



IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR  
BEFORE  
HON'BLE SHRI JUSTICE G. S. AHLUWALIA

SECOND APPEAL No. 235 of 2010

*ANIL KUMAR KUSHWAH*

*Versus*

*ANIL KUMAR GUPTA*

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Appearance:

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*Mr. Abhisehk Singh Bhadauria - Advocate for appellant.*

*Mr. Vikas Singhal - Advocate for respondent.*

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Reserved on: 17/12/2025

Pronounced on: 13/01/2026

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JUDGMENT

This second appeal under Section 100 of CPC has been filed against the judgment and decree dated 30/03/2010 passed by 10<sup>th</sup> Additional District Judge (Fast Track Court), Gwalior, in Civil Appeal Nos. 1-A/2010 and 2-A/2010 arising out of the judgment and decree dated 31/07/2009 passed by 8<sup>th</sup> Civil Judge, Class-II, Gwalior, in Civil Suit No. 21-A/2009.

2. Appellant is the plaintiff who has lost his case from both the Courts below.

3. The facts necessary for disposal of present appeal, in short, are that appellant/plaintiff filed a suit for eviction as well as for recovery of arrears of rent on the ground that he is the owner of a house situated in



front of office of INTAK, Tansen Road, Hajira, Gwalior, whose Municipal Corporation No. is 114 and is situated in Ward No. 15. Defendant/respondent was inducted as a tenant of one room situated in the said building on 17/10/2001 on a monthly rent of Rs. 500/- with additional charges of Rs. 125/- for electricity consumption, i.e., total amount of Rs. 625/- per month. Respondent/defendant is using the said room as his office. The tenancy is from 17th of every month till 16th of the succeeding month. Since plaintiff himself was in need of the suit premises, therefore, at the repeated verbal request by defendant, who was well known to him, gave the suit room for a period of six months and it was also assured by defendant that as soon as suitable accommodation is found by him, then he would vacate the suit room within a period of six months. Thereafter, defendant took a U-turn and every time refused to vacate the room on the ground that he could not find any suitable accommodation. In the month of November 2002, when the plaintiff requested the defendant to vacate the suit room, then he picked up quarrel and started abusing the plaintiff and pushed him out of the room. It was pleaded by plaintiff that plaintiff is in possession of one dining room and two other rooms in which he, his wife and three children are residing. The youngest son of plaintiff, namely Saujanya, is a student of engineering and since he has no separate room for himself, therefore, he is compelled to sit along with all his family members even for his study purposes, and therefore, it was pleaded that the room in question is *bona fide* required by the plaintiff for his youngest son.



Defendant paid rent of Rs. 625/- per month till 16/11/2002 and stopped depositing the rent thereafter. Defendant had sent an amount of Rs. 500/- towards the rent of one month on 10/12/2002 which was returned back by the plaintiff on the ground that defendant has not paid electricity charges. Thereafter, again on 20/05/2003, defendant sent a money order of Rs. 500/- at the rate of monthly rent of Rs. 125/-. Since the amount was not in accordance with the settled rent, therefore, the same was returned back. When the plaintiff requested the defendant to pay the entire outstanding settled rent, then he refused to do so. In April 2003, when the plaintiff went to defendant to ask him to vacate the suit room as well as to pay the outstanding amount, then defendant insisted that the plaintiff should alienate the room or should alienate the shop situated in the said building to defendant. When the plaintiff refused to do so, then defendant gave a threat that he is an advocate and the plaintiff will never be in a position to get the suit room vacated from him. Thereafter, defendant, with an intention to harass the plaintiff and his family members, lodged a false report on 07/05/2003 on the ground that plaintiff has tried to disconnect the electricity connection. When the police came to the suit room, then they found that the electricity connection was not disrupted, and accordingly, the police did not take any action. Thereafter, defendant filed a criminal complaint which was pending on the date of filing of the suit (however, it is fairly considered by counsel for parties that the complaint was partially dismissed and in appeal, appellant has been acquitted in toto. Thus, it was claimed that



because of the act of defendant, plaintiff has suffered mental agony which falls within the category of Section 12(1)(c) of MP Accommodation Control Act. Thus, a suit was filed for eviction as well as for recovery of arrears of rent of Rs. 5625/-, as well as for future monthly rent at the rate of Rs. 625/-. The suit was filed on the ground of Sections 12(1)(a), 12(1)(c) and 12(1)(e) of M.P. Accommodation Control Act.

