

**HIGH COURT OF MADHYA PRADESH AT JABALPUR**

**SA No.560/2012**

Ashok Kumar Dureja

Vs.

Shri Rajendra Kumar Jain through LRs

[Single Bench : Hon'ble Smt. Anjuli Palo, Judge]

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Shri Amit Sohani, learned counsel for the appellant.

Shri R.K. Sanghi, learned counsel for the respondent.  
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**ORDER**  
**(23/03/2017)**

1. Heard on IA No.4343/2017 an application for considering IA No.1118/17. This application under Order 6 Rule 17 of CPC has been filed on the ground that the respondent/plaintiff had filed a suit for eviction of appellant from the suit premises under the provisions of Section 12(1)(c) and 12 (1)(f) of M.P. Accommodation Control Act, 1961 (hereinafter referred to as the "Act") stating that during the pendency of the suit subsequent events took place. The appeal is in continuation of the suit and therefore, as established principle of law, the appellant prays that IA No.1118/17 be decided first.

2. By filing IA No.1118/17 under order 6 Rule 17 of CPC the appellant/defendant has contended that the learned trial Court decreed the suit for eviction under Section 12 (1)(c) and 12 (1)(f) of the Act. Being aggrieved by the judgment of the trial Court, he preferred an appeal which is partly allowed by the learned lower appellate Court and held that the plaintiff/respondent failed to make out the case for eviction under Section 12 (1)(c) of the Act. The grounds under Section 12 (1)(f) of the Act stand proved, hence decreed the suit.

3. The proposed amendments are that during the pendency of the second appeal, the respondent/plaintiff obtained possession of another shop No.5 from M/s Vijay Steel and has also made substantial construction over 1620 sq. ft. adjacent to M/s Raj Photoengravers (as shown in the plaint map). The plaintiff/respondent has concealed the availability of the alternative suitable accommodation. The conduct of the plaintiff/respondent clearly shows that he has not having bonafide requirement of the suit premises. Hence, opportunity is required to be given to the defendant/appellant to adduce additional evidence in support of this pleading.

4. Learned counsel for the appellant has placed reliance upon a judgment **Girish Sharma and Anr. Vs. Kailash Chandra (dead) through LRS [2012 SCC OnLine MP 6125]** and **Hasmat Rai and Anr. Vs. Raghunath Prasad [ (1981) 3 SCC 103]**.

5. In his reply the plaintiff/respondent denied the allegations regarding subsequent events. He specifically denied that he constructed new shop No.6 beside the shop No.5 and got vacated the shop No.5 from M/s Vijay Steel. It is contended by the plaintiff/respondent that Shop No.5 was not in the sole ownership or in possession of the respondent nor any substantial change has been made by him. In Shop No.5 M/s Vandana Kasliwal has a share as per will of late Shri Rajendra Kumar Jain. According to the respondent/plaintiff the proposed amendment is malafide and at the stage of second appeal it cannot be allowed for raising fresh factual question. On the above ground the proposed amendments are liable to be rejected.

6. Learned counsel for the respondent has placed reliance upon a judgment of this Court in the case of **Khemchand Mulchand Vs. Govt. of Madhya Pradesh, Bhopal [ 1972 MPLJ 524]**

7. Heard learned counsel for the parties and perused the records.

8. It is true that the proposed amendments are covered under the category of “subsequent events” and seems to be relevant for adjudication of the existing dispute. In case of **Hasmat Rai And Anr. (supra)** the Hon'ble Supreme Court has observed that at the stage of second appeal in the High Court the defendant appellant moved an application under Order VI Rule 17 of CPC for amendment of the written statement for elaborating what was already stated that the decree obtained by the plaintiff against the adjoining tenant of the same building. The High Court thus had before it a fact beyond dispute and beyond controversy that the major portion of the building was vacated by the adjoining tenant way back in 1972.

