

(2011) 01 MP CK 0023

Madhya Pradesh High Court (Indore Bench)

Case No: Second Appeal No. 581 of 2007

Ashok Kumar

APPELLANT

Vs

Nandkishore

RESPONDENT

Date of Decision: Jan. 27, 2011

Acts Referred:

- Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 - Section 12(1)(a)

Citation: (2011) 3 MPHT 347

Hon'ble Judges: N.K. Mody, J

Bench: Single Bench

Advocate: R.D. Sonwane, for the Appellant; T.K. Modi, for the Respondent

Judgement

N.K. Mody, J.

Being aggrieved by the judgment dated 28-3-2007 passed by XVI ADJ (Fast Track), Indore in Civil Appeal No. 4/2006 whereby judgment dated 14-5-2004 passed by VIII Civil Judge, Class II, Indore in Civil Suit No. 94-A/2004 whereby the suit filed by the respondent for eviction u/s 12(1)(a) of the M.P. Accommodation Control Act (which shall be referred hereinafter as "Act") was decreed in part so far as it relates to arrears of rent and was dismissed so far as it relates to eviction was modified by passing the decree of eviction, the present appeal has been filed. The appeal was admitted by this Court vide order dated 28-7-2008 on the following substantial questions of law:--

(1) "Whether Lower Appellate Court was justified in reversing the judgment/decreed passed by the Trial Court which had dismissed the plaintiff's suit for eviction in relation to the suit house on the ground covered u/s 12(1)(a) of the M.P. Accommodation Control Act ?"

(2) "Whether Lower Appellate Court was justified in holding that ground u/s 12(1)(a) ibid is made out on the facts pleaded and found proved."

Short facts of the case are that the respondent filed a suit for eviction of the suit accommodation against the appellant alleging that respondent has letted out the suit accommodation to the appellant on rent @ Rs. 200/- per month. It was alleged that it was agreed between the parties that rent shall be enhanced after completion of one year by 10%. It was further alleged that appellant is in arrears of rent w.e.f. 1-4-1997. It was alleged that notice was issued to the appellant for demand of arrears of rent on 12-4-1999 but no rent was tendered by the appellant. It was alleged that respondent requires the suit accommodation bonafidely. The suit was contested by the appellant alleging that appellant was tenant in the suit accommodation @ Rs. 40/- per month. It was denied that appellant is in arrears of rent w.e.f. 1-4-1997. It was alleged that the appellant has never received any notice from the respondent. It was denied that appellant is in arrears of rent. It was alleged that appellant has already paid the rent upto December, 2000 and rent thereafter has not been accepted by the respondent. In the written statement it was also alleged that the respondent is the co-owner of the suit property. It was prayed that suit be dismissed. After framing of issues and recording of evidence learned Trial Court decreed the suit so far as arrears of rent is concerned and dismissed the suit so far as it relates eviction against which the appeal was filed the respondent which was allowed and the decree of eviction was also passed against the appellant against which present appeal has been filed.

2. Learned Counsel for the appellant argued at length and submits that impugned judgment passed by learned Appellate Court is illegal, incorrect and deserves to be set aside. It is submitted that respondent himself has not stated that notice was duly served on the appellant. It is submitted that in the facts and circumstances of the case no decree of eviction could have been passed against the appellant. Learned Counsel submits that since Surendra Kumar Modi, who happens to be the brother of respondent is one of the co-owner of the suit accommodation claiming rights over the suit property, therefore, learned Appellate Court committed error in passing the decree of arrears of rent against the appellant. It is submitted that appeal filed by the appellant be allowed and impugned judgment passed by learned Appellate Court be set aside.

3. Mr. T.K. Modi, learned Counsel for the respondent argued at length and submits that no illegality has been committed by learned Appellate Court in modifying the decree passed by learned Trial Court. It is submitted that appeal filed by the appellant be dismissed.

4. From perusal of record, it appears that in the suit itself respondent has stated that notice was issued by the respondent whereby arrears of rent were demanded but notice was not served on the appellant. From the pleadings itself, it is evident that case was not made out by the respondent for eviction as the suit was filed for eviction u/s 12(1)(a) of the Act and respondent was required to plead and prove that the tenant was in arrears of rent and notice of demand was issued which was duly

served and in spite of service of notice rent was not paid. Since respondent has admitted that notice issued to the appellant was not served, therefore, there was no reason for dismissing the suit filed by the respondent u/s 12(1)(a) of the Act. So far as decree as it relates to arrears of rent is concerned, since the appellant himself has admitted that appellant has paid rent to the respondent, therefore, the learned Trial Court is rightly decreed the suit against the appellant. So far as contention of the appellant that appellant is not the tenant of respondent is concerned as the brother of respondent is also claiming the rent and since against judgment passed by learned Trial Court no appeal was filed by the appellant, therefore, at this stage appellant cannot challenge the validity of decree passed by learned Trial Court on that ground.

5. In the facts and circumstances of the case, appeal filed by the appellant is allowed. Substantial questions of law are answered in favour of the appellant the judgment and decree passed by learned Appellate Court is set aside and the judgment and decree passed by learned Trial Court is restored. With the aforesaid observations, appeal stands disposed of. No order as to costs. C.c. as per rules.