

**(1993) 11 MP CK 0013**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** Civil Rev. No. 379 of 1993

Devidayal Sales Pvt. Ltd.

APPELLANT

Vs

Dr. Rameshchandra

RESPONDENT

**Date of Decision:** Nov. 16, 1993

**Acts Referred:**

- Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 - Section 23C, 23D

**Citation:** (1994) 39 MPLJ 899 : (1994) MPLJ 899

**Hon'ble Judges:** A.R. Tiwari, J

**Bench:** Single Bench

**Advocate:** S.L. Pamecha, for the Appellant; M.G. Upadhyaya and V.K. Dubey, for the Respondent

**Final Decision:** Allowed

### **Judgement**

@JUDGMENTTAG-ORDER

A.R. Tiwari, J.

This revision petition is directed against the order dated 12-10-1993 rendered by the Rent Controlling Authority, Indore in case No. A/90(7)36/93 thereby refusing leave to contest the application pending before it for eviction.

Briefly stated, the facts of the case are that non-applicant has filed the application before the Rent Controlling Authority seeking eviction from the tenanted premises. The applicant in this petition sought leave to contest in terms of Section 23C of the M. P. Accommodation Control Act, 1961. By elaborate order, the Rent Controlling Authority refused the leave to contest the application. This revision petition is directed against that order.

The case was listed today for further orders on IA No. 5914/93. However, with the consent of the parties, the revision petition was taken up for final hearing today itself. Shri S. L. Pamecha learned counsel for the applicant and Shri M.G. Upadhyaya

and Shri V. K. Dube learned counsel for the non-applicant were thus finally heard.

In our country, men are more and mansions less. This is why eviction matters became highly controversial and face hot contest. To combat this position at least for certain specified categories of the landlords, the special forum and procedure for trial have been introduced by the Amending Act 27 of 1983.

The object is two-fold. One futile contest may be eliminated. This is intended to be controlled by Section 23C of the M. P. Accommodation Control Act requiring the tenant to obtain leave to contest on appropriate grounds. Two verdict may be expeditious. This is sought to be achieved by Section 23D of the Act, which demands (a) that the RCA shall commence the hearing as early as practicable and decide the same as far as may be, within six months and (b) that the RCA shall as far as possible proceed with the hearing of the application from day to day.

Precisely for attainment of these twin objects, the tenant is not left entitled to contest the application except under certain circumstances. Leave to contest is thus obtainable and grantable u/s 23C of the Act. Normally, right to oppugn is valuable but it suffers eclipse on the basis of fetters fixed by law.

The RCA uttered monosyllabic "no" on 12-10-1993 to the prayer for leave to contest contained in application dated 30-8- 1993. The prayer was made within the period statutorily provided. An application under Order 6, Rule 17 of the Code was, however, moved on 1-10-1993 to supplement the reasons.

The RCA took about one and a half month in answering the prayer in the negative. In such matters, there has to be neat balance between two extreme situations better explained by sayings "Justice delayed is justice denied" and "Justice hurried is justice buried." The search is still on for an ideal position where justice is neither delayed nor buried. Law and justice have to live in harmony.

The point that lingered on the mind was that if "seven pages" were required to say "no" on such minute and meticulous scrutiny then why "yes" was not said promptly to prevent procrastination and perish pettifoggery ? In Precision Steel and Engineering Works and Another Vs. Prem Deva Niranjan Deva Tayal, Precision Steel and Engg. Works and Anr. v. Prem Deva Niranjan Deva Tayal, it is held that -

"The Controller has to confine himself to the affidavit filed by the tenant under sub-section (4) and the reply if any. On perusing the affidavit filed by the tenant and the reply if any filed by landlord the Controller has to pose to himself the only question : "Does the affidavit disclose, not prove, facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in cl. (e) of the proviso to Section 14(1)? The Controller is not to record a finding on disputed questions of facts or his preference of one set of affidavits against other set of affidavits. That is not the jurisdiction conferred. The Controller while examining the question whether there is a proper case for granting leave to

contest application has to confine himself to the affidavit filed by the tenant disclosing such facts as would prima facie and not on contest disentitle the landlord from obtaining an order for recovery of possession."

Obviously the question at the stage of seeking leave was one of disclosure and not of proof of facts as such. The limited question needing answer at that infant stage was whether oppugnation to the claim was prima facie good or was just inutile and futile ? To put it differently the issue was whether cause was really contestable ? Why not say "yes" if as many as seven pages and as many as 42 days were required to say "No"?

In the circumstances, I vacate the order and differing with the conclusion of the learned RCA, grant leave to contest the application in terms of Section 23C of the Act subject to the condition that the applicant tenant files before the RCA written statement of its defence on or before 22-11-1993. It is made clear that in the event of failure to do so, the tenant shall stand precluded from contesting the application. The leave is, thus, granted on imposition of this term.

The RCA shall thereafter proceed with the trial of the main application in conformity with law.

The parties shall appear before the RCA on 22-11-1993 to take further orders in the matter.

In the result, the revision petition is allowed in terms indicated above. Parties are, however, left to bear their own costs of this revision petition as incurred. Counsel fee on each side shall be Rs. 500/- if certified.