

The High Court of Madhya Pradesh
MP 4985/2018
Smt. Manju Pathak vs. Munshi Singh Gurjar
Gwalior, dtd. 16/11/2018

Shri Sanjay Kumar Mishra, counsel for the petitioner.

Shri Kamal Mangal, counsel for the respondent.

This petition under Article 227 of the Constitution of India has been filed challenging the order dated 26/09/2018 passed by 12th Civil Judge, Class-I, Gwalior in Civil Suit No.35-A/2015, by which the application filed by the petitioner/defendant under Section 151 of CPC has been rejected.

The necessary facts for the disposal of the present petition in short are that the respondent has filed a civil suit for eviction and arrears of rent claiming that there is a relationship of landlord and tenant between the respondent and the petitioner. In the plaint itself, an alternate prayer has also been made that in case if the trial Court comes to a conclusion that the landlord and tenant relationship do not exist, then the respondent/ plaintiff is entitled to recover the possession on the basis of title.

Paragraph 12 of the plaint reads as under:-

“12.यह कि प्रतिवादी की ओर दिनांक 01.08.2013 (एक अगस्त दो हजार तेरह) से 1400=00 (एक हजार चार सौ) रूपया मासिक की दर से 33,600=00 (तैतीस हजार छ सौ) रूपया बकाया है तथा प्रतिवादी द्वारा वादग्रस्त सम्पत्ति अर्थात भाडेदारी स्थान के अतिरिक्त भाग पर अवैध आधिपत्य कर लिया है, परिणामस्वरूप वादी प्रतिवादी से 2000=00 (दो हजार) रूपया मासिक की दर से वासलात वाद प्रस्तुति दिनांक से आधिपत्य प्राप्त दिनांक तक प्राप्त करने का अधिकारी है विकल्प में वादी का याचना है कि प्रकरण में वादी एवं प्रतिवादी के मध्य वादग्रस्त सम्पत्ति बावत भवनस्वामी एवं भाडेदार के संबंध प्रमाणित नहीं होना करार दिये जाने की अवस्था में वादी प्रतिवादी से वादग्रस्त सम्पत्ति का स्वत्व के आधार पर सम्पूर्ण वादग्रस्त सम्पत्ति का आधिपत्य प्राप्त करने का अधिकारी है तदानुसार वादी के हक में प्रतिवादी के विरुद्ध आधिपत्य प्रदाय बावत सहायता प्रदाय की जावे तदानुसार यह वाद माननीय न्यायालय के समक्ष प्रस्तुत है।”

An application under Section 151 CPC was filed by the petitioner that since the respondent has prayed for recovery of possession on the basis of title by way of alternative relief, therefore, the respondent is liable to pay *ad-valorem* Court fee for recovery of

possession on the basis of title and since the respondent has paid the Court fee for eviction suit, therefore, the suit is not maintainable. In the alternative, it was prayed by the writ petitioner that in case the respondent is not ready and willing to pay the Court fee, then the prayer for recovery of possession on the basis of title may be deleted from paragraph 12 of the plaint.

The application under Section 151 of CPC was opposed by the respondent by filing a written reply.

The said application has been rejected by the trial Court by order dated 26/09/2018 by holding that the present suit has been filed for eviction under the MP Accommodation Control Act and for the said purpose, the suit has been properly valued and since the plaintiff can raise an alternative plea, therefore, he is not required to pay the Court fee for seeking relief for possession on the basis of title.

It is submitted by the counsel for the petitioner that it is not in dispute that the suit has been filed for eviction under the MP Accommodation Control Act and it has been properly valued but in paragraph 12 of the plaint, it is specifically stated that in case if the relationship of the landlord and tenant could not be established between the parties, then the respondent/plaintiff is entitled for possession of the suit property on the basis of title and for this relief, the suit has to be valued on the market value of the property and *ad valorem* Court fee is to be paid.

Per contra, it is submitted by the counsel for the respondent that the suit has been filed for eviction under MP Accommodation Control Act and, therefore, it has been properly valued.

