IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE JAI KUMAR PILLAI

SECOND APPEAL No. 439 of 2011

MOOLCHANDRA

Versus

KAMLABAI THRU.LRS.MANOJ AND ANR. AND OTHERS

Appearance:

Shri Somesh Gobhuj - Advocate for the appellant/defendant.

Shri V.K. Jain – Senior Advocate assisted by Shri Namit Jain – Advocate for the respondent/plaintiff through legal representatives No.1 and 2.

Reserved on : 16/09/2025

Delivered on : 22/09/2025

==========

J U D G M E N T

This second appeal under Section 100 of Code of Civil Procedure has been filed by the appellant/defendant/tenant being aggrieved by the judgment and decree dated 22/07/2011 passed by Additional District Judge, Shajapur, District-Shajapur in Civil Appeal No.2-A/2010 filed by legal representatives No.1 and 2 of sole respondent/plaintiff/landlord whereby the judgment and decree dated 24/12/2009 passed by Civil Judge, Class-I, Shajapur, District-Shajapur in Civil Suit No.89-A/2009 was set-aside.

Factual Matrix of the Case :-

2. Before adverting into the merits of the case, it would be apposite to state here first that earlier on 08/10/2012 this Court **admitted** the appeal for final hearing on the following substantial question of law :-

"Whether the lower appellate Court was justified in passing a decree for eviction

under Section 12 (1) (d) of the M.P. Accommodation Control Act, 1961 in the facts and circumstances of the case ?"

3. Thereafter, application under Order 41 Rule 27 of CPC for taking the additional documents on record was filed by the appellant/defendant and on 14/02/2019 parties appeared and argued the matter finally before this Court and vide judgment dated 05/03/2019 this Court has observed, as follows:-

"In view of the above discussion and since the documents filed by the appellant along with the application are required to be proved, therefore, the impugned judgment and decree passed by learned first appellate Court as well as by the judgment and decree passed by learned trial Court, both are ***set-aside*** *and the matter is remitted back to the trial Court for fresh adjudication."*

4. Being aggrieved by the judgment dated 05/03/2019, the legal representatives No.1 and 2 of sole respondent/plaintiff/landlord preferred S.L.P. (Civil) No.5449 – 5450/2021 and vide order dated 13/10/2023, the Hon'ble Supreme Court granted the leave and held as

under:-

> *" In view of the aforesaid, we set aside the judgment dated 05/03/2019 of the High Court, dismiss the application filed by the respondent for additional documents and direct that on the basis of the material already on record, a view should be taken by the High Court within the jurisdiction of a second appeal and see if the order of the First Appellate Court is required to be interfered with.*
>
> *The second appeal being of vintage 2011, we are sure that High Court would bestow its early consideration in the matter."*

5. Pursuant to the order of the Hon'ble Apex Court dated 13/10/2023, the present appeal has been restored on 08/02/2024 to its original number and the same was listed before this Court 06/08/2025, thereafter this Court finally heard the appeal on 16/09/2025.

Facts of case, in short are as under :-

6. It is the case of plaintiff/respondent/landlord (now dead) that she filed a suit against the defendant/appellant/tenant seeking eviction, recovery of rent etc. with respect to suit shop situated at Nai Sadak,

Jawahar Marg, Shajapur. It is contended that initially the defendant was running a Cycle Shop in the suit premises, thereafter after filing of the suit i.e. on 19/12/2007, the defendant started new business of *Mawa* (a diary product) in the suit premises. Since last one and a half years, the said alleged sale of diary product had stopped and the suit premises is lying vacant and closed/locked, therefore, the plaintiff prayed for eviction of suit premises on the ground that the defendant is not using the same, by passing decree of eviction under Section 12 (1) (d) of the M.P. Accommodation Act, 1961 (for brevity "Act, 1961").

7. The plaintiff initially filed an application under Section 23-A of the Act, 1961 before the Rent Controlling Authority for eviction on the ground of *bonafide* need for her son Manoj but after some time, the same was withdrawn, thereafter she filed the Civil Suit.

8. Upon receiving the notice, the defendant filed written statement contending that the suit premises is neither vacant nor closed and he is continuing with the same business, therefore, the suit is liable to be dismissed.

9. On the basis of pleadings of both the parties, learned trial Court framed following three issues for adjudication :-

> *"1. Whether the defendant has not used the suit shop let to him for a continuous period of more than six months for any reasonable purpose for which the shop was let ?*
>
> *2. Whether the plaintiff is entitled to get the disputed shop vacated from the defendant?*
>
> *3. Aid and expenses ?"*

10. Before the trial Court respondent/plaintiff examined herself as (PW/1), Bablu @ Ahad Khan (PW/2), Manik Chandra (PW/3) and D. Moravkar (PW/4) and exhibited 5 documents, on the other part, appellant/defendant also examined himself as Moolchandra (DW/1), Kamal Kishore Shrivastava (DW/2) and Vimal Chand (DW/3) and got exhibited 16 documents. After appreciation of oral and documentary evidence available on record, the learned trial Court passed the judgment and decree on 24/12/2009 and dismissed the suit filed by the respondent/plaintiff/landlord.

