



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

**SECOND APPEAL No. 2617 of 2024**

***DHEERAJ SINGH***  
*Versus*  
***HEMANT KUMAR SHARMA***

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**Appearance:**

*Shri Anoop George Chaudhari and Mrs. June Chaudhari- Senior Advocates  
assisted by Shri Prakash Chandra Chandil- Advocate for appellant.*

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Reserved on : 25.03.2025

Pronounced on : 01.04.2025

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**J U D G M E N T**

This Second Appeal, under Section 100 of CPC, has been filed against judgment and decree dated 06.08.2024 passed by V<sup>th</sup> District Judge, Gwalior (M.P.) in RCA No.255/2023, as well as, judgment and decree dated 21.11.2023 passed by XII<sup>th</sup> Civil Judge, Junior Division, Gwalior (M.P.) in RCSA No.105/2016.

2. Present appeal has been filed by the tenant.
3. The Trial Court had granted decree for eviction under Section 12(1)(a) and



12(1)(f) of M.P. Accommodation Control Act (*for brevity "the Act"*). However, the appellate Court has set aside the decree for eviction under Section 12(1)(a) of the Act but has affirmed the decree of trial court which was passed on the ground of bona fide need for non-residential purposes.

4. It is submitted by counsel for appellant that plaintiff/respondent filed a suit for eviction on the ground that he is a Senior Advocate practicing in Gwalior. He is owner and in possession of part of building No.37/58 situated at Nadi Gate, MLB Road, Shinde Ki Chhawani, Lashkar, Gwalior. The aforesaid building was purchased in the year 1996 from his previous owner. It was alleged that the defendant is in possession of a shop situated in the said building on the monthly rent of Rs.20/-. The suit shop was let out by the previous owner to Succha Singh and now defendant is in illegal possession as *Sikmi* tenant. The previous owner had also filed a suit for eviction against Succha Singh and defendant, however, during pendency of the said suit, appellant purchased the property. During the pendency of suit between earlier owner and Succha Singh, Succha Singh had paid rent upto December, 1978 and thereafter defendant did not deposit any rent. Later on, an agreement was arrived at between Succha Singh and previous owner and accordingly, the suit remained pending between previous owner and defendant. From December, 1978, neither Succha Singh nor defendant deposited the rent nor paid it to the plaintiff. However, the trial court passed judgment and decree by treating the defendant as *Shikmi* tenant. Copy of aforesaid judgment and decree was also filed along with plaint. Thereafter, the High Court in Second Appeal No. 65/1999 by its judgment and decree dated 13.12.2002 held that defendant is tenant. However, it was pleaded that in spite of demand raised by plaintiff, the defendant has not paid rent from December, 1978 and accordingly it was pleaded that plaintiff is entitled to seek eviction under Section 12(1)(a) of the Act on the ground of arrears of rent. It was pleaded that plaintiff is a Senior Advocate and



many junior advocates are working with him. Earlier office of plaintiff was being run in the portion of building which is in the ownership and possession of his sons Satya Sharma and Shiv Sharma and now elder son of plaintiff, namely, Satya Sharma has started practising independently and has established his office in the part of the building in which earlier plaintiff was running his office. Accordingly, it was pleaded that at present plaintiff is without any office. It was further pleaded that on account of non-availability of premises, plaintiff is running his office from his residence which is on the second floor of the house. Generally, litigants are required to visit the Court to meet the lawyers but since the building is in the street and as the office of plaintiff is on the second floor, therefore, it is not visible from the main road and old and infirm litigants cannot approach second floor of building and accordingly, in emergency situations plaintiff is required to come down to the road to discuss the matter by standing on the road itself. Since plaintiff has no place to run his office, therefore, neither he is in a position to provide place to his junior advocates nor he is in a position to develop his library. It was further pleaded that plaintiff has no other alternative accommodation in the city of Gwalior and therefore, the suit premises is required for his personal *bona fide* and real need for non-residential purpose. The tenancy of defendant has already been terminated. Accordingly, plaintiff has also pleaded for decree under Section 12(1)(f) of the Act. By way of amendment, it was also pleaded that since sufficient time is likely to be consumed for decision of the suit, therefore, plaintiff sent a notice to the defendant under Section 10 of the Act. The defendant also sent a false reply that plaintiff does not require the suit premises for non-residential purposes and his only intention is to enhance the rent. It was further pleaded that plaintiff has also filed an application under Section 10 of the Act before the Rent Controlling Authority and as soon as the order is passed, the same shall be produced in the suit. Plaintiff also prayed for *mesne* profit at the rate of 15,000/-



per month.

