

**HIGH COURT OF MADHYA PRADESH**  
**BENCH GWALIOR**

**SB : Hon'ble Shri Justice G.S. Ahluwalia**

**Civil Revision No. 10 of 2018**

Inderchand Jain (died) through L.R.s

Verus

Shyamlal Vyas (died) through L.R.s

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Shri Sanjeev Jain, learned counsel for the applicants.  
Shri B.B. Shukla, Shri Sanjay Dwivedi and Shri Prashant Sharma,  
learned counsel for the respondents.  
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Date of Hearing : 18.11.2020  
Date of Order : 24.11.2020  
Whether approved for reporting : Yes

**ORDER**

**(Passed on 24/11/2020)**

**Through Video Conferencing**

This Civil Revision under Section 23-E of M.P. Accommodation Control Act, 1961 (In short "Act, 1961) has been filed against the order dated 28-11-2017 passed by Rent Controlling Authority, Gwalior in Case No. 23/95-96/90-7 by which an order of eviction has been passed against the applicants.

The necessary facts for disposal of present revision in short are that the original respondent (Shyamlal Vyas) filed an application for eviction against the original applicant (Inderchand Jain) from a suit shop situated at Chhapparwala Bridge, Phalka Bazar, Lashkar, Gwalior

bearing Corporation No. 34/304 on the bonafide requirement of his son, Amitabh for starting the business of Paint and Cement. It is the case of the plaintiff-landlord/respondent that the suit shop was let out by Shantilal to defendant-tenant/applicant, and a rent Note was also executed. The plaintiff-landlord/respondent has become owner of the suit shop by virtue of Will executed by Shantilal and Probate in this regard has been issued. It was his case, that he has retired from Judicial service, and his fourth son, namely Amitabh Vyas is aged about 25 years, and is unemployed, and the suit shop is bonafidely required for opening the business of paint and cement. It was further stated that the plaintiff-landlord/respondent has no other alternative and suitable accommodation.

The original defendant/applicant filed an application under Section 23-C of Act, 1961 seeking leave to defend. In the application for leave to defend, the defendant/applicant accepted that he was regularly making payment of rent to the plaintiff/respondent, and in fact the plaintiff-landlord wants to enhance the rent and therefore, the application for eviction has been filed on frivolous ground. The statement made by the plaintiff-landlord with regard to the bonafide requirement for non-residential purpose of his son Amitabh was also denied.

Accordingly, leave to defend was granted on the grounds mentioned in the application for grant of leave to defend. At the cost of repetition, it is once again clarified that the landlord tenant

relationship was admitted by the defendant-tenant/applicant in his application for grant of leave to defend, and no leave was sought by denying the landlord tenant relationship.

Thereafter, it appears that the applicant filed an application under Order 11 Rule 12 C.P.C., seeking direction to the Plaintiff-landlord/respondent to produce his documents of title, claiming that the applicant was inducted as tenant by Shantilal (Grand father of original applicant Shyamlal Vyas). The said application was rejected by R.C.A. by order dated 5-2-1997 and thereafter, written statement was filed on 27-2-1997 and an additional defence by disputing landlord tenant relationship was also taken. It was pleaded that in fact, the owner of the property is Mahalaxmi Temple and Shantilal was appointed as Pujari of the said temple and therefore, the Plaintiff-landlord/applicant, namely Shyamlal Vyas is not the owner and the ownership dispute can be decided by the Competent Court of civil jurisdiction.

It appears that during the pendency of the eviction proceedings, the defendant-tenant/applicant filed an application for framing additional issue with regard to the ownership, which was rejected by the Trial Court and accordingly C.R. No. 530/1997 was filed. The said Civil Revision was dismissed by this Court by order dated 23-7-1997 by holding that, the defendant is making payment of rent to the Plaintiff-landlord/applicant and on some occasions, rent was paid even by money orders, and it has never been disputed by the

defendant that the defendant-tenant/applicant/Shyamlal Vyas is not the owner.

