

**HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE**  
**SINGLE BENCH: HON'BLE SHRI JUSTICE VIVEK RUSIA**

**CIVIL REVISION NO.118/2015**

Mohd.Shakeel s/o Abdul Rashid Ansari (dead) represented  
through legal representatives

vs.

Smt.Surjeet Kaur w/o late Amarnath Saluja

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Shri L.L.Sharma, learned counsel for the applicants.  
Shri A.K.Sethi, learned Senior Counsel with Shri  
Harish Joshi for the respondent.

**ORDER**

(Passed on 25.02.2020)

Applicant/tenant (now dead and represented through legal representatives) has filed the present revision petition under section 23(e) of the M.P Accommodation Control Act, 1961 (hereinafter referred to as '**the Act of 1961**') read with section 115 of the CPC being aggrieved by the order dated 13.02.2015 passed by the Rent Controlling Authority (hereinafter referred to as '**the RCA**'), whereby the application filed by the respondent/landlord under section 23-A(a) & (b) of the Act of 1961 has been allowed.

Facts of the case in short are as under:

2. Respondent (hereinafter referred to as '**the landlord**') is the owner of house No.292, Mechanic Nagar, Indore. A shop situated at the ground floor admeasuring 30 ft. x 15 ft. =450

sq. ft. (hereinafter referred to as '**the suit accommodation**') was given on rent to the tenant by rent deed dated 27.11.1992 at the rate of Rs.2,000/- per month. The tenant has started a business in the name of Golden Engineering and using the premises for commercial purposes. At the time of filing the application the rent became Rs.2,200/- per month. According to the landlord, the suit accommodation was given on lease dated 06.02.1989 by the Indore Development Authority to her husband Amarnath Saluja. After his death she has become the exclusive owner of the suit accommodation. His son Kailash Saluja is doctor by profession and he is in need of the suit accommodation to start his clinic and except the suit accommodation she has no other alternative suitable accommodation in the city to fulfill the bona fide need. At present her son Kailash Saluja is running his clinic in a rented premises situated at plot No.292, Khatiwala Tank, Indore. The plaintiff served a notice to the tenant calling upon him to vacate the shop but when he refused, a cause of action accrued in her favour for filing the application under section 23(a) & (b) of the Act of 1961 before the RCA. On 01.10.1992 the tenant has denied the relationship of landlord and tenant and the bona fide need of the plaintiff. By way of special pleading he submitted that the landlord has agreed to sell the suit accommodation to him and he has paid the sale consideration by way of 162 equal installments but the landlord is delaying the execution

of the sale deed, therefore, no relationship of landlord and tenant survives between them.

3. On the basis of the pleading, the RCA framed four issues for adjudication which are as under:

वाद विषय—

1. क्या प्रार्थी और प्रतिप्रार्थी में मकान मालिक एवं किरायेदार के संबंध है ?

2. क्या प्रार्थी के पास इन्दौर शहर में अन्य कोई वैकल्पिक स्थान उपलब्ध है?

3. क्या यह प्रकरण इस न्यायालय के क्षेत्राधिकार का नहीं है ?

4. सहायता एवं व्यय।

4. In support of the application, landlord examined himself as PW/1 and her son Kailash Saluja as PW/2 and got exhibited license deed Ex.P/1 & notice dated 14.08.2006 Ex.P.2. In defence tenant examined himself as DW/1 and Mohd. Shakil Ansari as DW/2 and got exhibited the report of hand writing expert as Ex.D/1.

5. After appreciating the evidence came on record, learned RCA has answered the issue No.1 by holding that there is a landlord-tenant relationship between the parties and the present applicant is a tenant with monthly rent of Rs.2,200/-. While answering the issue No.2 learned RCA has held that the landlord is not having any alternative suitable accommodation in the Indore city. The issue No.3 has also been answered in favour of the plaintiff by holding that she comes under the category of special landlord and the RCA has the jurisdiction to decide the application. Vide

order dated 13.02.2015 learned RCA has decreed the application by directing the present applicant to vacate the premises within a period of two months. Being aggrieved by the aforesaid order applicant/tenant has filed the present revision before this Court. Vide order dated 24.04.2015 the notices were issued of the revision petition as well as the application for stay (IA No.3135/2015) and the counsel for the applicant sought permission to serve Humdast notice on the respondent but no stay was granted in favour of the applicant. After receipt of the record this revision was dismissed in default on 08.01.2016 but later on it was restored vide order dated 05.04.2016 in MCC No.95/2016. On 19.08.2016 learned counsel for the applicant has placed reliance over the judgment delivered in the case of **Sushila Devi Somani (Smt.) vs. Kedarnath Gupta 1987 JLJ 450** on the point that the RCA has no jurisdiction to decide the application for eviction under section 23 of the Act of 1961 because after the death of Amarnath Saluja the suit accommodation was devolved upon Smt.Surjeet Kaur as well as upon her major son, therefore, she alone is an exclusive owner under the special category of landlord to invoke the jurisdiction of the RCA. Vide order dated 19.08.2016 this Court has made the order dated 25.04.2015 absolute till the final hearing of the case, but as is stated above, on 25.04.2015 no stay was granted by this Court. Thereafter the original tenant has expired and his legal heirs have been brought on record.

