section 34, an order made by the Rent Controlling Authority

or an order passed in appeal under this Chapter or in a revision under Chapter III-A shall be executable by the Rent Controlling Authority as a

decree of a Civil Court and for this purpose, the Rent Controlling Authority shall have all the powers of Civil Court.

Section 36. Finality of order.--Save as otherwise expressly provided in this Act; every order made by the Rent Controlling Authority shall, subject

to decision in appeal, be final and shall not be called in question in any original suit, application or execution proceeding. Section 35 of the Act

empowers the Rent Controlling Authority to exercise the power of Civil Court for execution of its order as a decree of Civil Court and it is vested

with all the powers of a Civil Court in this regard. So far as Section 36 of the Act is concerned, it relates to finality of the order passed by the Rent

Controlling Authority and has no concern with the execution of the decree in respect of which a specific provision has been made in Section 35 of

the Act.

Section 47 of the Code provides that all questions arising between the parties to the suit in which decree was passed relating to the execution,

discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. The order of the Rent

Controlling Authority, directing eviction under Chapter III-A of the Act is executable as a decree of Civil Court. Before 1983, such powers were

vested with the Civil Court and now by incorporation of Chapter III-A in the Act, limited power has been given to the Rent Controlling Authority

to pass an order of eviction in respect of landlords defined in Section 23-J, for their bonafide necessity for residential or non-residential

accommodation. If any question arises during execution proceedings between the parties or their representatives, naturally the Rent Controlling

Authority which is vested with the power to execute its order as a decree of Civil Court has to decide the question between the parties. Otherwise

the provisions of Section 35 shall be nugatory because as soon as any such question arises between the parties, the Rent Controlling Authority will

be left with no option except to dismiss the application without deciding the objection on merits.

The Apex Court has an occasion to consider the powers of the Rent Controlling Authority in *V. Uthirapathi Vs. Ashrab Ali and Others*, wherein

the Apex Court considering Section 18 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 providing that the order for eviction

passed under the Act shall be executed by the Controller as if such an order is an order of the Civil Court and for this purpose, the Controller shall

have all the powers of a Civil Court. The Apex Court held that the effect of Section 18 is that the orders of the Rent Controller under Sections 10,

14, 15, 16 and 17 will cease to be orders passed under the Act by the Rent Controller when they reach the stage of execution.

Accordingly, execution petition filed in Rent Controller's Court (within the time limited for filing execution petition) becomes by force of the fiction,

execution petition under the CPC and not under the Act. Therefore, powers of a Civil Court in regard to execution proceedings will be equally

applicable to execution proceedings filed in the Rent Controller's Court.

Section 47 of the CPC provides that all questions arising between parties to the suit in which decree was passed relating to the execution,

discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. In view of the specific

language used u/s 47 of the Code, the Rent Controlling Authority which was exercising power of Civil Court for execution of order was having

jurisdiction to decide such dispute arises between the parties and for this purpose is vested with power of Section 47 of the Act. If for the sake of

argument, contention of learned Counsel for respondent is accepted, then position will be very anomalous.

On one hand Section 35 of the Act provides the Rent Controlling Authority powers of Civil Court to execute its orders and when any question

arises between the parties in respect of execution, discharge or satisfaction of the decree, the Rent Controlling Authority would stay its hands on

the ground that it has no power to decide such question, then in those circumstances, where the party would go. The intention of Section 35 of the

Act is very clear and it provides a complete forum in respect of execution of the orders passed by the Rent Controlling Authority. In case of arising

any such exigency, all the questions falling within the purview of Section 47 of the Code are to be dealt with only by the Rent Controlling Authority

and none else. In these circumstances, the Rent Controlling Authority erred in holding that it has no power to decide the question raised by the

petitioner u/s 47 of the Code.

The Rent Controlling Authority had passed the order on the premise that the procedure applicable to it was of Provincial Small Cause Courts Act,

1887 and Section 47 of the Code is not applicable to it. But as stated hereinabove when Section 35 clothes the Rent Controlling Authority with the

powers of Civil Court for the execution of the orders, the aforesaid question cannot be left outside the jurisdiction of the Authority merely on the

ground that the procedure applicable to the Rent Controlling Authority is of Provincial Small Cause Courts Act. Apart from this, this procedure of

Small Cause Courts has been made applicable to the proceedings under Sub-section (2) of Section 23-D of the Act which provides that the Rent

Controlling Authority shall, while holding an enquiry in a proceeding to which this Chapter applies, follow as far as practicable, the practice and

procedure of a Court of Small Causes including the recording of evidence under the Provincial Small Cause Courts Act, 1887. The aforesaid

provision has been made applicable in respect of procedure to be followed by the Rent Controlling Authority while dealing the application under

Chapter III-A of the Act, so that the proceedings under the Chapter may be decided expeditiously. But Section 35 of the Act is not under Chapter

III-A of the Act and vests powers of the Civil Court to the Rent Controlling Authority, to exercise such powers, u/s 35 of the Act while executing

an order passed by the same authority. In these circumstances, the reasonings assigned by the Rent Controlling Authority are not convincing to this

Court.

Petitioner after rejection of the aforesaid application filed an application under Order 47 Rule 1 of the Code seeking review of the order dated 16-

11-2007, which was also rejected by order dated 20-11-2007 on the ground that u/s 36 of the Act, the order passed by the Rent Controlling

Authority was final and could not be reviewed as the authority was having no power of review, but the Rent Controlling Authority failed to take

note of judgment of this Court in Ramnath Singh v. Sanjay and Ors. 1998 J.L.J. 141, wherein this Court considering this question held that:

“Since no specific provision is provided for execution of the order and the power to execute the order as a decree of Civil Court have been

given to the Rent Controlling Authority, in the absence of any provision the provisions of the CPC shall be applicable in execution proceedings u/s

35 of the Act. In these circumstances, the application for review was maintainable before the Rent Controlling Authority. The Rent Controlling

Authority erred in holding that it has no jurisdiction to entertain the application for review. The order is set aside.

In view of the law settled by this Court in Ramnath Singh (supra), it is not necessary for this Court to re-examine same issue. In view of the law laid

down by this Court in Ramnath Singh (supra), it is found that the Rent Controlling Authority erred in rejecting the application filed by the petitioner

under Order 47 Rule 1 of the Code.

7In the result, this revision is allowed and the order dated 20-11-2007 passed by the Rent Controlling Authority, Jabalpur rejecting the application

filed by the petitioner under Order 47 Rule 1, CPC is hereby set aside. The order dated 16-11-2007 so far as it relates to rejection of application

filed by the petitioner u/s 47 of the Code as not maintainable is also set aside. The matter is remitted back to the Rent Controlling Authority with

following directions:

(1) The Rent Controlling Authority, Jabalpur shall hear and decide the application filed by the petitioner u/s 47 of the Code afresh in accordance

with law.

(2) It is made clear that no opinion on merits of the objection filed by the petitioner is expressed by this Court and the Rent Controlling Authority

shall be free to deal and decide the application in accordance with law.

(3) The parties present herein are directed to remain present before the Rent Controlling Authority on 15-4-2008, for which date, no fresh notice

shall be necessary to the parties.

No order as to costs.