Thereafter again, the present applicant filed an application seeking extensive amendment in the written statement thereby raising the dispute of ownership. The said application was rejected by R.C.A. by order dated 24-9-1997, against which C.R. No. 1277/1997 was filed and the said revision was dismissed by order dated 11-8-1998 with the following observations :

“In the present case, the petitioner was granted leave. He filed the written statement as well. The plea taken was that the petitioner was not the owner. To my mind, there is already an order of this Court passed in C.R. No. 529/1997 wherein this Court has observed that the defendant did not dispute the ownership of Shyamlal. That order has become final and no further order in this respect need be passed at this stage. As stated above, the amendment sought to be made is not necessary in the circumstances of the case, and the court-below has rightly rejected the application on this ground.

Accordingly, the revision fails and is dismissed summarily.”

It appears that during the pendency of eviction proceedings, one Akhil Bhartavarshiya Shirmali Brahman Samaj Sansthan filed a suit for declaration in respect of the property in dispute. The said suit was pending . The R.C.A. by its order dated 29-10-1997, directed the defendant-tenant/applicant to pay the rent within a period of 15 days, failing which his right to defend against eviction will be forfeited. As the aforesaid direction was not complied, therefore, the plaintiff-landlord/respondent, moved an application on 9-1-1998 seeking a

direction that the defence of the defendant be struck off. The defendant-tenant/applicant filed his reply and submitted that monthly rent of Rs. 40/- is being deposited in the Civil Court, in a civil suit instituted by Akhil Bharavarshiya Shrimali Brahman Samaj Sansthan. By order dated 27-3-1998, the R.C.A. directed to comply the order by depositing rent within a period of 7 days, failing which the right of the defendant shall be deemed to have extinguished automatically and fixed the case for 24-4-1998. Against the said direction, Civil Revision No. 439/1998 was filed by the defendant which was rejected by this Court by order dated 7-10-1998.

Thereafter again, the defendant-tenant/applicant made an attempt to file documents. It is not out of place to mention here that earlier, the defendant-tenant/applicant had filed an application under Order 16 Rule 6 and 7 CPC which was allowed by order dated 16-12-1997. Against the said order, a C.R. No. 614/1998 was filed by Plaintiff-landlord/respondent which was dismissed. However, by order dated 1-3-1999, it was held by the R.C.A., that since, the defence of the defendant-tenant/applicant has already been struck off by order dated 27-3-1998, therefore, the question of landlord and tenant relationship cannot be raised and it has attained finality. Against the said order, C.R. No. 492/1999 was preferred by the applicant, which was partially allowed, however, a following observation was also made :

“In this revision, there is no material to show as

to how the documents filed by the petitioner, for which, original record was summoned are relevant for the purpose of cross examination of the witnesses. In the circumstances, this Court is unable to decide this point at this stage.....”

and it was further held, that since, the defence of the defendant-tenant/applicant has already been struck off, therefore, the relevancy of the documents shall be considered at the time of cross-examination.

It appears that thereafter, the applicant/defendant insisted upon the R.C.A. to decide the relevancy of the documents. The said application was dismissed by R.C.A. by order dated 30-9-2001, against which C.R. No. 126/2002 was filed and the said Civil Revision was dismissed by order dated 4-12-2002 with following observations :

“5..... From the conduct of the petitioner shows that he wants anyhow to linger on the litigation. Till today, he has filed as many as seven different revisions against the interim orders passed by the Rent Controlling Authority and most of the revisions were found baseless by this Court. This conduct of the petitioner itself shows that he is in the habit of misleading the trial Court. Once, this Court has ordered in the revision filed by him that the relevancy of the document shall be decided at the time of evidence his insistence for deciding the relevancy prior to recording of the evidence is unjustified. Moreover, these documents relate to the title of the suit property. This Court in the earlier revisions i.e., Civil Revision No. 439/1998 has already observed in para 5 that order dated 6-1-1998 indicates that the defendant had agreed to deposit the rent and had also admitted the right of the person authorized by the plaintiff to receive the rent. In Para 17 the Court has observed that : a perusal of the impugned order

indicates that the relationship of the landlord and tenant existed between Shyamlal Vyas and the present applicants. In para 20, the Court held that the present applicants have been paying rent as noticed in the impugned order in respect of the accommodation in dispute from much before the filing of the suits, and thus, as per this Court, there was no dispute about relationship of landlord and tenant between the parties and the defendant i.e, the present petitioner is estopped from challenging the title of the plaintiff. Hence, in view of this judgment, the Rent Controlling Authority has rightly held that once, it is found proved that the tenant was paying rent to the plaintiff-landlords and hence he was estopped from challenging his title and, therefore, the document of title are not relevant for just and property decision of the case.”