11. Being aggrieved by dismissal of the suit, respondent/plaintiff filed First Appeal before the First Appellate Court *inter alia* stating that the impugned judgment and decree passed by learned Trial Court is contrary to law and that the learned Trial Court has not properly appreciated the evidence while it was proved that the defendant is not using the suit premises for about one and a half year. It was also contended that the learned Trial Court failed to consider that the defendant had alternative suitable accommodation for its use in the same locality, therefore, liable to be evicted.

12. After due appreciation of evidence and the material available on record, the learned First Appellate Court passed the judgment and decree dated 22/07/2011 allowing the appeal of the respondent/plaintiff, by setting-aside the judgment and decree of the learned Trial Court under Section 12 (1) (d) of the Act, 1961 directing the appellant/defendant to deliver/hand-over the vacant possession of the suit premises to the respondent/plaintiff forthwith.

13. Being aggrieved by which, the appellant/defendant preferred the present appeal on the following substantial questions of law for proper adjudication of the appeal :-

> "**a.** Whether learned appellate court has erred in shifting onus on the Appellant/Defendant before Plaintiff could discharge initial burden to prove her case?
>
> **b.** Whether suit is maintainable in view of remedy available before rent control authority?
>
> **c.** Whether the judgment and decree of learned appellate court is against the evidence on record and hence perverse?
>
> **d.** Whether the learned appellate court has erred in misreading the evidence laid down by the Appellant in support of his case and drawing adverse inference there from?
>
> **e.** Whether learned appellate court has grossly erred in giving finding on the basis of-inferences derived from oral evidence?
>
> **f.** Other substantial question of law arising in the case, which this Hon'ble Court deem it fit to frame ?

14. Learned counsel for the appellant argued that that the learned first Appellate Court reversed the judgment and decree of the trial Court but has not assigned any justified reasoning's to the findings arrived. It is contended by learned counsel for the appellant that the impugned judgment and decree is based on the incorrect appreciation of evidence and law and the learned First Appellate Court has grossly erred in not considering the fact that there is no evidence on record to justify the decree of eviction under Section 12 (1) (d) of Act, 1961. Further, it is argued by the learned counsel for the appellant that the learned First Appellate Court has grossly erred in reading the evidence out of contest and drawing adverse inference out of them and also the learned First Appellate Court has grossly erred in shifting the onus on the appellant/defendant only on the basis of allegation of plaintiff and regardless of the fact that the plaintiff had not discharged initial burden to prove his case.

15. Learned counsel for the appellant contended that the learned First Appellate Court has grossly erred in wrongly interpreting the provision of Section 137 of Indian Evidence Act, 1872 and erred in drawing adverse inference from the photographs produced by the appellant/defendant and respondent/plaintiff. It is also submitted that the appellant/defendant has been carrying on business from the suit property but the learned First Appellate Court has grossly erred in holding that the appellant/defendant has not been using the premises for last more than 6 months immediately preceding the filing of suit and also the fact that the plaintiff has not proved the fact that from which another place the appellant is carrying on business to earn his livelihood wherein itself creates doubt regarding allegation of closure of business from suit premises.

16. It is submitted by learned counsel for the appellant that the judgment and decree passed by learned First Appellate Court suffer from manifest illegality & perversity and deserves to be set-aside and the appeal filed by the appellant/defendant be allowed by setting-aside the

judgment and decree passed by learned First Appellate Court.

17. On the other hand, learned Senior counsel for the respondent/plaintiff Shri Jain has supported the impugned judgment and decree passed by the learned First Appellate Court.

18. The learned senior counsel for the respondent/plaintiff draws attention of this Court to the judgment of the Hon'ble Supreme Court in ***Nilesh Laxmichand & Anr. v. Shantaben Purushottam Kakad (Deceased) through LRs., reported in (2019) 6 SCC 542.*** and submitted that this judgment not only holds the field but squarely covers the present case. In that case, the Hon'ble Supreme Court upheld an eviction decree on the sole ground of non-use of the rented premises, clarifying that eviction on this ground requires proof that the property was let for a particular purpose, that it was not used for that purpose without reasonable cause and that such non-use continued for at least six months prior to the filing of the suit. The Hon'ble Court further held that actual use during

the said period can only be demonstrated by the defendant by producing documents such as electricity bills, invoices, receipts or other records evidencing business operations during the relevant six months; failure to produce such evidence is fatal to the defendant's case. Further it is submitted by learned senior counsel that the defendant has failed to produce any such documentary evidence establishing use of the suit premises during the relevant six-month period. It is further contended that once there is finding of fact regarding non-user of the tenanted premises, the same is not liable to be interfered in a second appeal unless the findings so recorded are wholly illegal and perverse. It is also submitted on behalf of the appellant that in the present matter the findings recorded by the learned First Appellate Court by no stretch of imagination can be said to illegal or perverse.

19 It is, thus prayed by the respondent/plaintiff that in the facts and circumstances of the case, in hand and the fact that respondent/plaintiff has sufficiently and successfully proved her case and therefore, the present appeal deserves to be dismissed.

