IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

SECOND APPEAL NO.23 OF 2004

Between:-

SHRI ABHISHEK PATHAK, S/O LATE SHRI DEENDAYAL PATHAK, AGED ABOUT 32 YEARS, R/O WARD NO.31, LALBAGH ROAD, CHINDWARA (M.P.)

……..APPELLANT

(BY SHRI KISHORE SHRIVASTAVA, SENIOR ADVOCATE ALONG WITH SHRI ANKUR SHRIVASTAVA, ADVOCATE)

AND

1. **RAMKRISHNA MAHOD, S/O LATE PRAHLAD, AGED ABOUT 55 YEARS**
2. **SHIVSHANKAR MAHOD, S/O LATE PRAHLAD, AGED ABOUT YEARS**
3. **MAHADEV MAHOD, S/O LATE PRAHLAD, AGED ABOUT 42 YEARS**
4. **SMT. INDUMATI @ INDI, RAMKRISHNA MAHOD, D/O LATE PRAHLAD, AGED ABOUT 48 YEARS**

ALL R/O WARD NO.12, LALBAGH ROAD, CHINDWARA (M.P.)

……...RESPONDENTS

(BY SHRI P.C. PALIWAL, ADVOCATE)

Reserved on : 14.10.2022
Delivered on :

This appeal coming on for final hearing this day, the Court passed the following:

JUDGMENT

This second appeal has been preferred by the original defendant Smt. Sangita (since died now is represented by her legal heir) challenging the judgment and decree dated 29/09/2003 passed by District Judge, Chhindwara in Civil Appeal No.15-A/2003, confirming the judgment and decree dated 26/03/2003 passed by 1st Civil Judge Class-I, Chhindwara in Civil Suit No.12-A/98, whereby suit for eviction filed by the original plaintiff Prahlad (since died, now is represented by the respondents 1-4) has been decreed on the grounds available under Section 12(1)(e)&(o) of the M.P. Accommodation Control Act, 1961 (in short "the Act").

2. In short the facts are that the original plaintiff Prahlad instituted a suit for eviction of tenanted residential premises against the original defendant Smt. Sangita Pathak on the grounds available under Section 12(1) of the Act as well as for arrears of rent with the allegations that the defendant was given two rooms on rent of Rs.175/- p.m. vide rent note dated 11/07/1991 (Ex.P/1) for a period of 11 months but after expiry of the said period, the defendant neither vacated the premises nor paid the rent after the month of July, 1991 and is trying

to grab the tenanted premises, in furtherance of which, she lodged a false report against the plaintiff and his family members and also instituted a civil suit No.225-A/97, which was dismissed and decided in favour of the landlord.

3. It is further alleged that the defendant has made encroachment by taking forcible possession over another one room of road side, which has not been vacated despite issuance of a registered notice dated 06/08/1998. It is alleged in the plaint that the plaintiff's married son namely Shiv Shankar is residing in rented accommodation, hence the tenanted accommodation is required for his residence and there is no other alternative accommodation in possession of the plaintiff in the township of Chhindwara. On inter alia allegations, the plaintiff claimed arrears of rent of Rs.15,225/- along with compensation amount of Rs.16,600/-.

4. The defendant appeared and filed written statement denying the plaint allegations and contended that the defendant is tenant in three rooms since the year 1984. In the another house situated back side of the disputed house, the plaintiff has sufficient accommodation, in which the plaintiff and his son may reside, as such he has no bonafide requirement of the tenanted accommodation but he wants to let out the premises on excessive rent, therefore, the suit has been filed. On 19/04/1991, husband of defendant had died, therefore, she went Satna and due to the sudden need of tenanted accommodation to the plaintiff,

she handed over possession of the same and after returning from Satna, the plaintiff got signature of the defendant on blank stamp, under pressure and contended that the plaintiff is not in need of the suit accommodation. On inter alia contentions, the suit was prayed to be dismissed.

5. On the basis of pleadings of the parties, learned trial Court framed as many as twelve issues and recorded evidence of the parties and vide its judgment and decree dated 26.3.2003, held that the plaintiff is owner of the house and the defendant is tenant in the two rooms on rent of Rs.175/-p.m., on the basis of written agreement of tenancy dated 11/07/1991 (Ex.P/1) and contrary to the agreement, the defendant has taken forcible possession over one room situated towards road. The defendant has not paid rent w.e.f. August, 1991 and the plaintiff is in need of the suit premises for the residence of his son and there is no alternative accommodation available in the township. The plaintiff was also held to be entitled for receiving arrears of rent of Rs.15,225/- as well as compensation amount of Rs.16,600/- along with interest.

6. Upon appeal filed by the original defendant Smt. Sangita, learned first appellate Court confirmed the findings recorded by learned trial Court and vide its judgment and decree dated 29/09/2003 dismissed the civil appeal.