In the meanwhile, on 5-10-2001, Shri Ajit Jain Advocate, Counsel for the defendant-tenant/applicant appeared before the R.C.A. and pleaded no instructions and hence, the defendant-tenant/applicant was proceeded exparte. The evidence of the plaintiff-landlord/plaintiff's witness was recorded and the case was fixed for final arguments. On 25-2-2002, the defendant-tenant/applicant filed an application under Order 9 Rule 7 C.P.C for setting aside, exparte proceedings dated 25-2-2002 and on the same day, the plaintiff/respondent also filed his written arguments.

By order dated 9-1-2003, the application filed by defendant-tenant/applicant under Order 9 Rule 7 CPC was rejected and case was fixed for 10-1-2003. On 10-1-2003, none appeared for the defendant-tenant/applicant and final arguments by plaintiff-landlord/respondent were heard and on 14-1-2003, final order of eviction was passed.

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The defendant-tenant/applicant filed an application for setting aside *ex parte* proceedings which was rejected by R.C.A. by order dated 13-3-2003 against which C.R. No. 114/2003 was filed.

The defendant-tenant/applicant also filed Civil Revision No. 85/2003 against the final order.

The defendant-tenant/applicant also filed an application under Order 9 Rule 13 CPC, which was allowed by R.C.A. by order dated 10-7-2004.

Civil Revision No. 114/2003 which was filed by the defendant-tenant/applicant against the order dated 13-3-2003 was allowed by order dated 11-9-2003, and the matter was remanded back to the R.C.A. to decide the application filed under Order 9 Rule 7 CPC afresh as well as to decide the correctness of the order dated 5-10-2001 by which the defendant-tenant/applicant was proceeded *ex parte*.

Thereafter, by order dated 7-7-2004, the R.C.A. allowed the application filed by the defendant-tenant/applicant for setting aside *ex parte* order under Order 9 Rule 13 CPC.

On 2-5-2009, the plaintiff/respondent filed an application for passing an eviction order in the light of the judgment passed by a Division Bench of this Court in the case of **Paramjeet Kaur Bambah Vs. Smt. Jasbir Kaur Wadhwa** reported in **2007 (4) MPLJ 238**.

In the meanwhile, the suit filed by Akhil Bhartavarshiya Shirmali Brahman Samaj Sansthan was decreed against which the



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Plaintiff-landlord/respondent had filed F.A. No. 24/2008. By judgment and decree dated 18-3-2011, the appeal filed by Plaintiff-landlord/respondent was allowed and the suit filed by Akhil Bhartavarshiya Shirmali Brahman Samaj Sansthan was dismissed.

It appears that Akhil Bhartavarshiya Shirmali Brahman Samaj Sansthan has filed C.A. No. 3160-3161 of 2012 against the judgment and decree dated 18-3-2011 passed by the High Court, and on 19-3-2020, an interim order was passed and the respondents therein were restrained from alienating the property or changing its present character. At the relevant time, eviction proceedings in the present case were pending before R.C.A., therefore, a further prayer was made by Akhil Bhartavarshiya Shirmali Brahman Samaj Sansthan, seeking stay of further proceedings in the present case which was pending before the R.C.A. as well as also in other cases in which the subject matter of the property is involved. The Supreme Court by order dated 24-1-2013 observed as under :

“In our view, it is not necessary to pass any order on the aforementioned prayers because any alienation of the property during the pendency of the appeal will be subject to final adjudication thereof and the third party in whose favour the property in question or any part thereof, is alienated will be bound by the judgment of this Court.”