4. Defendant filed his written statement and denied the plaint averments. It was denied that defendant was inducted as a tenant on a monthly rent of Rs. 500/- and monthly electricity expenses of Rs. 125/-. It was denied that the plaintiff was already in need of the suit room prior to inducting the defendant as tenant. It was also denied that the defendant was inducted as tenant on his repeated verbal request. It was denied that the defendant/tenant had assured that as soon as any suitable accommodation is received by him, then he would vacate the suit room. All other plaint averments were denied. It was pleaded that defendant is an advocate and sits in the suit room for one hour in the morning and two hours in the evening. It was claimed that defendant was regularly making payment of rent. It was pleaded that the room was let out on a monthly rent of Rs. 100/- rent and monthly electricity charges Rs. 25/-, i.e., total amount of Rs. 125/- per month. Averments with regard to *bona fide* need of plaintiff for his youngest son was also denied. Thus, it is the case of defendant that the suit room was let out on monthly rent of Rs. 100/- and monthly electricity charges of Rs. 25/-,



and in all, Rs. 125/- per month and the allegations of nuisance was also denied and *bona fide* need of plaintiff for residential purposes was also denied.

5. The Trial Court, after framing issues and recording evidence, held that the suit premises is *bona fide* required by plaintiff and defendant is in arrears of rent of Rs. 5625/-, but held that plaintiff is not entitled for decree because the suit room was let out to defendant for non-residential purposes, but plaintiff has sought the eviction for his residential purposes.

6. Being aggrieved by judgment and decree passed by the Trial Court, appellant preferred an appeal which was registered as Civil Appeal No. 2-A/2010, and similarly, respondent also preferred Civil Appeal No. 1-A/2010, and prayed for setting aside of the findings given by the lower Appellate Court in respect of issue Nos. 1, 2 and 5. By impugned judgment and decree dated 30/03/2010, learned lower Appellate Court dismissed the appeal filed by appellant, whereas allowed the appeal filed by respondent.

7. It is not out of place to mention here that by issue No. 1, Trial Court had held that the monthly rent of the suit room is Rs. 500/- and monthly electricity charges is Rs. 125/-, and in all, the monthly rent of the suit room is Rs. 625/-. By issue No. 2, it was held that the suit room is required for study purposes of the youngest son of the plaintiff, and by issue No. 5, it was held that an amount of Rs. 5625/- is outstanding towards the arrears of rent.



8. Challenging the judgment and decree passed by the lower Appellate Court in Civil Appeal Nos. 1-A/2010 and 2-A/2010, present appeal has been filed.

9. This appeal was admitted on the following substantial question of law:

"Whether finding recorded by the lower appellate court allowing the appeal of the defendant setting aside the finding of the trial court with respect to the rate of rent is based on surmises and perverse however in lieu of the aforesaid finding, the lower appellate court committed error to refuse the decree under section 12(1)(a) of the M.P. Accommodation Control Act, 1961?"

10. After going through the entire record, this Court is of considered opinion that two more substantial question of law arises in the present appeal, and, accordingly, in exercise of power under Section 100(5) of CPC, following two additional substantial questions of law are framed:

(i) Whether office of the advocate is a commercial activity or not? and

(ii) Whether, an appeal under Section 96 of CPC against a finding recorded by the Trial Court was maintainable, specifically when no decree was passed against the respondent/defendant?

11. Counsel for the parties are heard on all the three substantial questions of law, i.e., substantial question of law framed on 16/6/2014, and the two additional substantial questions of law which have been framed today.