5. Defendant filed his written statement and claimed that defendant had deposited rent. Further, defendant had also sent rent by money-order which was refused by plaintiff (since the appellate Court has set aside the decree for eviction on the ground of 12(1)(a) of the Act and in absence of challenge to the aforesaid finding, this Court is deliberately not referring to the stand taken by the defendant in respect of arrears of rent).

So far as the *bona fide* requirement of plaintiff for non-residential purposes is concerned, it was claimed by defendant that the plaintiff is residing in a joint family along with his sons, Satya Sharma and Shiv Sharma and the entire premises was purchased by plaintiff, however, to falsely project, different sale deeds were got executed in the name of his family members. In fact, the house was purchased by plaintiff and the construction was also done by plaintiff. It was denied that Satya Sharma is independently practising in the Court. It was claimed that the office of plaintiff and his son Satya Sharma is situated on the first floor of the premises which is approximately 800 Sq.ft of area which is sufficient to run the office. It was denied that the plaintiff is rendered office-less. It was further submitted that one Karvy Consultancy was tenant of plaintiff whose office was also situated on the first floor and the plaintiff has already got the same vacated which is in possession of the plaintiff. A board has also been affixed that the office and shops are to be let out. The plaintiff was in possession of five shops which were situated on the ground floor and plaintiff after removing the intervening wall has constructed two big halls. The size of one hall is approximately 600 sq. ft. and the size of another hall is 400 Sq.Ft. Initially, the plaintiff had started his office in two shops adjoining the suit shop and did so for about one year and, at present, plaintiff is running his office on the first floor of the building. It was further pleaded that the plaintiff is intending to enhance the



rent by putting undue pressure on the defendant.

6. The Trial Court, after framing issues and recording evidence of the parties, decreed the suit and granted decree for eviction under Section 12(1)(a) and 12(1)(f) of the Act.

7. Being aggrieved by the said judgment and decree passed by the Trial Court, the appellant preferred appeal which has been partially allowed by judgment and decree dated 06.08.2024 and the judgment and decree dated 21.11.2023 passed by the Trial Court for eviction under Section 12(1)(a) of the Act has been set aside, however, decree under Section 12(1)(f) of the Act has been affirmed.

8. Challenging the judgment and decree passed by the Appellate Court, it is submitted by counsel for appellant that the profession of Advocacy is not a business. The decree for eviction on the ground of *bona fide* need for non-residential purposes can be obtained only for the purpose of running a business. It is submitted that although some of the lawyers might be treating Advocacy as a business, but office of an Advocate is not a commercial activity. Furthermore, plaintiff had never claimed that he is not in possession of any reasonably suitable accommodation. Although the Trial Court had framed an issue as to whether plaintiff has no other alternative and reasonably suitable accommodation or not, but there is no finding that the plaintiff is not in possession of any alternative and reasonably suitable accommodation. It is further submitted that it is well established principle of law that if a statute provides for doing a thing in a particular manner then it has to be done in the same manner and relied on the judgment passed by Supreme Court in the case of **Dipak Babaria and another Vs. State of Gujarat and Others** reported in (2014) 3 SCC 502. It is further submitted that plaintiff has not examined his elder son Satya Sharma to prove that Satya Sharma has established his independent office on the first floor of the premises, thereby rendering the plaintiff without any office and accordingly,



proposed the following substantial questions of law:

“(1) Whether the lower appellate court was justified in affirming the decree of eviction of suit shop against the appellant without discussing and deciding the question of illegal rejection of appellant/defendant's application under Order 7 Rule 11 CPC to reject the plaint?

(ii) Whether in view of Section 2(c)(vii) and Section 6 and 15 of the Commercial Court Act the courts below were justified in decreeing plaintiff/respondent suit for eviction and arrears with respect to suit shop being use exclusively for commercial purpose, which is a commercial dispute and only commercial court has the jurisdiction to try the same?

(iii) When first floor of the plaintiff's suit house is vacant in the possession of the plaintiff/respondent and there is no explanation for this accommodation whether the courts below were justified in granting decree of eviction on the ground of Section 12(1)(f) of the M.P. Accommodation Control Act against the appellant?

(iv) Whether the court below were justified in granting decree of eviction under Section 12(1) (f) of the M.P. Accommodation Control Act in favour of the plaintiff/respondent ignoring the material evidence photographs exhibit D-208 to D-211?”

9. During the course of arguments, counsel for appellant, instead of arguing in line of the substantial questions of law which were proposed in paragraph 06 of memo of appeal, proposed another set of substantial questions of law which reads as under:

1. Could issue No.4 have been framed in the absence of a pleading which should have been in consonance with the statutory provisions of Section 12(f) of M.P. Accommodation Control Act 1961.

