
Omprakash Saxena Vs Satyanarayan Chouhan

Civil Revision No. 202 of 2010

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Feb. 8, 2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 18 Rule 4#Madhya Pradesh/Chhattisgarh
Accommodation Control Act, 1961 " Section 2, 23A

Citation: (2011) 2 MPHT 379

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

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

N.K. Mody, J.

Being aggrieved by the order dated 8-7-2010 passed by Rent Controlling Authority, Indore in Case No. A-90(7) 46/09,

whereby eviction petition filed by Petitioner u/s 23A of M.P. Accommodation Control Act (which shall be referred as "the Act") was dismissed,

present petition has been filed.

2. Short facts of the case are that Petitioner filed petition u/s 23A of the Act alleging that Petitioner is the owner of a house situated at Nandlal Pura

Sabji Mandi, Indore bearing municipal house No. 5, Ward No. 44. It was alleged that Respondent is in occupation of the suit accommodation as

tenant @ Rs. 350/- per month since last thirty years. Further case of the Petitioner was that Petitioner, who is the senior citizen aged 73 years is

also a handicapped person. It was alleged that Petitioner requires the suit accommodation bonafidely for the residence of himself and also for the

members of his family. It was alleged that the accommodation, which is in occupation of Petitioner is not sufficient to meet out the requirement of

the family. It was alleged that there are five members in the family of the Petitioner, which includes Petitioner, his wife, daughter-in-law and two

grandsons. It was alleged that Petitioner is in occupation of one room on the ground floor and two rooms on first floor and a rain shed on second

floor. It was alleged that Petitioner is having no other alternative accommodation of his own from where requirement of the Petitioner can be

fulfilled. It was further alleged that since the Petitioner is aged 73 years and wife of the Petitioner is aged 65 years and the Petitioner is handicapped

and wife of the Petitioner is not in a position to climb the stair case, therefore, Petitioner requires the suit accommodation bonafidely. It was prayed

that order of eviction be passed. The eviction petition was contested by the Respondent after seeking leave to defend. It was not disputed that

Respondent is in occupation of the suit accommodation as tenant. However, it was denied that Petitioner requires the suit accommodation

bonafidely. It was denied that Petitioner is having no other alternative accommodation from where the requirement can be fulfilled. It was prayed

that petition be dismissed. After framing of issues and recording of evidence learned Trial Court dismissed the petition filed by the Petitioner against

which present petition has been filed.

3. Shri S.C. Shrivastava, learned Counsel for Petitioner argued at length and submits that impugned order passed by learned Trial Court is illegal,

incorrect and deserves to be set aside. It is submitted that the only ground on which the petition was dismissed is that Petitioner requires the suit

accommodation for the need of daughter-in-law and grandson, who are not the members of family. It is submitted that this ground cannot be

allowed to sustain. Learned Counsel for Petitioner placed reliance on a decision of this Court in the matter S.R. Brothers v. Smt. Tara Bai,

reported in 1989 MPACJ 71, wherein the landlord was ailing landlady and there was nobody to look after, this Court held that if the landlady calls

her daughter, who is married to look after her and to stay with her there is nothing wrong and it is the requirement of Plaintiff herself and not of the

daughter and son-in-law. Further reliance is placed on a decision of this Court in the matter of Makbool s/o Abdul Latif v. Abdul Hafij s/o Abdul

Rajak, reported in 2005 (II) MPACJ 94, wherein in a suit for eviction on genuine requirement where the major son was married having his own

family, this Court held that requirement of the family is genuine. Further reliance is placed on a decision of this Court in the matter of Smt. Mona

Shrivastava Vs. Smt. Pan Bai Raikwar, wherein the landlady was the woman, who was looked after by the daughters with her, this Court held that

accommodation was required for the need of the landlady and not for the daughters. On the strength of aforesaid decisions, it is submitted that

petition be allowed and the impugned order be set aside and order of eviction be passed against the Respondent.