**Whether, an appeal under Section 96 of CPC against a finding recorded by the Trial Court was maintainable, specifically when no decree was passed against the respondent/defendant?**

12. Section 96 of CPC reads as under:

**"96. Appeal from original decree.- (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.**

**(2) An appeal may lie from an original decree passed ex parte.**

**(3) No appeal shall lie from a decree passed by the Court with the consent of parties.**

**(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees."**

From plain reading of this Section, it is clear that appeal under Section 96 of CPC would lie from every decree passed by the Court and not otherwise. If a decree is in favor of appellant and appellant is aggrieved by any finding, then he has two options, i.e., either to file cross objection under Order 44 Rule 2 CPC or to file a civil revision in case if no appeal is filed by the person against whom the decree has been passed. The right to file an appeal is a statutory right granted by a statute, and, therefore, the appeal has to be strictly in accordance with law. Section 96 of CPC specifically provides that appeal will lie against a decree. Decree and findings are two different aspects and cannot be equated with each other.

13. If the respondent/defendant was aggrieved by the findings recorded by the Trial Court, then in absence of a decree against him, he



had only two options, i.e., either to file cross objection under Order 44 Rule 2 CPC or to file a civil revision in case if no appeal is filed by plaintiff/appellant. However, in the present case, appeal was also filed by the plaintiff, and therefore, the only option available with the defendant was to prefer a cross objection, and the appeal filed by him under Section 96 of the CPC against the findings recorded by the Trial Court was not maintainable. Under these circumstances, the appeal filed by defendant was not maintainable.

14. During the course of arguments, it was not prayed by respondent/defendant that his appeal may be treated as a cross objection under Order 44 Rule 2 CPC. Under these circumstances, it is held that the appeal filed by respondent/defendant, which was registered as Civil Appeal No. 1-A/2010, was not not maintainable. Therefore, the decree passed by the lower Appellate Court, so far as it relates to setting aside of the findings of the Trial Court in respect of issue Nos. 1, 2, and 5 is hereby set aside.

**Whether office of the advocate is a commercial activity or not?**

15. The Trial Court, after coming to a conclusion that the suit room was *bona fide* required by the plaintiff for his residential purposes, and the defendant has committed a default in payment of rent, and plaintiff has made out a ground under Section 12(1)(a) of M.P. Accommodation Control Act, has refused to grant decree on the ground that since office of an advocate is a commercial activity, therefore, the suit for residential purposes is not maintainable.



16. The undisputed fact is that the room in question is situated in a residential building and not in a commercial building. This Court, by judgment dated 01/04/2025 passed in the case of **Dheeraj Singh vs. Hemant Kumar Sharma** in Second Appeal No. 2617/24 (Gwalior Bench), has held as under:

"10. ....

**The first question for consideration is as to whether Office of an Advocate involves any commercial activity or not?**

11. The aforesaid question arose for number of times in respect of the tariff of electricity chargeable for running the office of an Advocate. The Supreme Court in the case of M.P. Electricity Board and Ors Vs. Shiv Narayan and Anr. reported in (2005)7 SCC 283 has held as under:-

"5. The word "commerce" is a derivative of the word "commercial". The word "commercial" originates from the word "commerce" which has been defined in Black's Law Dictionary, 6th Edn, as under:

"Commerce.- The exchange of goods, productions, or property of any kind; the buying, selling, and exchanging of articles. Anderson v. Humble Oil and Refining Co. The transportation of persons and property by land, water and air. Union Pacific R. Co. v. State Tax Commr.

Intercourse by way of trade and traffic between different peoples or States and the citizens or inhabitants thereof, including not only the purchase, sale, and exchange of commodities, but also the instrumentalities and agencies by which it is promoted and the means and appliances by which it is carried on, and transportation of persons as well as of goods, both by land and sea. Brennan v. Titusvill; Railroad Co. v. Fuller; Hoke v. United States. Also interchange of ideas, sentiments, etc., as between man and man.