6. On 23.09.2019 learned counsel appearing for the respondent/landlord has placed reliance over the judgment passed in the case of **Shivraj Jat vs. Smt.Asha Lata Yadav and others 1989 JLJ 336** whereby the judgment passed in the case of **Sushila Devi Somani (Smt.) vs. Kedarnath Gupta 1987 JLJ 450** has been overruled and sought adjournment to address on this issue.

7. Shri L.L.Sharma, learned counsel for the applicant submits that although the judgment on which the applicant has placed reliance and got admitted this revision has been overruled but there are other grounds raised in the revision for setting aside of the impugned order. He submits that the respondent approached the Court projecting herself as a widow but no such document has been filed and that status has not been proved, therefore, the RCA has wrongly entertained her application under the special category of landlord. He further submits that the respondent has filed an application for bona fide need for her son who is a doctor by profession but the wife of the doctor son is having property in which he can start his business. The plaintiff in cross examination has admitted that after taking the vacant possession she will decide the use of the accommodation which clearly establishes that the bona fide need has not been proved. He further argued that Ex.P/1 is a license and the same is unregistered, therefore, learned RCA before granting the decree of eviction ought to have considered the status of Ex.P/1 as to whether it is a license or a lease

agreement. The service of notice has also not been proved by the plaintiff. The son of the respondent is already running a clinic in a rented premises, therefore, his bona fide need has been fulfilled. At the end of the hearing he submitted that by way of oral agreement the present applicant has purchased the suit accommodation from the respondent/plaintiff and paid the entire sale consideration by way of equal monthly installments, hence there is no landlord-tenant relationship between them.

8. Per contra, Shri A.K.Sethi, learned Senior Counsel appearing for the respondent submits that the scope of interference by the High Court against the order passed by the RCA is very limited. The revision petition cannot be decided as a regular first appeal, therefore, re-appreciation of evidence is not permissible. The applicant has got admitted this revision on the strength of an overruled judgment, therefore, this revision is liable to be dismissed on this ground alone. He further submits that under section 23-A(b) of the Act of 1961 when the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of starting his business of his major son and he has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town, he may submit an application in a prescribed form before the RCA seeking eviction of the tenant. The definition of landlord for the purpose of Chapter-III A is given in 23-J in which the widow or divorced wife is also a

landlord of special category, therefore, the respondent has rightly invoked the jurisdiction of the RCA for the bona fide need of her son. This Court in the case of **Ratnaprabha Nazan (Smt.) vs. Kalyansingh, 2010 (2) JLJ 282** has held that application for eviction is filed by one of the owners and the other co-owners are not objecting, hence their consent can be presumed and one co-owner can file the eviction application. As per section 23-D (3) of the Act of 1961, in respect of an application by a landlord it shall be presumed, unless the contrary is proved, the requirement by the landlord with reference to clause (a) or clause (b), as the case may be, of section 23-A is bona fide, therefore, the burden was on the applicant/tenant to prove that there was no bona fide need for filing an application before the RCA which he has failed to discharge, hence there is no ground for interference by the High Court in this revision petition. There is no perversity in the findings recorded by the RCA, therefore, no interference is called for against the impugned order.

9. Respondent filed an application under section 23-A(a) &(b) of the Act of 1961 seeking vacant possession of the suit accommodation from the applicant/tenant on the ground that her son wants to start a clinic to practice as doctor and she is not having any suitable alternative accommodation in the town. At present he is running his clinic in a rented premises. As per section 23-D(3) of the Act of 1961 if the landlord comes under the special category under section 23-J then

there is a presumption of bona fide in his favour. The respondent has specifically pleaded that she is a widow of late Amarnath Saluja and she became the exclusive owner of the suit accommodation after his death. In the cause title she has described her name as widow of Amarnath Saluja. In the rent deed dated 27.11.1992 also the name of respondent is mentioned as Surjeet Kaur w/o late Amarnath Saluja. The applicant came up with the plea that the respondent entered into an oral agreement for sale by way of hire purchase and he has purchased the suit accommodation by payment of 162 equal installments of Rs.2,200/- per month. On the one hand he is claiming that he has purchased the suit accommodation from the respondent and on the other hand he has denied that she is not the exclusive owner of the suit accommodation. In the written statement he has not contended that she is not the widow, hence she does not come under the special category of special landlord, therefore, learned RCA has not framed any issue on this point. Thereafter, at this stage the present applicant is estopped from challenging the status of the respondent. In the case of Ratnaprabha (supra) it has been held that widow is a special category of landlord under section 23-J of the Act of 1961 and the fact admitted in the written statement by tenant need not be proved by the tenant, therefore, the argument advanced by Shri Sharma, learned counsel for the applicant is not tenable that the respondent has not proved that she is a widow.