9. This was an uncontroverted fact. Therefore remand on this point is an exercise in futility under these circumstances, the application for amendment has been admitted. In that case the Hon'ble Supreme Court has also held that the Act enables a landlord to seek eviction of a tenant and obtain possession under various circumstances set out in section 12. If a landlord's bona fide requires possession of a premises let for residential purpose for his own use, he can sue and obtain possession during the pendency of the appeal by the tenant. If the landlord comes in possession of the premises sufficient to satisfy his requirement, on the view taken by the High Court, the tenant should be able to show that the subsequent events disentitled the plaintiff, on the only ground that here is tenant against whom a decree or order for eviction has been passed and no additional evidence was admissible to take note of subsequent events. When a statutory right of appeal is conferred against the decree or the order and once in exercise of the right an appeal is preferred the decree or order ceases to be final. Therefore a tenant against whom a decree for eviction is passed by Trial Court does not lose protection, if he files the appeal, because if the appeal is allowed the umbrella of statutory protection shields him.

10. An appeal is an continuation of first suit. Once an appeal against decree or order of eviction is preferred the appeal being a continuation of suit, landlord's need must be shown to continue to exist at appellate

stage. If the tenant is in a position to show that the need or requirement no more exists because of subsequent events, it would be open to him to point out such events and the Court including the appellate Court has to examine, evaluate and adjudicate the same.

11. In light of the above principles laid down by the Hon'ble Supreme Court, the appellant/defendant is entitled to amend his written statement on account of bonafide need and due to subsequent event.

12. In the case of **Girish Sharma (supra)** the Hon'ble Supreme Court in para 7 has held as under :-

“7. The basic rule of civil law is that the rights of the parties stand crystalised on the date of institution of the suit. A suit must be tried in all its stages on the cause of action that existed on the date of its commencement and the relief in the suit must be confined to matters existing at that date. Although this is settled law as general rule, it is equally settled that there are exceptions to this rule and it is open to the court in exceptional cases to take into consideration subsequent events. Equally clear is the principle, the Court cannot be blind to subsequent events for the purpose of adjudication of the controversy in issue.”

13. It is well settled that the cause of action for the suit grounded on the personal requirement of a land lord is not such personal action that would die with the plaintiff, but survives to his heirs and they can continue the suit as substituted landlords only when it is proved that they also themselves need the premises. The Hon'ble Supreme Court has also held that an appeal in continuation of suit and therefore, making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities. The Hon'ble Supreme Court in the aforesaid case also relying on the case of **Pasupuleti Venkateswarlu Vs. Motor and General Traders [(1975) 1 SCC 770]** has held that the appellate Court can take notice of the subsequent event having bearing on the controversy. On the above grounds the Hon'ble Supreme Court sent back the case to the trial Court for fresh decision after allowing the amendment application.

14. In the present case, it is alleged that during pendency of the appeal the respondent/plaintiff has obtained the possession of shop No.5 from M/s Vijay Steel and he further made construction of another shop over 1620 sq. ft. adjacent to M/s Raj Photoengravers. This alleged availability of the alternative suitable accommodation during pendency of the appeal satisfies the bonafide requirement of the plaintiff which reflect requirement of the plaintiff/respondent under Section 12 (1)(f) of the Act. But in the case of **Khemchand Mulchand (supra)** this Court has held that it is beyond comprehension how the appellate Courts are liable to decide such such type of application when they have not idea whatsoever on the merits of the appeal. The question whether the party should or should not be allowed to amend its pleadings at the appellate stage cannot in its very nature be decided unless the appeal is first heard on merits.

15. Section 101 of CPC provides no second appeal shall lie except on the ground mentioned in Section 100. Section 100 expressly bars second appeal unless a question of law and that too substantial one is involved in a case, this Court before admitting a second appeal has to satisfy its that the case involves a substantial question of law. Needless to say that satisfaction has to be arrived at after considering the grounds as put forth by the appellant as also record and judgment of the two Courts below.

16. In light of the above observation in the case of **Khemchand Mulchand (supra)**, the prayer of the appellant for considering IA No.1118/17 before admission stage is not proper. Accordingly, IA No.4343/17 is dismissed with the direction that IA No.1118/17 an application for amendment in the written statement shall be considered at the time of final hearing of appeal on merits.

**[Smt. Anjali Palo]**  
**Judge**