7. This Court vide order dated 15/04/2004 admitted the second appeal for final hearing on the following substantial questions of law:

"(i) Whether the Courts below have committed an error of law in not appreciating the facts that tenancy has commenced with husband of appellant before alleged execution of Ex.P/1 and therefore finding recorded by both Courts below with regard to area of tenanted premises has vitiated?

(ii) Whether finding of Courts below with regard to area of tenanted premises has vitiated on account of non-consideration of material and clinching evidence on the point?"

8. Learned senior counsel for the appellant submits that infact the tenancy commenced with the husband of defendant/appellant-Sangita and the agreement of tenancy dated 11/07/1991 (Ex.P/1) was got executed by the plaintiff/landlord under pressure, after death of husband of defendant and by using the signed blank stamp, the plaintiff has got prepared the agreement dtd. 11/07/1991, which is not binding on the defendant. All the three rooms were in tenancy of the defendant even prior to the agreement dated 11/07/1991, therefore, the findings with regard to the area of the tenanted premises are not sustainable. He submits that the learned Courts below have not considered and appreciated the evidence available on record in real perspective. He further submits that although in the second appeal, no substantial question of law was proposed and framed by this Court with regard to the ground of eviction under Section12(1)(e) of the Act but the findings recorded by learned Courts below with regard to bonafide requirement being perverse, one more substantial question of law deserves to be framed in that regard. With these submissions, learned senior

counsel for the appellant prays for allowing the second appeal. However, he submits that in case of dismissal of second appeal, looking to the period of tenancy, the appellant may be given one year time for vacating the suit premises.

9. Learned counsel for the landlord/respondents submits that learned Courts below have rightly held that the defendant was inducted as tenant in the two rooms as per written agreement of tenancy dated 11/07/1991 (Ex.P/1) and in view of the admission about her signature on the agreement of tenancy, nothing can be said against it and in presence of the proven written document of tenancy, oral evidence is not admissible. As such both the substantial questions of law framed on 15/04/2004 do not arise in the present second appeal. He further submits that as neither in the memo of appeal any substantial question of law is proposed nor this Court has framed any substantial question of law with regard to the decree of eviction under Section 12(1)(e) of the Act, therefore, no substantial question of law can be framed at this stage because the finding on the question of bonafide requirement being a pure finding of fact, does not give rise to any substantial question of law. With these submissions, he prayed for dismissal of the second appeal.

10. Heard learned counsel for the parties and perused the record.

Substantial questions of law No.1&2

11. Both the formulated substantial questions of law are with regard to the decree of eviction passed by learned Courts below on the ground of eviction under Section 12(1)(o) of the Act. In this regard, as against the written agreement of tenancy dated 11/07/1991 (Ex.P/1), the defendant has tried to say that the plaintiff got the blank stamp signed from the defendant and due to death of her husband, she under compulsion/presssure signed the blank stamp, which has been used by the plaintiff for preparation of the agreement of tenancy, and as the tenancy commenced even with the husband of appellant and she is in possession of all the three rooms since prior to execution of the agreement (Ex.P/1), therefore, it cannot be said that the defendant has, contrary to the agreement of tenancy, taken possession of one road side room forcibly.

12. Apparently, while passing the judgment and decree, learned Courts below have, not only considered the written agreement of tenancy dated 11/07/1991, but also considered the oral evidence of the parties and disbelieved the statement of defendant Sangita and clearly held that the agreement of tenancy (Ex.P/1) was executed by defendant-Sangita herself, which shows that she was given only two rooms on rent but undisputedly the defendant is in possession of three rooms, therefore, learned Courts below have rightly held that the defendant has taken possession over another one roadside room, illegally.

13. In view of the considered and well reasoned concurrent finding of fact regarding encroachment over one room, no illegality appears to have been committed by learned Courts below and consequently, the substantial questions of law framed by this Court do not arise in the present second appeal.

14. As regards the ground of eviction under Section 12(1)(e) of the Act is concerned, no substantial question of law was even proposed in the memo of second appeal and this Court also did not frame any substantial question of law in that regard. I have also perused the entire record as well as the judgements of both the Courts below, but no perversity is there in the judgements passed by learned Courts below.

15. However, in the case of ***Kishore Singh Vs. Satish Kumar Singhvi 2017(3) JLJ 375*** this Court has relied upon the decision of Supreme Court in the case of ***Ragavendra Kumar Vs. Firm Prem Machinary and Company AIR 2000 SC 534***, and held that the findings recorded on the question of bonafide requirement do not give rise to any substantial question of law. As such, the submission made by learned senior counsel on behalf of appellant with regard to framing of additional substantial question of law, is not acceptable.