The term 'commerce' means trade, traffic, commerce, transportation or communication among the several States, or between the district of Columbia or any territory of the United States and any State or other territory, or between any foreign country and any State, territory, or the district of Columbia, or within the district of Columbia or any territory, or between points in the same State but through any other State or any territory or the district of Columbia or any foreign country. National Labor Relations Act, §2."

6. The word "commercial" has been defined to mean:



"Commercial.-Relates to or is connected with trade and traffic or commerce in general; is occupied with business and commerce. Anderson v. Humble Oil & Refining Co. Generic term for most all aspects of buying and selling."

The expression "commerce" or "commercial" necessarily has a concept of a trading activity. Trading activity may involve any kind of activity, be it a transport or supply of goods. Generic term for almost all aspects is buying and selling. But in legal profession, there is no such kind of buying or selling nor any trading of any kind whatsoever. Therefore, to compare legal profession with that of trade and business is a far from correct approach and it will totally be misplaced.

14. A professional activity must be an activity carried on by an individual by his personal skill and intelligence. There is a fundamental distinction, therefore, between a professional activity and an activity of a commercial character. Considering a similar question in the background of Section 2(4) of the Bombay Shops and Establishments Act, 1948 (79 of 1948), it was held by this Court in Devendra M. Surti (Dr.) v. State of Gujarat that a doctor's establishment is not covered by the expression "commercial establishment".

12. The Madras High Court in the case of **K. Kanagasabai Vs. The Superintending Engineer Kanniyakumari Electricity Distribution Circle and another** by judgment dated 23.12.2010 passed in WP. No.21731/2003 has held as under:-

12. Before the Supreme Court, the judgment rendered in (New Delhi Municipal Council vs. Sohan Lal Sachdev (dead) rep. By Mrs. Hirinder Sachdev) (2002) 2 SCC 494 was relied on. The Supreme Court found that certain observations made in the decision rendered in (New Delhi Municipal Council vs. Sohan Lal Sachdev (dead) rep. By Mrs. Hirinder Sachdev) (2002) 2 SCC 494 to the effect that in the case of a guest house, a building is used for providing accommodation to 'guests' who may be travellers, passengers or such persons who may use the premises temporarily for the purpose of their stay on payment of charges and therefore, the electricity service connection provided to a guest house has to be classified under 'commercial establishment' was found to be incorrect and therefore, the matter was referred to a larger bench for consideration.



13. The larger Bench of the Supreme Court in the decision made in Civil Appeal No.1065 of 2000, dated 27.10.2005 held that the Advocate running his office from his residence cannot be charged the additional tariff on the commercial basis. However in case office is run in an independent commercial place then the advocate cannot be exempted from the same. A distinction has been made between the office in a residence and office in a commercial place.

14. Following the above decision of the Supreme Court, a Division Bench of the Rajasthan High Court, Jaipur Bench, had categorically held in the decision reported in (J.V.V.N. Limited and others vs. Smt. Parinitoo Jain and another) AIR 2009 Rajasthan 110 that the advocate running his office from his residence cannot be charged the additional tariff on commercial basis. However, in case of office is run in an independent commercial place, then the advocate cannot be exempted from the same. A distinction has been made between the office in a residence and office in a commercial place.

*(Underline supplied)*

Thus, it is clear that although the office of an Advocate cannot be said to be a commercial activity provided the same is situated in the residential premises, but where the office of an Advocate is situated in commercial building, then he cannot seek exemption from higher electricity tariff payable on commercial activities."

As already pointed out, the suit room is not situated in any commercial building but is situated in a residential building, and therefore, by no stretch of imagination, it can be said that the office of an advocate situated in a residential building can be said to be a commercial activity.

17. Under these circumstances, this Court is of considered opinion that the Trial Court committed a material illegality by dismissing the suit for eviction merely on the ground that although the plaintiff has proved the aforesaid two grounds, but since the office of an advocate is a



commercial activity and the suit was filed for residential purposes, therefore, the decree cannot be granted. Therefore, this substantial question of law is answered in negative.