ANALYSIS AND CONCLUSION :

20. Heard learned counsel for both the parties at length and perused the entire records and on going through the findings recorded by the learned First Appellate Court it has been found that the appellant/defendant has not proved any such documentary evidence establishing use of the suit premises during the relevant six-month prior to the date of institution of the suit, as spelt-out under Section 12 (1) (d) of the Act, 1961.

21. So far as the burden of proving the case is concerned, the same lies on the plaintiff/landlord. As per Section 12 (1) (d) of the Act, 1961 which reads as under :-

> ***12. Restriction on eviction of tenants.***
>
> *(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :*
>
> *(d) that the accommodation has not been used without reasonable cause for which it was*

let, for a continuous period of six months immediately preceding the date of the filing of the suit for the recovery of possession thereof;

22. The basic question which is to be answered and looked into a case for eviction filed under Section 12 (1) (d) of the Act, 1961 is that *"whether the appellant/defendant has been in continuous occupation/use of the shop for the purpose for which it was rented-out preceding six months from the date of institution of suit"*.

23. To substantiate this moot question, the learned First Appellate Court rightly held that as per the statement of respondent/plaintiff - Kamla Bai (PW-1), the appellant/defendant is not carrying-out any business in the disputed shop for the last two years and it is lying vacant and also the appellant/defendant has locked it. In relation to which the respondent/plaintiff has presented the certified copy of the meter reading card/book of Electricity consumption (Ex.P/1). On perusal of Ex.P/1 it confirms that there is no endorsement of electricity consumption for the last more than six months. (Ex.P/1) filed by the

respondent/plaintiff also clarifies that there is no recording of any electricity consumption of unit by the Meter Reader from the year January, 2006 onwards, with the clear remark of the Meter Reader that no electricity is consumed, as the shop is closed as acknowledged by the Meter Reader. It also manifests from the Electricity bill dated 31/01/2007 (Ex.-D/1) filed by the appellant/defendant that the consumption of electricity is not more than 10-11 units a month, meaning thereby there is no business/activity run by the appellant/defendant at the disputed shop as claimed by him.

24. The said evidence clearly indicates that the appellant/defendant was never in continuous occupation of the shop, six months prior to the institution of suit. Further the statement of Bablu (PW/2) regarding the closure of the shop also specifically confirms that the disputed shop has been closed for more than 2 years prior to the institution of suit. This witness in his cross-examination in paragraph No.21, upon the suggestion put by Counsel of appellant/defendant has admitted that the disputed shop in

question was lying vacant for last two years and stated further that there is a table, a chair and a fan in it and there is a portion attached to it and there is a temple behind the living room. The suggestion of appellant/defendant goes against himself.

25. Even on going through the cross-examination of Moolchand (DW/1) in para 5, he himself admitted that he has not obtained any license of sale of *Mawa* by any Competent Authority and in para 8 of his cross-examination, he himself affirms that only average bill of electricity was given by the appellant/defendant. Further more a bare perusal of electricity bill would be clear on myopic scrutiny that the electricity consumption of each month as shown in electricity bill (Ex.D/1) is not more 10-11 units a month. Thus, there was no consumption of electricity, which clearly explains that the appellant/defendant was not carrying-out any business in the said disputed shop, six months prior to the institution of suit.

26. The Hon'ble Apex Court in the matter of **Vora Rahimbhai Haji Hasanbhai Popat vs. Vora Sunderlal Manilal and another (1985) 4 SCC 551**, appreciating the Section 12 (1) (d) of the Act, 1961 (correspondent Section 13 (1) (k) of Bombay Rent, Hotel and Lodging House Rates Control Act, 1947) has held that a continuous period of six months immediately preceding the date of suit for the purpose of which let out, even non-user of the premises for any purpose whatsoever for six months or more would make the tenant liable to eviction. It has further been held that legislative intent could be carried-out only when the premises is used and not kept vacant for long.

27. The learned First Appellate Court rightly held that the (Ex.-D/2) to (Ex.-D/16), the bills of Ghadi Powder, Neo Powder, Sanchi Soap etc., produced by the appellant/defendant to prove the fact that he deals in detergent powder and soap in respect of which, the respondent/plaintiff took objection that the said bills were fake because the witness Vimal Kumar Jain (DW-3) who

prepared the said bill was considered doubtful by the earlier Court in some case for making the fake document. It was contended by the respondent/plaintiff that writing of "cash" in the middle of the said bill and Moolchand written before it and Mangal Shri Mawa written after it creates doubt and confirms *malafides* of the appellant/defendant and the credibility of the bills cannot be accepted.

28. Thus in view of the aforesaid discussion and upon due consideration of material available on record and considering the law laid down by the Hon'ble Apex Court, this Court does not find any illegality or perversity in the judgment and decree passed by the learned First Appellate Court, allowing the appeal of the respondent/plaintiff.

29. Resultantly in absence of any material evidence available on record, this Second Appeal fails and is hereby **dismissed**. The judgment and decree of the learned First Appellate Court is **confirmed**.

30. Pending applications, if any, shall also stands

disposed off accordingly.

(Jai Kumar Pillai)
Judge

Aiyer*