4. Shri Manohar Dalai, learned Counsel for Respondent, submits that no illegality has been committed by the learned Trial Court in passing the

impugned order. It is submitted that after taking into consideration the evidence on record, learned Court below came to the conclusion that

Petitioner requires the suit accommodation for the need of daughter-in-law and grandson, who are not the members of the family.
Learned Counsel

submits that from the evidence it is proved that daughter-in-law of the Petitioner is having independent income. It is submitted that it has also come

in evidence that daughter-in-law of the Petitioner is having her own flat. Learned Counsel submits that it was also found by the learned Trial Court

that one of the grandson of the Petitioner is also earning member. It is submitted that earlier also eviction suit was filed by mother of the Petitioner

before Civil Court, wherein it was held that mother of the Petitioner requires the suit accommodation for need of her grandson, i.e., need of the son

of Petitioner. It is submitted that earlier eviction petition was filed, which was numbered as Case No. A 90 (7)/2000 and dismissed on 15-7-2002

against which revision petition was filed, which was numbered as C.R. No. 851/2002, which was also dismissed by order dated 17-12-2003. It is

submitted that learned Court has observed that for the similar need again petition is filed, which was not maintainable and the same be dismissed.

Learned Counsel placed reliance on a decision of the Apex Court in the matter of Maya Devi (dead) through Lrs. Vs. Smt. Raj Kumari Batra

(dead) through Lrs. and Others, wherein the Hon"ble Apex Court held that issues concerned having been determined finally as SLP seeking to

agitate them having been dismissed in limine, they could not be reagitated yet again. Learned Counsel submits that from the evidence it is proved

that Petitioner requires the accommodation of ground floor while the accommodation in question is not on ground floor. It is submitted that petition

be dismissed.

5. Section 2(e) of M.P. Accommodation Control Act, 1961 lays down the definition of word of member of the family, which reads as under:

in case of any person means the spouse son, unmarried daughter, father, grand father, mother, grand mother, brother unmarried sister, paternal

uncle, paternal uncle"s son or unmarried daughter living jointly with or any other relation dependent on him;

6. A bare reading of the definition of "member of the family" shows that it embraces within its ken three categories of persons-- (1) the spouse,

son, unmarried daughter, father, grandfather, mother, grandmother, brother, unmarried sister, paternal uncle, paternal uncle"s wife or widow; (2) or

brother"s son, or unmarried daughter living jointly with him; and (3) or any other relation dependent on him.

7. A bare reading of the provision clearly suggests that the Legislative intent is that the words "living jointly with" are intended to qualify only

brother"s son or unmarried daughter, the words just preceding. They do not extend any beyond. The reason is not far to seek. The first category

of relations are even otherwise the members of the family and in the Indian Society those relations can ordinarily be expected to be living with the

landlord. A daughter-in-law who has lost her husband may ordinarily live with the landlord.

8. In the matter of Joginder Pal Vs. Naval Kishore Behal, Hon"ble Apex Court observed that the rent control legislations are heavily loaded in

favour of tenants treating them as weaker sections of the society requiring Legislative protection against exploitation and unscrupulous devices of

greedy landlords. The Legislative intent has to be respected by the Courts while interpreting the laws. But it would be uncharitable to the

Legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of

being unfair to the landlords. The Legislature is fair to the tenants and to the landlords, both. The Courts have to adopt a reasonable and balanced

approach while interpreting rent control Legislations starting with an assumption that an equal treatment has been meted out to both the sections of

the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the

landlord the Court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control Legislations to take care of

those situations where the landlords too are weak and feeble and feel humble. It was further held that the expression ""for his own use"" as occurring

in the Act cannot be narrowly construed. It must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the

landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically

occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the

landlord can be considered to be the requirement of the landlord for his own use. Keeping in view the social or socio-religious milieu and practices

prevalent in a particular section of society or a particular region to which the landlord belongs, it may be the obligation of the landlord to settle a

person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such

obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. All the cases and

circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be

exhaustively enumerated. It will depend on a variety of factors such as interrelationship and interdependence- economic or otherwise, between the

landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they

belong. The test to be applied are: (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement,

and (ii) whether on the facts and in the circumstances of a given case, actual occupation and user by a person other than the landlord would be

deemed by the landlord as ""his own"" occupation or user. The answer would, in its turn, depend on (i) the nature and degree of relationship and/or

dependence between the landlord pleading the requirement as ""his own"" and the person who actually would use the premises; (ii) the

circumstances in which the claim arises and is put forward, and (iii) the intrinsic tenability of the claim. The Court on being satisfied of the

reasonability and genuineness of the claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.