*Whether finding recorded by the lower appellate court allowing the appeal of the defendant setting aside the finding of the trial court with respect to the rate of rent is based on surmises and perverse however in lieu of the aforesaid finding, the lower appellate court committed error to refuse the decree under section 12(1)(a) of the M.P. Accommodation Control Act, 1961?*

18. It is submitted by counsel for respondent/defendant that the lower Appellate Court did not commit any mistake by holding that the suit room was let out on a monthly rent of Rs. 100/- with monthly electricity charges of Rs. 25/-.

19. In order to consider the said aspect, counsel for respondent was directed to produce the electricity bills of the office of respondent/defendant. Even during the course of arguments, multiple other original bills were also shown to the Court.

20. I.A. No. 9839/2025 has been filed for taking additional documents on record. The said application is allowed and the electricity bills of new electricity connection taken by the respondent in the disputed property shall be considered.

21. For the month of March 2010, the electricity consumption was shown to be 0 units. For the month of May 2011, the monthly electricity consumption was shown to be 7 units. For the month of January 2012,



the monthly electricity consumption was shown to be 0 units. For the month of November 2012, the monthly electricity consumption was shown to be 3 units. From this bill, it is clear that the reading was taken on 20/11/2012, and the meter reading was found to be 230 units, whereas the previous reading was 227 units, and accordingly, it was observed that the monthly electricity consumption is 3 units, whereas from the same bill, it is clear that in the month of May 2012, June 2012, July 2012, and August 2012, reading of the electricity consumption was 185 units. Therefore, it is clear that in the month of May, June, July and August 2012, there was no consumption of electricity at all. For the month of September 2012, it was found that the total consumption is of 33 units, and thereafter, it came down to 8 units for the month of October 2012, and came down to 3 units for the month of November 2012. From the bill of August 2025, it is clear that the electricity consumption reading was 1097 units and the previous reading was also 1097 units, and it was specifically mentioned that the total consumption of electricity in the month of August 2025 is 0 units. Similarly, in the month of November 2024, the electricity consumption was found to be 0 units.

22. Be that whatever it may be.

23. It is clear that either the defendant has manipulated the electricity meter or is not using the suit room at all. Furthermore, I.A. No. 9773/2025 has been filed for condonation of delay of depositing the rent as adjudicated by the lower Appellate Court, i.e., at the rate of Rs.



125/- per month. According to this application, there was a delay of 25 months in depositing the rent even at the rate of Rs. 125/- per month. No reason has been assigned by defendant for not depositing the rent for a period of 25 months even at the rate of Rs. 125/- per month as adjudicated by the lower Appellate Court. Except by submitting that there is a *bona fide* mistake of respondent in remaining under impression that because of disconnection of electricity facility, the rent would be Rs. 100/- per month, he did not deposit the rent.

24. The Supreme Court in the case of **Sayedha Akhtar v. Abdul Ahad**, reported in (2003) 7 SCC 52, has held as under:

"5. Section 13 of the M.P. Accommodation Control Act, 1961 reads as under:

"13. (1) On a suit or proceeding being instituted by the landlord on any of the grounds referred to in Section 12, the tenant shall, within one month of the service of the writ of summons on him or within such further time as the court may, on an application made to it, allow in this behalf, deposit in the court to pay to the landlord an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate.

\* \* \*

(6) If a tenant fails to deposit or pay any amount as required by this section, the court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit."

6. A bare perusal of the aforementioned provision would clearly go to show that although the court has the jurisdiction to extend the time for depositing the rent both for the period during which the tenant had defaulted as well as the period subsequent thereto but an application is to be made therefor. The provision requiring an application to be made is indisputably necessary for the purpose of showing sufficient cause as to why such deposit could not be made within the time granted by the court. The court does not extend time



or condone the delay on mere sympathy. It will exercise its discretion judicially and on a finding of existence of sufficient cause.