Therefore, the further proceedings in this case which were pending before the R.C.A. continued and ultimately by order dated 28-11-2017, an order of eviction was passed on the ground that since, the defence of the applicant/defendant has already been struck off,

therefore, the bonafide requirement for non-residential purposes has to be presumed.

Challenging the impugned order dated 28-11-2017, it is submitted by the Counsel for the applicant/defendant, that once the stage of Section 23-C of Act, 1961 had crossed, then even if the defence of the applicant/defendant is struck off, but still for the limited purposes, in order to demolish the case of the plaintiff-landlord/respondent, they have a right to cross examine the plaintiff's witnesses, therefore, the R.C.A. committed a material illegality by passing a final order of eviction on the basis of presumption.

Per contra, the Counsel for the respondent/plaintiff has supported the reasoning assigned by the R.C.A.

Heard the learned Counsel for the parties.

The applicant/defendant had not raised any dispute regarding landlord tenant relationship in his application, seeking leave to defend filed under Section 23-C of Act, 1961. Para 4 and 5 of the application for leave to defence reads as under :

4. यह कि, वास्तव में आवेदक अनावेदक से किराया 40/- रुपये माहवार के स्थान पर 1,000/- एक हजार रुपये माहवार करना चाहता है। जब कि अनावेदक / प्रार्थी उपरोक्त किराया बढ़ाने को तत्पर नहीं है। इस कारण आवेदक ने अनावेदक पर बेजा दबाव डालने की नियत से ताकि वह किराया 40/- रुपये माहवार के स्थान पर 1,000/- रुपये एक हजार रुपये माहवार कर दे, प्रस्तुत किया है इस कारण भी आवेदक द्वारा प्रस्तुत किया आवेदन पत्र निरस्त किए जाने योग्य है।
5. यह कि, आवेदक ने विवादित स्थान के पास में रिक्त स्थान को पुनः बड़े हुए किराये पर अधिवासित कर दिया है। यदि वास्तव में उसको अपने पुत्र की आवश्यकता होती तो वह विवादित स्थान जो कि विवादित स्थान से ज्यादा युक्तियुक्त व सुविधाजनक है को पुनः बड़े हुए किराये पर नहीं देता । जो कि आवेदक की दुर्भावना प्रमाणित करता है। इस कारण भी विवादित स्थान रिक्त कराने का अधिकारी नहीं है। इस कारण भी अनावेदक प्रकरण में अपना बचाव का अधिकार

प्राप्त करने का अधिकारी है।

Only after the leave was granted, the applicant/defendant raised the dispute regarding landlord tenant relationship in his written statement. An attempt was also made to extensively amend the written statement in this regard, which was rejected and the Civil Revision was also dismissed. Therefore, the first question which arises for consideration is that whether any ground which was not raised in the application for grant of leave to defend can be permitted to be raised at a later stage or not?

The aforesaid question is no more *res integra*.

On a reference made by a learned Single Judge, the Division Bench of this Court in the case of **Smt. Paramjeet Kaur Bambah (Supra)** has held as under :

“20. Thus, the question referred is answered as under:

Under the scheme of Chapter III-A and the procedure laid down under Section 23-D of the Act there is no provision for granting time to the tenant to file written statement after grant of leave to defend. The Rent Controlling Authority is required to proceed with the application for eviction and decide the application after considering the grounds on which leave to defend is granted to the tenant after recording evidence as provided under Order XVIII Rule 13 of the Code.”

The aforesaid order passed by the Division Bench of this Court in the case of **Smt. Paramjeet Kaur Bambah (Supra)** was assailed before the Supreme Court in SLP (Civil) No. 23630/2007 which was dismissed by order dated 1-5-2014.

Thus, it is clear that in absence of any right to file a written

statement, the R.C.A. has to proceed with the case only on the basis of defence disclosed by the tenant in his application for grant leave to defend.

Thus, any additional defence raised by the applicant/defendant in his written statement cannot be looked into. In the present case, in the application for grant of leave to defend, the applicant/defendant had admitted landlord tenant relationship.