**"Landlord or such person has no other reasonably suitable Non-Residential accommodation of his own in his occupation in the city or town concerned"**



2. Could the courts below have legally decreed the suit under Section 12 (f) of the M.P. Accommodation Control Act 1961 in the absence of a pleading as mandatorily required by Section 12 (f).
3. Could the Trial Court legally give a finding in para 35 and 47 of its judgment contrary to the issue No.4 framed by it, there by vitiating the trial.
4. Whether the Courts below should have drawn an adverse inference against the plaintiff under Section 114 (g) of the Evidence Act, in view of non-examination of Satya Sharma, elder son of plaintiff after submitting affidavit of evidence.
5. Whether the courts below failed to consider the pleadings and the evidence led by the plaintiff which on the face of it is inherently improbable and clearly not bonafide.
6. Whether the Courts below failed to apply the statutory provisions of Section 12 (f) to the evidence regarding the fact that the plaintiff required the premises in question bonafide for the purpose of continuing or starting his business, when it is trite law that the profession of a lawyer is not business and therefore the provisions of section 12 (f) are not applicable.
7. Whether the Judgment and decree of the trial court and the First Appellate court on the Issue relating to Section 12 (f) is per incuriam the judgment of the Supreme Court in 201(2) JLJ 196 (SC).”
10. Heard learned counsel for appellant.  
**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.

**Now, the only question for consideration is as to whether, the suit filed by appellant under Section 12(1)(f) of the Act can be said to be maintainable or not?**

13. Undisputedly, defendant is running a business in the shop situated on the ground floor. The shop of defendant must be registered under the M.P. Shops and Establishment Act, therefore, the defendant is running a commercial activity and the plaintiff wants to establish his office at a place which is purely of commercial value and where the commercial activities are being carried out by defendant. Under these circumstances, this Court is of considered opinion that the only option available to plaintiff was to file a suit for eviction on the ground of *bona fide* need for non-residential purposes. Even otherwise, plaintiff could have filed a suit under Section 12(1)(e) of the Act i.e. for *bona fide* need for residential purposes.

14. Because of the aforesaid distinction, where the office of an Advocate situated in a commercial building has to be treated differently from his office situated in residential building for the purposes of electricity tariff, it is held that the suit filed by plaintiff was maintainable under Section 12(1)(f) of the Act.

15. So far as the contention of counsel for appellant that neither the plaintiff has pleaded nor proved that he has no other alternative and reasonably suitable



accommodation for running his office and in that regard no such finding has been recorded by the courts below is concerned, it is submitted by counsel for appellant that although the courts below have held that the plaintiff has no alternative accommodation in the city of Gwalior but in absence of any finding that the suit property which is in possession of plaintiff is not reasonably suitable accommodation to run his office for his Advocacy, the suit should have been dismissed. He also submitted that the judgment and decree passed by the Courts below is *per incurium* in the light of the judgment passed by the Supreme Court in the case of **Vijay Narayan Thatte and Ors. Vs State of Maharashtra & Ors.** reported in **(2009) 9 SCC 92** because the Courts below have not considered the law laid down by the Supreme Court in this regard.

16. Heard learned counsel for appellant.

17. Order VI Rule 2 CPC reads as under:

2. Pleading to state material facts and not evidence.-

(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

Thus, it is clear that every pleading must contain and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence. In other words, it can be said that only the material facts are to be pleaded and not law and evidence. If the pleadings of plaintiff are considered, then he has specifically stated that after his elder son has started his office independently, the plaintiff has been forced to shift his office to the second floor of the building where he is residing. Since the staircase which goes up to the



second floor are not on the main road but in a street and it is difficult for old and infirm litigants to come to the second floor of the building, under these circumstances, plaintiff is required to come down to the road and discuss the issue by standing on the road itself. Thus, the plaintiff has specifically pleaded and proved that office which he is running on the second floor is not reasonably suitable accommodation. The plaintiff, in his examination-in-chief, which was filed in the form of affidavit under Order 18 Rule 4 CPC has specifically pleaded the aforesaid fact. Although the defendant by cross-examining the plaintiff had tried to establish that in fact it was the plaintiff who had purchased some part of the building in the name of his minor son but it was the stand of the plaintiff that the property was purchased by their grandmother out of the proceeds which they have received by virtue of will executed by their grandfather.