7. In Nasiruddin v. Sita Ram Agarwal this Court noticed the said provision as well as the decision in Shyamcharan Sharma v. Dharamdas and observed that the court has been conferred the power to extend the time for deposit of rent but on an application made to it."

25. If the reasons assigned by defendant for extension of time to deposit the rent is considered, it is suffice to mention here that the defendant is an advocate by profession, and therefore, he cannot say that he had no legal knowledge. If the defendant was under any factual confusion that after the disconnection of electricity connection of meter of the plaintiff, and after installation of new electricity connection in his name, still he is required to pay the rent at the rate of Rs. 125/- or not, then he should have moved an application before this Court for clarification, but deciding not to deposit the rent by taking a decision on his own cannot be said to be a *bona fide* reason, specifically when the defendant himself is an advocate. Therefore, no case is made out for extension of time to deposit the rent, and accordingly, I.A. No. 9773/2025 is hereby rejected.

26. Since it is held that not only the appeal filed by defendant against the judgment and decree passed by the Trial Court was not maintainable, but even otherwise, the non-deposit of rent at the rate of Rs. 125/- per month, as adjudicated by the lower Appellate Court, was without any sufficient cause, and no application was filed for extension of time, and the said application was filed on 16/12/2025, specifically when the matter was listed for hearing on 17/12/2025, and this Court has



already rejected I.A. No. 9773/2025 and has refused to condone the delay or extend the time to deposit the rent, this Court is of considered opinion that even otherwise, plaintiff is entitled for a decree under Section 12(1)(a) of M.P. Accommodation Control Act.

27. Thus, it is held that Trial Court committed a material illegality in not granting the decree for eviction on the ground that the office of an advocate is a commercial activity and plaintiff had prayed for a decree of eviction for the residential purposes, in spite of the fact that plaintiff had proved that defendant is in arrears of rent and has not complied with the provisions of Sections 13(1) and 13(2) of M.P. Accommodation Control Act and the suit room is required *bona fide* for residential purposes.

28. The Supreme Court in the case of **Ashok Kumar Mishra and Another vs. Goverdhan Bhai (Dead Through Legal Representatives) and Another**, reported in (2018) 12 SCC 533, has held as under:

"12. In the circumstances, we find no merit in the contention that the respondents had paid rent regularly. The learned counsel for the respondents also contended that the respondents are willing to pay arrears of rent now before this Court and this Court may condone such delay. The learned counsel for the respondents relied on Section 13(5) of the Act which reads as follows:

"13. (5) If a tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no decree or order shall be made by the Court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the Court may allow such cost as it may deem fit to the landlord."

13. We are of the view that on a plain reading, this provision protects a tenant from eviction if a tenant makes deposit/payment as required by Section 13(1) or 13(2) of the Act. In other words, if the tenant has complied with the provisions of Sections 13(1) and 13(2) in the matter of making payment, he is protected from eviction. It must be remembered that the provisions of Section 13 of the Act shied a tenant from eviction if the tenant regularly pay rent after the



suit is filed."

Thus, any default in deposit of rent during the pendency of appeal cannot be condoned.

29. This Court has already come to a conclusion that even defendant has failed to deposit the rent as adjudicated by the lower Appellate Court and has rejected I.A. No. 9773/2025 as well as refused to condone the delay of 25 months in depositing the rent. Under these circumstances, this Court is of considered opinion that now only an academic issue is left as to whether the alteration of rate of monthly rent by the lower Appellate Court from Rs. 500/- to Rs. 100/- and monthly electricity charges from Rs. 125/- to Rs. 25/- was right or not?

30. Since this Court has already held that the appeal filed by defendant was also not maintainable in the light of Section 96 of CPC, accordingly, this Court is of considered opinion that since any answer to this substantial question of law will not have any bearing on the outcome of this appeal, therefore, it is not required to be dealt with in detail.