Heard the learned counsel for the parties.

It is undisputed that the suit is primarily filed for eviction under the MP Accommodation Control Act and the respondent has claimed himself to be landlord of the property.

So far as prayer for eviction under the MP Accommodation Control Act is concerned, the suit has been properly valued which is

not disputed but the only contention raised by the counsel for the petitioner that as an alternative prayer for delivery of possession of the suit property on the basis of title has also been made and, therefore, the suit should have been valued on the market value of the property and the *ad valorem* fee is payable.

The counsel for the respondent could not dispute that where the suit for possession is filed, then the property has to be valued on the market value and *ad valorem* Court fee is payable.

The Supreme Court in the case of **Biswanath Agarwalla vs. Sabitri Bera and Others**, reported in **(2009) 15 SCC 693**, has held as under:-

"14. It is not clear what amount of court fee was paid. Presumably, the court fee was paid of one year's rent that is calculated on the basis of twelve months' rent at the rate of Rs.45/- in terms of [Section 7\(xi\)\(cc\)](#) of the Court Fees' Act, 1870. [Section 4](#) of the Court Fees' Act, 1870 reads as under:

"4. *Fees on documents filed, etc., in High Courts in their extraordinary jurisdiction*;- No document of any of the kinds specified in the First or Second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction;

or in the exercise of its extraordinary original criminal jurisdiction;

in their appellate jurisdiction; - or in the exercise of its jurisdiction as regards appeals from the judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) of one or more Judges of the said Court, or of a division Court;

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

as Courts of reference and revision. - or in the exercise of its jurisdiction as a Court of reference or revision;

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document."

For obtaining a decree for recovery of possession, court fees are required to be paid in terms of [Section 7\(v\)](#) of the Court Fees' Act, 1870 i.e., according to the value of the subject matter of the suit."

I have gone through the plaint from which, it is clear that primarily the suit has been filed for eviction claiming the landlord/tenant relationship between the parties. However, in paragraph 12 of the plaint, an alternative plea has also been raised that in case if the respondent/ plaintiff fails to establish the landlord and tenant relationship between the parties, then the decree for possession may be passed against the petitioner/defendant on the basis of title. In the considered opinion of this Court, for seeking possession on the basis of title, the plaintiff is required to pay ad valorem Court fee on the market value of the property. However, in this case, as the suit has been filed primarily for eviction under the MP Accommodation Control Act and prayer for delivery of possession on the basis of title has been made by way of alternative plea, therefore, this Court is of the considered opinion that for the said alternative prayer, the respondent/plaintiff is under obligation to value the suit property and pay ad valorem Court fee. However, as already held that the suit is primarily for eviction under the MP Accommodation Control Act, therefore, it is directed that in case if the decree for possession is passed, instead of decree for eviction, then the said decree shall not be enforced until and unless the ad valorem Court fee is deposited by the respondent/plaintiff.

Accordingly, the order dated 26/09/2018, by which the application filed by the petitioner under Section 151 of CPC for either directing the plaintiff/ respondent to pay the *ad valorem* court fee or to delete the alternative plea as made in the paragraph 12 of the plaint is accordingly set aside to the extent mentioned above.

Another application was filed by the petitioner under Section

151 of CPC seeking condonation of delay in depositing the rent so fixed by the trial Court. The said application has also been decided by the trial Court by order dated 26/09/2009. As two sets of Court fee have been paid, therefore, the petitioner is permitted to challenge both the orders in one petition only.

It is the case of the petitioner that although there is a delay in depositing the rent but the petitioner has deposited the entire rent and the delay in depositing rent may be condoned. The said prayer has been rejected by the trial Court by holding that the rent was not deposited within the stipulated period and there is a delay of one year.

It is submitted by the counsel for the respondent that by order dated 2/11/2016, while fixing the provisional rent, it was directed by the trial Court that in case if such rent is not deposited within the stipulated period, then the defence of the petitioner shall be struck off. Accordingly, it is submitted that since the defence of the petitioner has automatically stood struck off, therefore, there is no question of condonation of delay.

