

HIGH COURT OF MADHYA PRADESH : JABALPUR
SINGLE BENCH : JUSTICE MS.VANDANA KASREKAR

CIVIL REVISION No.248/2014

Rajendra Prasad Gupta

Vs.

Smt. Sushila Devi Jaswani

Smt. Shobha Menon, learned senior counsel with Shri Rahul Choubey, learned counsel for the applicant.
Shri Avinash Zargar, learned counsel for the non-applicant.

Whether approved for reporting : Yes

ORDER
(05/10/2016)

The applicant has filed the present civil revision under Section 23-E of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as 'the Act') against the order dated 02/04/2014 passed by Rent Controlling Authority in R.C.A. No.2-B/2010-11.

2. Brief facts of the case are that the applicant was a tenant in shop No.2, Navyuvak Sabha School Road, Bairagarh, Distt. Bhopal. Tenancy agreement has been executed between the applicant and the non-applicant on 01/08/1986. The non-applicant issued a legal notice dated 27/05/2008 to the applicant for evicting the premises on the ground that the shop

in question is bona fide required to the non-applicant for starting the business of her son namely Deepak Jaswani who is unemployed. The applicant filed reply to the legal notice and denied the agreement made in the notice. The non-applicant, thereafter, instituted Civil Suit No.947-A/2012 for eviction of the accommodation. The applicant filed an application under Order 7 Rule 11 of CPC contending that since the non-applicant is a widow, therefore, appropriate remedy available to her under M.P. Accommodation Control Act, 1961 was to file an application before the Rent Controlling Authority under Section 23-A of the Act.

3. The trial Court vide its judgment and decree dated 26/03/2009 dismissed the suit preferred by the non-applicant and allowed the application filed by the applicant under Order 7 Rule 11 of CPC. The non-applicant thereafter filed an application for eviction of the applicant under Section 23-A of the Act which was registered as RCA No.2-B/2010-11 on the ground that the shop in question is bona fide required for her son namely Deepak Jaswani for starting business. The applicant denied the averments made in the application preferred by the non-applicant and thereafter the applicant has

filed an application under Order 14 Rule 5 of CPC for framing additional issues. The said application was rejected by the trial Court vide order dated 18/3/2011. Against the said order dated 18/03/2011 the applicant has preferred civil revision No.206/2011 before this Court which was dismissed vide order dated 12/5/2011. The applicant thereafter filed an application for amendment under Order 6 Rule 17 of CPC for bringing the subsequent facts on record but the same stood rejected vide order dated 13/10/2011.

4. The Rent Controlling Authority after recording the statement of both the parties, has passed an order dated 02/04/2014 thereby allowing the application of non-applicant and directed the applicant to hand over the possession within two months. Being aggrieved by the order passed by the RCA, the applicant has preferred the present civil revision.

5. Learned senior counsel for the applicant submits that the order passed by the Rent Controlling Authority is contrary to the facts, record and law. She further submits that the Rent Controlling Authority, without appreciating the evidence in its proper perspective and in a most casual manner without applying any application of mind, has passed the impugned

order. She submits that the Rent Controlling Authority has not assigned any reason much less cogent reasons showing application of mind in recording a finding of bona fide necessity of non-applicant and in utter disregard to the statutory provisions, has allowed the application of non-applicant. She further submits that the non-applicant has deliberately suppressed the fact of availability of alternate accommodation in her possession. It is for the non-applicant to plead and mentioned about the details of the alternate accommodation and how the same were not suitable for her and in absence of the aforesaid pleadings as mandate under Section 23-A of the Act, the application preferred by the non-applicant ought to have been dismissed. She further argued that the authority below could not have acted upon the agreement dated 01/08/1986 as the same is not registered and duly stamped and, therefore, the same cannot be relied upon even for co-lateral purposes. Learned senior counsel has relied upon the judgment passed by the Apex Court in the case of **Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta** reported in (1999) 6 SCC 222 as well as the judgment passed by this Court in the case of **Balwant Singh Vs. Smt. Prema Devi** reported in 1991

(1) MPWN Note 152.