31. No other argument is advanced by counsel for the parties.

32. For the reason mentioned above, the judgment and decree dated 30/03/2010 passed by 10<sup>th</sup> Additional District Judge (Fast Track Court), Gwalior in Civil Appeal No. 1-A/2010, by which the findings recorded by the Trial Court on issue Nos. 1, 2, and 5 were set aside, is hereby set aside, and the judgment and decree dated 30/03/2010 passed in Civil Appeal No. 2-A/2010, by which the appeal filed by appellant



was dismissed, is also hereby set aside. Similarly, the judgment and decree dated 31/07/2009 passed by 8<sup>th</sup> Civil Judge, Class-II, Gwalior, in Civil Suit No. 21-A/2009, by which the Trial Court had refused to grant a decree on the ground of Sections 12(1)(a) and 12(1)(3) of M.P. Accommodation Control Act for the reason that although the plaintiff has proved both the grounds but still the suit room was let out to an advocate for commercial activities and the plaintiff has sought the decree for residential purposes, therefore, the decree cannot be granted, is also hereby set aside.

33. Before parting with this order, this Court would like to point out the glaring mistake committed by the Trial Court. If the Trial Court was of the view that since the suit has been filed for residential purposes, whereas the activity of an advocate is a commercial activity, then at the most, it could have refused to grant decree under Section 12(1)(e) of M.P. Accommodation Control Act, but whether the suit premises was let out for residential purposes or for non-residential purposes would not make any difference when the Trial Court had come to a conclusion that the defendant is in arrears of rent and is liable to be evicted under Section 12(1)(a) of M.P. Accommodation Control Act. Therefore, it is observed that even if the Trial Court was under *bona fide* belief that in case if the suit room is let out for non-residential purposes, then the suit for *bona fide* need for residential purposes is not maintainable, still should have awarded a decree under Section 12(1)(a) of M.P. Accommodation Control Act.



34. Accordingly, the suit filed by plaintiff is hereby decreed and a decree under Sections 12(1)(a) and 12(1)(e) of M.P. Accommodation Control Act is passed against the respondent/defendant.

35. Respondent/defendant is directed to vacate the suit room within a period of one month from today, failing which the plaintiff will be entitled to get it vacated by initiating the execution proceedings, and it is directed that in case if the plaintiff is compelled to initiate the execution proceedings, then the Executing Court must ensure that the execution proceedings are finally decided within a period of six months from the date of initiation of the execution proceedings as the Supreme Court in the case of **Periyammal (Dead) Through Lrs & others vs. V. Rajamani and another**, decided on 06/03/2025 in Civil Appeal Nos. 3640-3642 of 2025, has held as under:

"73. It is worthwhile to revisit the observations in **Rahul S. Shah (supra)** wherein this Court has provided guidelines and directions for conduct of execution proceedings. The relevant portion of the said judgment is reproduced below:

*"42. All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:*

*42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.*

*42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.*

*42.3. After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of*



proceedings and also make such joinder of cause of action in the same suit.

42.4. Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as *custodia legis* for proper adjudication of the matter.

42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.

42.11. Under Section 60 CPC the term "... in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13. The executing court may on satisfaction of the



*fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.*

*42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts."*

(Emphasis supplied)

74. The mandatory direction contained in Para 42.12 of **Rahul S. Shah (supra)** requiring the execution proceedings to be completed within six months from the date of filing, has been reiterated by this Court in its order in **Bhoj Raj Garg v. Goyal Education and Welfare Society & Ors.**, Special Leave Petition (C) Nos. 19654 of 2022.

75. In view of the aforesaid, we direct all the High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions. Once the data is collected by each of the High Courts, the High Courts shall thereafter proceed to issue an administrative order or circular, directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the concerned presiding officer would be answerable to the High Court on its administrative side. Once the entire data along with the figures of pendency and disposal thereafter, is collected by all the High Courts, the same shall be forwarded to the Registry of this Court with individual reports."

36. Accordingly, the appeal succeeds and is hereby allowed.

37. Decree be drawn accordingly.

(G. S. AHLUWALIA)  
JUDGE