Heard the learned counsel for the parties.

This Court has gone through the order dated 02/11/2016 (Annexure P6) by which it was directed that the petitioner shall pay Rs.1400/- per month by way of provisional rent and the arrears of rent should be paid within one month and the rent so deposited by the petitioner shall be deposited in the Court and shall not be disbursed to the plaintiff. However, the following observation was made:-

"प्रतिवादी के द्वारा उक्त आदेश का पालन न किए जाने पर अधिनियम की धारा 13-6 के तहत उसकी प्रतिरक्षा का अधिकार समाप्त कर दिया जाएगा ।

Thus, it is clear that by order dated 02/11/2016, the trial Court has held that in case if the order is not complied with, then the defence of the petitioner shall be struck off in the light of Section 13(6) of the MP Accommodation Control Act. However, the counsel

for the respondent /plaintiff fails to point out as to whether any order has been passed by the trial Court striking off the defence or not. The submission made by the counsel for the respondent that in view of the direction given by the trial Court in the order dated 2/11/2016, the defence of the petitioner has automatically stood struck off, cannot be accepted. It was not mentioned in the order dated 02/11/2016 by the trial Court that in case if the order is not complied with, then the defence of the petitioner shall automatically stand struck off. In fact, a warning was given by the trial Court in its order dated 2/11/2016 that, in case of non-compliance of the order, the defence of the petitioner shall be struck off. Therefore, in the considered opinion of this Court, there should have been a specific order by the trial Court striking off the defence of the petitioner. Admittedly, no such order has been passed by the trial Court. Accordingly, it is difficult for this Court to accept the contention made by the counsel for the respondent that defence of the petitioner has already stood struck off because of non-compliance of the order dated 2/11/2016.

It is submitted by the counsel for the petitioner that here the suit has been filed for eviction with an alternative plea of possession on the basis of title. Had it been the case of suit for possession only, then there would not have been any occasion for the Court to strike off the defence. Even otherwise, it is not disputed that the entire arrears of rent has been deposited and the petitioner is regularly depositing the future rent as directed by the trial Court by order dated 2/11/2016.

Under these circumstances, it is submitted that the trial Court should have condoned the delay in depositing the rent by the petitioner and in support of his contention, the counsel for the petitioner has relied upon the judgment passed by this Court in the case of **Annesh Kumar Vinayak vs. Smt. Savita Pokar decided on 10th February, 2018 in MP No.871/2018** as well as the judgment passed by this Court in the case of **Ajay Kumar vs.**

Nanlal reported in **2016 (3) MPLJ 521**.

Considered the submissions made by the counsel for the parties.

Undisputedly, the suit has been filed primarily for eviction under the MP Accommodation Control Act with an alternative plea of possession on the basis of title in case if the plaintiff fails to prove the relationship of landlord and tenant. It is also not disputed by the counsel for the respondent that the entire arrears of rent has not been deposited so far. It is also not disputed that the defence of the petitioner has not been struck off by the trial Court by passing a specific order and in the light of the order dated 2/11/2016, it cannot be said that by necessary implication the defence of the petitioner has already stood struck off automatically. Under these circumstances, this Court is of the considered opinion that the trial Court should have adopted a lenient view and should have condoned the delay in depositing the rent as prayed by the petitioner, otherwise the petitioner is likely to suffer irreparable loss. It is also not in dispute that the evidence of the parties has not begun, therefore, no prejudice shall be caused to the respondent in case if the delay in depositing the rent is condoned. Accordingly, the application under Section 151 CPC for condonation of delay in depositing the arrears of rent filed by the petitioner is hereby allowed and the delay is hereby condoned.

Accordingly, the order dated 26/09/2018 passed by the trial Court so far as it relates to non- condonation of delay in depositing the rent is also hereby set aside.

Petition succeeds and is hereby **allowed**.

(G.S.Ahluwalia)
JUDGE