9. From perusal of the record it appears that to prove the case Petitioner Omprakash has examined himself as A.W. 1 and has also examined Smt.

Tripti Saxena as A.W. 2 and Umashankar as A.W. 3 while Respondent has examined himself as D.W. 1 and Harish Joshi as D.W. 2. The record

reveals that earlier also eviction petition was filed against the Respondent by Smt. Leelabai, mother of the present Petitioner, wherein it was alleged

that Respondent is tenant in the accommodation @ Rs. 350/- per month. It was alleged by Smt. Leelabai, mother of the Petitioner, that she is

having a son and daughter-in-law and grown up children in her family. In the petition it was alleged that she requires suit accommodation bonafidely

for her family, which consists of her son Shailendra, his wife and three grown up grandsons. The petition was finally dismissed holding that learned

Court below committed no error in not considering the requirement of Shailendra, who was grandson of Leelabai as a member of family and not

respecting or recognising her need.

10. Petitioner Omprakash Saxena who was aged 73 years at the time of submitting the affidavit under Order XVIII Rule 4, CPC has stated that

the Respondent is tenant in two rooms and gallery on the first floor @ Rs. 350/- per month. He has further stated that his wife is aged 67 years and

is old and ailing lady. He has further stated that he in occupation of one room of the ground floor measuring 10" x 10", wherein Petitioner and his

wife are living. He has further stated that Petitioner is having two rooms on the first floor wherein his daughter-in-law is residing with her two sons.

He has further stated that upon eviction of Respondent one room which is in occupation of the Respondent shall be used for kitchen and another

shall be used by his grandson who is studying in B. Com-II year. Statement of Petitioner is fully supported by his daughter-in-law Smt. Tripti

Saxena and Umashankar Shrivastava, who is also aged 70 years. It is true that earlier Lilabai Saxena filed a petition for eviction wherein it was

alleged that Petitioner (Leelabai Saxena) is having a son, i.e., Omprakash Petitioner, daughter-in-law and growing up grandson Shailendra Kumar

who has wife and school going children in his family. In the said petition bonafide requirement was pleaded by Smt. Leelabai Saxena mother of

present Petitioner for her son, daughter-in-law, growing up grandson, his wife and school going sons. While deciding the revision petition this Court

has observed that the Petitioner Leelabai has failed to prove the bonafide need of her grandson Shailendra Kumar. This order is dated 17-12-03

and the order passed by Rent Controlling Authority in that case whereby petition filed by Petitioner Leelabai Saxena was dismissed is dated 15-7-

11. After passing the order in the earlier revision circumstances of the family has changed. Leelabai Saxena who filed earlier petition died.

Omprakash s/o Leelabai being legal representative of Leelabai has become owner of the suit accommodation and Shailendra Kumar who was

grandson of Leelabai and son of the Petitioner has also died. Now, in the old age it is only daughter-in-law who is taking care of Petitioner and his

wife. Even if daughter-in-law doing some petty job for earning her livelihood as she is in a private teaching job from where she is getting Rs.

1,000/- to 1,500/- per month, then too, it cannot be said that Smt. Tripti Saxena is not the member of the family of Petitioner.

12. Applying the tests laid down in the case of Joginder Pal (supra), to the facts of the present case it is clear that the tenanted premises were

required by the Petitioner for the members of his family. It is moral obligation of the landlord to settle the daughter-in-law who has lost his son.

Petitioner is not going to let out the premises to his daughter-in-law. Possession of the daughter-in-law would continue with the Petitioner. Thus, it

was the Petitioner who requires the premises and the case is squarely covered within the scope of Section 23A of the Act. Otherwise also for

various needs Petitioner and his wife are dependent on their daughter-in-law and grandsons, Petitioner is dependent on them in his old age. Thus,

they are covered under the definition of the member of family. This Court is also of the opinion that in the change circumstances earlier order of

eviction passed on 17-12-03 is not having a force of res judicata. In the opinion of this Court order passed by the learned RCA is illegal, incorrect

and deserves to be set aside. In view of this, petition filed by the Petitioner is allowed. Impugned order of eviction passed by the learned Rent

Controlling Authority dated 8-7-10 is set aside. Eviction petition filed by the Petitioner is allowed directing the Respondent to vacate the suit

accommodation within a period of two months.

13. With the aforesaid observations, petition stands disposed of. No order as to costs.