6. On the other hand, learned counsel for the respondent has supported the order passed by the Rent Controlling Authority. He submits that bare perusal of the order would reveal that the Rent Controlling Authority has appreciated the evidence adduced by the parties, however, has not quoted the evidence and non-quoting of the evidence would not mean that the Rent Controlling Authority has not appreciated the evidence on record. He also submits that Section 23-D of the Act provides for procedure to be followed by Rent Controlling Authority or grant of leave to tenant to contest. Sub-section (2) of the said Section provides that the Rent Controlling Authority shall, while holding an enquiry in a proceeding to which this Chapter applies, follow as far as practicable, the practice and procedure of a Court of Small Causes including the recording of evidence under the Provincial Small Causes Courts Act, 1987. He further submits that as per the said section, Rent Controlling Authority is required to hold summary enquiry and, therefore, the detail of the evidence is not required to be mentioned in the order. He further submits that since the eviction order of the Rent Controlling Authority

is based on admitted facts and as per the judgment passed by the Apex Court in the case of **Vice -Chairman, Kendriya Vidyalaya Sangathan and another Vs. Girdharilal Yadav** reported in **(2004) 6 SCC 325**, admitted facts need not to be proved. He has further relied upon the judgment passed by the Apex Court in the case of **Sushil Kumar Vs. Rakesh Kumar** reported in **(2003) 8 SCC 673**. So far as the question regarding admissibility of the rent agreement is concerned, learned counsel for the respondent has argued that the document once tendered in evidence, cannot be questioned later on and for the said purpose, he relied upon the judgments passed by the Apex Court in the cases of **Shyamlal Vs. Sanjeev Kumar and others** reported in **(2009) 12 SCC 454**, **Oriental Insurance Company Limited Vs. Premlata Shukla and others** reported in **(2007) 13 SCC 476**. Regarding the scope of interference in the revision, learned counsel for the respondent relied upon the judgment passed by the Apex Court in the case of **Hindustan Petroleum Corporation Limited Vs. Dil Bahar Singh** reported in **(2014) 9 SCC 78**. He further submits that the order passed by the Rent Controlling Authority is based on admission of the tenant, therefore, the order passed by the Rent

Controlling Authority cannot be interfered. Thus, in the light of the aforesaid submissions, he prays for dismissal of the civil revision.

7. I have heard learned senior counsel for the applicant as well as learned counsel for the respondent and perused the record. The applicant has filed an application under Section 23-E of the Act before the Rent Controlling Authority for eviction of the applicant on the ground of bona fide requirement of her son. It is an admitted fact that the rent agreement was executed between the applicant and the non-applicant. The applicant, in his evidence, has also admitted the tenancy. In the agreement which has been executed by the non-applicant, one of the clause is that the applicant will vacate the premises as and when required by the non-applicant. The Rent Controlling Authority while passing the order has relied on the said clause of the agreement and on the basis of the said agreement, the Rent Controlling Authority has passed the impugned order. From perusal of the impugned order, it appears that the order passed by the Rent Controlling Authority shows that there is no appreciation of evidence and he has passed order in a cryptic manner. There is no discussion of

evidence put forth by both the parties. This Court in the case of **Ramkishore Vs. Gyanchandra Jain** reported in **2010 (3) MPLJ 359**, has held that due to lack of proper appreciation of evidence adduced by the parties and also contrary to existing legal position, the eviction of the applicant from the disputed premises is apparently perverse. Although as per Section 23-D of the Act, Rent Controlling Authority has to make an enquiry as in the small causes cases, but the Rent Controlling Authority should apply its mind objectively. However, in the present case, from bare perusal of the order, it reveals that there is completely non-application of mind on the part of the Rent Controlling Authority. Thus, I deem it fit to remand the matter to the Rent Controlling Authority for passing the order afresh after due appreciation of evidence on record.

8. In view of aforesaid discussion, this revision is allowed. The impugned order dated 02/04/2014 passed by the Rent Controlling Authority is hereby set aside and the matter is remanded back to the Rent Controlling Authority to pass a fresh order after appreciating the evidence on record. The Rent Controlling Authority shall pass fresh order within three months. Since I am not deciding the matter on merit and has

remanded the case to the Rent Controlling Authority, therefore, the judgments cited by learned counsel for both the parties are not discussed in detail.

9. Record of the Rent Controlling Authority be sent to Rent Controlling Authority, Bhopal forth with.

(Ms. Vandana Kasrekar)
JUDGE

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