The Division Bench of this Court, on a reference made by learned Single Judge in the case of **Ratnakar Vs. Hazi Inayatullah** reported in **AIR 1989 MP 134** has held that if the tenant fails to deposit the rent, then the R.C.A. has a jurisdiction to strike out the defence of the tenant as contemplated under Section 13(6) of the said Act.

In the present case also, the defence of the applicant/defendant was also struck off. Therefore, now question for determination is that whether the statement of the plaintiff-landlord, made in the eviction application, are to be treated as admitted by the defendant-tenant, or the plaintifflandlord is still required to prove his case.

Section 23-C of Act, 2019 reads as under:

**Section 23-C. Tenant not entitled to contest except under certain circumstances –(1)** The tenant on whom the summons is served in the form specified in the Second Schedule shall not contest the prayer for eviction from the accommodation unless he files within fifteen days from the date of service of the summons, an application supported by an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the

Rent Controlling Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or in default of his obtaining such leave, or if such leave is refused, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant. The Rent Controlling Authority shall in such a case pass an order of eviction of the tenant from the accommodation .....

Thus, it is clear that where the leave to defend is refused or not prayed, then the statement made by the plaintiff-landlord in his application for eviction shall be deemed to have been admitted by the defendant-tenant, and the R.C.A. shall only see that whether the plaintiff-landlord is entitled to get an order of eviction under the law, on the basis of statement(s) in the application made by the landlord which are deemed to have been admitted by the tenant, or not.

In the present case, leave to defend was granted, but thereafter, the defence of the defendant-tenant/applicant was struck off due to non-payment of rent. Thus, the defendant-tenant/applicant stood relegated back to the position as provided under Section 23-C of Act, 1961, as if his application for leave to defend is refused. The contention of the Counsel for the applicant/defendant, that once, the leave is granted, then the presumption as provided under Section 23-C of Act, 1961 would not arise, even if the defence is struck off at a later stage cannot be accepted. In the case of **Smt. Paramjeet Kaur Bambah (Supra)** it has been held that there is no provision for filing written statement, and the application for grant of leave to defend is to be considered as grounds of defence. Once, the defence is struck

off, then it would mean, that the application for leave to defend is removed from the file. Therefore, under this circumstance, the defendant-tenant would be relegated back to the stage of either non-filing of an application for leave to defend or refusal to grant leave to defend, and the consequences of non-filing of an application for leave to defend or refusal to grant leave to defend would automatically follow as provided under Section 23-C of Act, 1961.

Therefore, in case of striking off of the defence of the defendant, then the statement made by the landlord in his application for eviction shall be deemed to have been admitted by the defendant/tenant, and the R.C.A. is under obligation to pass an order of eviction, if the statement made in the eviction application are sufficient to pass an order of eviction.

In the present case, the evidence of plaintiff's witness was also recorded who had stated that the suit shop is bonafidely required for his non-residential purposes. It appears that while passing the impugned order of eviction, the R.C.A. has merely mentioned that since, the defence of the defendant-tenant/applicant has already been struck off, therefore, in the light of Section 23-D of Act, 1961, it shall be presumed that the requirement of the plaintiff-landlord/respondent is bonafide. However, the case of the Plaintiff-landlord/respondent was not considered, and no finding has been given as to whether an order of eviction can be passed on the basis of statement made in the application for eviction or not. Although the R.C.A. should have

assigned the reasons for passing an order of eviction, but this Court is of the considered opinion, that there is no good ground for remanding the matter back to R.C.A. for this purpose. The application for eviction was filed by Shyamlal Vyas against Inderchand Jain on 22-8-1996. Inderchand Jain expired during the pendency of the proceedings before R.C.A. and Shyamlal Vyas expired during the pendency of this revision. The original litigants have already expired and their legal representatives are fighting. More than 24 long years have passed, and still the final order could not be passed. Remand of matter would further delay the proceedings. Chapter III-A of Act, 1961 was inserted for the first time by M.P. Amending Act 27 of 1983 with effect from 16-8-1983. Special Provisions have been made under Chapter III-A of Act, 1961, so that a landlord falling in the said category is not required to go to the Civil Court, and there is no provision for appeal, and only a revision lies to the High Court. This special provision was inserted with a sole object of expeditious trial of eviction cases on the ground of “bonafide requirement” of certain landlords. By M.P. Amending Act, 1985, Section 23-J was inserted and a special category of Landlord was introduced. Thus, expeditious trial is the sole object, and in the present case, the final order of eviction was passed by the Rent Controlling Authority after 21 long years of institution of eviction application and in C.R. No. 126/2012 dated 4-12-2012, this Court had already made an observation with regard to the conduct of the defendant-