18. The defendant has not tried to demolish the claim of the plaintiff that on certain occasions he is required to come down on to the road to discuss with the old and infirm litigants. It is a matter of common knowledge that in the office, an Advocate is required to give consultancy/advice to the litigants. He is also required to prepare the case etc. The office of plaintiff is claimed to be situated on the second floor of the house and the stand taken by plaintiff that it is not possible for old and infirm litigants to climb up to the second floor of the house, cannot be said to be false or improbable. Thus, if plaintiff has claimed that on certain occasions he is required to come down to discuss the matter with the litigants while standing on the road, it clearly indicates that plaintiff has no other reasonably suitable accommodation to run his office, as the office which is being run plaintiff on the second floor is not conducive for Advocate from all the angles. Furthermore, it is well established principle of law that it is not for the defendant to dictate his terms that at what place plaintiff should run his office. It is the choice of the plaintiff/landlord/owner which cannot be curtailed on the basis of



objection raised by defendant.

19. The Supreme Court in the case of **Prativa Devi (Smt.) Vs. T.V. Krishnan** reported in **(1996) 5 SCC 353** has held that a tenant cannot dictate the terms of use of property to landlord and the landlord is the best judge of his requirements. It is not for the Courts to dictate that in what manner and how the landlord should live.

20. The Delhi High Court in the case of **R.S. Chadha (through SPA) Vs. Thakur Dass** decided on **3/1/2024** in **RC.REV.109/2023** and **CM No.20693/2023** has held as under:-

13.1 It is settled law that the tenant cannot dictate the terms of use of a property to a landlord and that the landlord is the best judge of his requirements. It is not for the Courts to dictate in what manner and how a landlord should live. It is also not for the Courts to adjudicate that the landlord has a bonafide need or not. The Courts will generally accept the landlords need as bonafide. The Supreme Court in the case of **Prativa Devi (Smt) v. T.V. Krishnan ((1996) 5 SCC 353)** has directed:

"2. The proven facts are that the appellant who is a widow, since the demise of her husband late Shiv Nath Mukherjee, has been staying as a guest with Shri N.C. Chatterjee who was a family friend of her late husband, at B-4/20, Safdarjang Enclave, New Delhi. There is nothing to show that she has any kind of right whatever to stay in the house of Shri Chatterjee. On the other hand, she is there merely by sufferance. The reason given by the High Court that the appellant is an old lady aged about 70 years and has no one to look after her and therefore she should continue to live with Shri Chatterjee, was hardly a ground sufficient for interference. **The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.** The High Court is rather solicitous about the age of the appellant and thinks that because of her age



she needs to be looked after. Now, that is a lookout of the appellant and not of the High Court. **We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property.** We accordingly reverse the finding reached by the High Court and restore that of the Rent Controller that the appellant had established her bona fide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances."

[Emphasis supplied]

13.2 In any event, it is only the Respondent/landlord and his family who can decide what is sufficient space as per their needs and requirements. Sufficiency of residential accommodation for any person would essentially be dependent on multiple factors, including his living standard and general status in society. In view of the fact that admittedly the Respondent/landlord has a large family, it is not open to the Petitioner/tenant to contend that requirement of 6 rooms as pleaded by the Respondent/landlord, is not bonafide.

13.3 The Trial Court has dealt with the sufficiency of accommodation of the Respondent/landlord in the Impugned Order. This Court finds no reason to impugn these findings."

21. The Supreme Court in the case of **Kanhaiya Lal Arya Vs. Md. Ehshan & Ors. decided on 25.02.2025 in Civil Appeal No.3222 of 2025** has held as under:

"10. The law with regard to eviction of a tenant from the suit premises on the ground of bona fide need of the landlord is well settled. The need has to be a real one rather than a mere desire to get the premises vacated. The landlord is the best judge to decide which of his property should be vacated for satisfying his particular need. The tenant has no role in dictating as to which premises the landlord should get vacated for his need alleged in the suit for eviction."

Thus, it is clear that the plaintiff by raising the pleadings as well as leading



evidence has proved that he is not in possession of any alternative accommodation which can be said to be reasonably suitable for running his office. Contention of appellant that plaintiff should have examined Satya Sharma to prove that he has ousted the plaintiff from his office cannot be appreciated because undisputedly some of part of the building which is in possession of Satya Sharma was purchased in the name of Satya Sharma and Satya Sharma is the owner of the said property.

22. Considering the totality of facts and circumstances of the case, this Court is of the considered opinion that no substantial question of law arises in the present case. Accordingly, judgment and decree dated 06.08.2024 passed by V District Judge, Gwalior (M.P.) in RCA No.255/2023 thereby affirming the eviction decree dated 21.11.2023 passed by XII Civil Judge, Junior Division, Gwalior (M.P.) in RCSA No.105/2016 under Section 12(1)(f) of the Act is hereby affirmed.

23. Appeal fails and is hereby *dismissed*.

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

(and)