16. It is pertinent to mention here that even in absence of any substantial question of law with regard to ground of eviction under Section 12(1)(e) of the Act, this second appeal has remained pending for more than 19 years, whereas it

is well settled that the decree of eviction passed even on one ground of eviction, is as effective as passed on two or more grounds and is executable, but due to stay of execution of decree, the same could not be executed. Such course, in my considered opinion is not legal. The Supreme Court has in the case of Ram Phal Vs. Banarasi and others (2003) 11 SCC 762 held as under :

> *"2. ……..When the second appeal came up for admission on 20-12-1999 the High Court directed to list the appeal for framing of question of law on 28-3-2000. However, the High Court granted interim order by staying the execution of the decree. It is against the said order granting interim relief the respondent in the second appeal has preferred this appeal. This Court, on a number of occasions, has repeatedly held that the High Court acquires jurisdiction to decide the second appeal or deal with the second appeal on merits only when it frames a substantial question of law as required to be framed under Section 100 of the Civil Procedure Code. In the present case, what we find is that the High Court granted interim order and thereafter fixed the matter for framing of question of law on a subsequent date. This was not the way to deal with the matter as contemplated under Section 100 CPC. The High Court is required to frame the question of law first and thereafter deal with the matter. Since the High Court dealt with the matter contrary to the mandate enshrined under Section 100 CPC, the impugned order deserves to be set aside."*

17. The aforesaid judgment of Ram Phal (supra) has further been followed by Supreme Court in the case of ***Raghavendra Swamy Mutt Vs. Uttaradi Mutt (2016) 11 SCC 235***. Relevant paras 15,16 and 23 of which are quoted as under :

> *"15. In **Roop Singh v. Ram Singh[(2000) 3 SCC 708]** the Court had to say thus:-*
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> *"It is to be reiterated that under Section 100 CPC jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure questions of fact while exercising its jurisdiction under Section 100 CPC."*
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> *16. In Municipal Committee, Hoshiarpur v. Punjab SEB & Others[(2010) 13 SCC 216] it has been categorically laid down that the existence of a substantial question of law is a condition precedent*

for entertaining the second appeal and on failure to do so, the judgment rendered by the High Court is unsustainable. It has been clearly stated that existence of a substantial question of law is the sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC.

23. Submission of the learned senior counsel for the appellant is that Order XLI Rule 5 confers jurisdiction on the High Court while dealing with an appeal under Section 100 CPC to pass an ex parte order and such an order can be passed deferring formulation of question of law in grave situations. Be it stated, for passing an ex parte order the Court has to keep in mind the postulates provided under sub-rule (3) of Rule 5 of Order XLI. It has to be made clear that the Court for the purpose of passing an ex parte order is obligated to keep in view the language employed under Section 100 CPC. It is because formulation of substantial question of law enables the High Court to entertain an appeal and thereafter proceed to pass an order and at that juncture, needless to say, the Court has the jurisdiction to pass an interim order subject to the language employed in Order XLI Rule 5(3). It is clear as day that the High Court cannot admit a second appeal without examining whether it raises any substantial question of law for admission and thereafter, it is obliged to formulate the substantial question of law. Solely because the Court has the jurisdiction to pass an ex parte order, it does not empower it not to formulate the substantial question of law for the purpose of admission, defer the date of admission and pass an order of stay or grant an interim relief. That is not the scheme of CPC after its amendment in 1976 and that is not the tenor of precedents of this Court and it has been clearly so stated in Ram Phal (supra). Therefore, the High Court has rectified its mistake by vacating the order passed in IA No. 1/2015 and it is the correct approach adopted by the High Court. Thus, the impugned order is absolutely impregnable."

In view of the aforesaid legal position settled by the Supreme Court, it is hereby observed that if the second appeal is not admitted on all the grounds of eviction, on which the decree has been passed by learned Court(s) below, the same deserves to be and can be executed irrespective of order of admission and stay of execution of decree.

18. In view of the aforesaid, there being no involvement of substantial question of law, the second appeal deserves to be dismissed.

19. In view of the prayer made on behalf of the appellant for granting time to vacate the tenanted premises, which has not been opposed by learned counsel for the respondents, in the interest of justice and looking to the period of tenancy, one year time for vacating the tenanted premises is granted on the following conditions:-

(i) The appellant/defendant shall vacate the tenanted premises on or before 31.10.2023.

(ii) The appellant/defendant shall regularly pay rent to the respondents/landlord and shall also clear all the dues, if any, including the costs of the litigation, if any, imposed by learned Courts below.

(iii) The appellant/defendant shall not part with the tenanted premises to anybody and shall not change nature of the tenanted premises.

(iv) The appellant/defendant shall furnish an undertaking with regard to the aforesaid conditions within a period of 3 weeks before learned Court below/executing Court.

(v) If the defendant/appellant fails to comply with any of the aforesaid conditions, the respondents/plaintiff shall be free to execute the decree forthwith.

(vi) If after filing of the undertaking, the defendant/appellant does not vacate the tenanted premises on or before 31.10.2023 and creates any obstruction, he shall be liable to pay mesne profits of Rs.500/- per day, so also for contempt of order of this Court.

20. With the aforesaid observation, this second appeal is hereby **dismissed and disposed off**. No order as to costs.

(DWARKA DHISH BANSAL)
JUDGE

RS