tenant/applicant in making every effort to linger on the litigation, and still, the R.C.A. took further 5 years to pass the final order and the present revision is pending from the year 2018. Therefore, this Court is of the view, that instead of remanding the matter, it would be appropriate to find out as to whether the statement made by the plaintiff-landlord/respondent in his application for eviction is sufficient to pass an order of eviction or not?

The plaintiff-landlord/respondent had filed an application for eviction on the ground that the suit shop is being used by the defendant-tenant/applicant for non-residential purposes. It was the case of the plaintiff-landlord/respondent that Shyamlal Vyas is a retired Judicial officer having retired in the year 1976 and thus, falls within the definition of "Landlord" as given in Section 23-J of Act, 1961. His fourth son Amitabh Vyas who is aged about 25 years, is unemployed and wants to start his independent business of Paint and Cement. In absence of any alternative and suitable accommodation, his son is not in a position to start his business, although sufficient funds are available for starting business. Since, his son is sitting in the shops of his friends, therefore, he is having knowledge of business also. When the plaintiff/respondent requested the defendant-tenant/applicant to vacate the suit shop, then he refused to do so.

The defendant-tenant/applicant, filed an application for leave to defend and denied the bonafide requirement for running a paint



and cement shop by the son of the plaintiff-landlord/respondent, but admitted that the plaintiff-landlord/respondent is the landlord of the suit shop.

Thus, the applicant/defendant cannot raise a dispute of landlord tenant relationship at a later stage by filing written statement on the basis of a suit filed by Akhil Bhartavarshiya Shirmali Brahman Samaj Sansthan. It is not out of place to mention here that Akhil Bhartavarshiya Shirmali Brahman Samaj Sansthan had filed the suit subsequent to filing of the eviction application by the plaintiff-landlord/respondent. The suit filed by Akhil Bhartavarshiya Shirmali Brahman Samaj Sansthan has already been dismissed and Civil Appeal is pending before Supreme Court.

The evidence of Amitabh Vyas was also recorded and he has specifically stated about his bonafide need to start business. Further, when the leave to defend is refused or is not prayed, then R.C.A. is only required to see that whether the statement made by the plaintiff-landlord in his eviction application, is sufficient to pass an order of eviction or not as the entire statement made in the eviction application is deemed to have been admitted.

If the statement made by the plaintiff/respondent in his eviction application is considered, then it is clear that he had specifically pleaded that he falls within the definition of Landlord as provided under Section 23-J of Act, 1961. He doesnot have any alternative and suitable accommodation, and the suit shop is required bonafide

for non-residential purposes for starting a paint and cement shop by his fourth son Amitabh as he is an unemployed person and is having sufficient funds for starting the business. Although the evidence of Amitabh Vyas was recorded after the defendant-tenant/applicant was proceeded ex parte, and subsequently, ex parte proceedings were set aside, but in view of presumption as provided under Section 23-C of Act, 1961, the statement made in eviction application is deemed to have been admitted, therefore, it is held that when the leave to defend is rejected or if it is not prayed, then even recording of evidence of plaintiff-landlord is not required. Under these circumstances, this Court is of the considered opinion, that the plaintiff/respondent has made all necessary statement in his application for eviction, and therefore, he is entitled for an order of eviction.

Accordingly, the order dated 28-11-2017, passed by R.C.A., Gwalior in Case No. 23/95-96/90-7 is hereby affirmed for the reasons mentioned above.

Thus, for the reasons mentioned above, the Civil Revision fails and is hereby **Dismissed**.

**(G.S. Ahluwalia)**  
**Judge**