10. So far the jurisdiction of the RCA to decide the application is concerned, once it has been held that co-owner can file an application for the bona fide need of himself or for his major son or unmarried daughter as held by this Court in the case of **Shivraj Jat (supra)**, the respondent comes under the category of landlord under section 23-J of the Act of 1961, therefore, the RCA has rightly exercised the jurisdiction vested in it under the Act of 1961. The applicant got admitted this revision by citing an overruled judgment in the case of **Sushila Devi Somani (Smt.) supra**. The Division Bench of this Court in the case of **Shivraj Jat (supra)**, while overruling the judgment in the case of **Sushila Devi Somani (Smt.) supra** has held as under:

*In view of the aforesaid provisions, two questions arise for consideration: One whether non applicant No.1 alone is entitled to maintain an action for eviction and Two, whether non-applicant No.1 is entitled to the relief of eviction on the ground that the accommodation in question which was let out for non-residential purposes, is bona fide require by her for the purpose of starting the business of her major son.*

5. *As regards the first question as to whether anyone of the co-owners can maintain an action for eviction, the matter is finally decided by the Supreme Court in Pal Singh v. Shri Sunder Singh (dead) by L.Rs and others. The Supreme Court has held that where other co-owners do not object to the eviction, one co-owner can maintain an action for eviction even in the absence of other co owners. In the instant case, the other co owners have joined with non applicant No.1 in the action of eviction and, therefore, it is evident that they do not object to eviction of the applicant. Non applicant No.1 is a landlord as defined by section 23-J of the Act and hence she would be entitled to file an application for eviction u/s 23-A of the Act. The fact that other non applicants have joined her in that action to signify that they do not object to eviction, cannot*

*disentitle her to seek relief u/s 23-A of the Act which she is otherwise entitled to get under that provision.*

*6. The next question for consideration is whether non applicant No.1 is entitled to the relief of eviction on the ground that the leased premises is bona fide required by her for starting the business of her major son. Clause (b) of section 23-A of the Act makes a specific provision in that behalf and there is no room for any ambiguity. To deny relief of eviction to a landlord falling within the category of landlords as specified by section 23-J of the Act, even after making out a ground for eviction specifically provided by clause (b) of section 23-A of the Act would mean not giving effect to the provisions of clause (b) of section 23-A of the Act. When legislation enables a landlord to seek eviction if the lease premises are bona fide required by the landlord for starting the business of a major son or daughter of the landlord, there can be no logic or justification for denying that relief to the landlord, because the major son or daughter of the landlord also happens to be co-owner of the lease premises. As laid down by the Supreme Court in Kanai Lal Sur. vs. Paramnidhi Sadhukhan, if the words used are capable of one construction only, then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged objects and policy of the Act. The decision in Sushila Devi Somani case (supra) that unless the accommodation is required by the widow to start her business, she is not entitled to the relief of eviction, fails to give effect to the mandate of law contained in clause (b) of section 23-A of the Act and with respect, does not, in our opinion lay down correct law. Our answer to the question referred by the learned Single Judge is that a suit by joint landlords out of whom one is a landlord within the meaning of that expression as defined by section 23-J of the Act, can be entertained by the Recent Controlling Authority and when the other co-owners, if any, do not object to eviction, the relief of eviction can be granted if the accommodation is bona fide required by the landlord for starting the business of the major son or daughter.*

11. Respondent examined herself as well as her son and both of them have categorically stated that they have no

other alternative suitable accommodation in the city of Indore to start the clinic. The present applicant came up with the plea that the son of the respondent is already running a clinic in the rented premises but if the landlord wants to run his business in his own premises the same is certainly a bona fide need. When he is the owner of a premises then he cannot be compelled to run his business in a rented premises.

The applicant has failed to prove that the landlord is having any other alternative suitable accommodation in the city of Indore, therefore, after appreciating the evidence the RCA has rightly recorded the finding on the point of bona fide need and I do not find any perversity in it.

12. The present applicant denied the relationship of landlord-tenant only on the ground that he has purchased the property by way of oral agreement and paid the sale consideration in 162 equal installments. A property is transferred under the Transfer of Property Act by way of registered document if the value of the property is more than Rs.100/- and there cannot be any transfer of property by way of oral agreement. The installments of 162 is nothing but the rent paid by the applicant, therefore, he came up with a false plea that he purchased the suit accommodation and denied the title of the plaintiff which is also a ground for eviction under section 12(1)(c) of the Act of 1961 had it been a case before the civil Court. The minor contradiction in the statement of PW/1 & PW/2 are liable to be ignored as the respondent was aged about 70 years at the time of filing the

application. For the special category of landlord the Legislature has given a power to the RCA to decide the application within a period of one month from the date of receipt of the application and 90 days has been given to the High Court to decide the revision. The landlord filed an application in the year 2006 which was decided in the year 2015 i.e. after a period of 9 years and this revision is pending since 2015. The very purpose of giving special power to the RCA has got frustrated in this matter as the landlord fails to get the possession of the suit accommodation in compliance of the order dated 13.02.2015.

13. In view of the foregoing discussion, no case for interference is made out in this revision petition. Accordingly, the revision petition is dismissed.

**(VIVEK RUSIA)**  
**JUDGE**

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