

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 9th OF JULY, 2025

SECOND APPEAL No.37 of 2008

DR. S.K. PATHAK

Versus

***MOOLCHAND (DEAD) THROUGH LRS SMT. ASHA DEVI AND
OTHERS***

.....
Appearance:

Shri Sushant Ranjan, Advocate for appellant.

None for the respondents though served and represented.

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JUDGMENT

This second appeal has been preferred by the appellant/defendant/tenant challenging the judgment and decree dtd. 29.11.2007 passed by 3rd Additional District Judge (Fast Track Court), Katni in Civil Appeal No.78A/2006 reversing the judgment and decree dtd.28.11.2002 passed by 1st Civil Judge Class-II, Katni in Civil Suit No.26A/2001 whereby trial Court dismissed the respondents/plaintiffs' suit for eviction of rented shop filed on the ground of bonafide requirement of original plaintiff-Siyadulari Sahu's son-Jagdish Prasad for starting grain merchant and kirana business.

2. In short the facts are that the original plaintiff-Siyadulari Sahu instituted the suit for eviction of the rented shop for starting business by his son Jagdish Prasad available on the ground under Section 12(1)(f) of the M.P. Accommodation Control Act, 1961 (in short “the Act”) with the allegations that the defendant is tenant in the shop on rent of Rs.225/- per month and without written consent of the plaintiff, he has made several additions and alterations in the rented shop. It is also alleged that except the rented shop there is no other alternative suitable vacant accommodation with the plaintiff in the township of Katni. With these allegations the suit was filed. During the suit, original plaintiff had died, therefore, his husband-Moolchand and son-Jagdish Prasad were substituted as plaintiffs and during pendency of second appeal Moolchand has also died.

3. The defendant appeared and filed written statement denying the plaint averments, however admitted relationship of landlord and tenant between the parties. It is also alleged that the defendant himself has vacated two rooms on ground floor, which are suitable for starting business by the plaintiff’s son. With these contentions, the suit was prayed to be dismissed.

4. On the basis of pleadings of the parties, trial Court framed issues and recorded evidence of the parties and vide judgment and decree dtd.

28.11.2002, dismissed the suit on the ground that the plaintiff has not pleaded unsuitability of two rooms vacated by the defendant himself.

5. Upon filing civil appeal by the respondents/plaintiffs/landlord, first appellate Court vide impugned judgment and decree dtd. 29.11.2007 has set aside the judgment and decree of trial Court and decreed the suit holding the respondent 2-Jagdish Prasad to be in bonafide need of the rented shop for starting his business and that there is no other alternative accommodation available with him in the township of Katni.

6. Against the aforesaid judgment and decree passed by first appellate Court, instant second appeal was preferred, which was admitted on 15.02.2008 for final hearing on the following substantial question of law:-

“Whether the learned First Appellate Court erred in substantial error of law in decreeing the suit of plaintiff/respondent under Section 12(1)(f) of M.P. Accommodation Control Act, 1961 when there is no pleading of plaintiff in his plaint that he obtained two non-residential rooms from the appellant in the year 1994 which he (plaintiff Jagdish Prasad) admitted in para 6 of his testimony?”

7. Learned counsel for the appellant/defendant/tenant submits that it is an established fact on record that the defendant himself vacated two rooms on ground floor upon condition that the landlord shall return them after getting repaired the same. He submits that in any case during pendency of suit the plaintiff herself had died and during second appeal her husband has also died, therefore, these two rooms are available for starting business by Jagdish Prasad and in absence of pleadings and

evidence on the part of the plaintiffs regarding their unsuitability, trial Court rightly dismissed the suit but first appellate Court has committed illegality in decreeing the suit. With these submissions, he prays for allowing the appeal.

8. Heard learned counsel for the appellant and perused the record.

9. From the oral evidence available on record, it is clear that originally there were 5 rooms in possession of the defendant/tenant and the plaintiff-Siyadulari and her husband Moolchand being aged persons and patient of asthma, the defendant vacated two rooms for their residence on ground floor, which were converted by them in one room for their residence in which they resided till their death. It is also clear from the record that still the appellant/defendant is in possession of accommodation, which is having larger area than vacated previously by him, therefore, said two rooms cannot be said to be alternative and suitable accommodation for starting business by Jagdish Prasad.

10. So far as the substantial question of law framed by this Court regarding nature of two rooms vacated by defendant, is concerned, the plaintiff has clearly stated that these two rooms were vacated by the appellant/defendant for residence of Siyadulari and her husband Moolchand and they converted both the rooms into one room and they resided therein till their death, so it cannot be said that said two rooms

are available with the plaintiff as non residential accommodation for starting business by the respondent-Jagdish Prasad.

11. In the case of Kishore Singh vs. Satish Kumar Singhvi, **2017(3) JLJ 375**, a coordinate Bench of this Court has relied upon the decision of Hon'ble Supreme Court in the case of Ragavendra Kumar vs. Firm Prem Machinery 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.

12. At this stage, learned counsel for the appellant/defendant/tenant prays for one year time i.e. up to 30.06.2026 to vacate the suit shop.

13. In view of prayer made by learned counsel for the appellant and looking to the facts and circumstances of the case, this Court deems fit to grant time for vacating the suit shop/tenanted premises upto **30.06.2026** on the following conditions:-

(i) The appellant/defendant/tenant shall vacate the tenanted premises on or before 30.06.2026.

(ii) The appellant/defendant/tenant shall regularly pay monthly rent to the respondents/landlords and shall also clear all the dues, if any, including the costs of the litigation, if any, imposed by Court below, within a period of 30 days.

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

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

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

(vi) If after filing of the undertaking, the appellant/defendant/tenant does not vacate the tenanted premises on or before 30.06.2026 and creates any obstruction, he shall be liable to pay mesne profits of Rs.500/- per day, so also contempt of order/judgment of this Court.

(vii) It is made clear that the appellant/defendant/tenant shall not be entitled for further extension of time after 30.06.2026

14. With the aforesaid observations, this second appeal is hereby **dismissed/disposed off.**

15. Misc. application(s), pending if any, shall stand closed.

(DWARKA DHISH BANSAL)
JUDGE

