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MP-6745-2019

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 23rd OF FEBRUARY, 2026MISC. PETITION No. 6745 of 2019*SMT. SUMAN SONI**Versus**SHRI RATHORE SAKAL PANCH TRUST KHANDWA AND OTHERS*

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Appearance:

Shri Avinash Zargar - Advocate for petitioner.

*Shri Arpan Pawar - Senior Advocate with Shri Chiranjeev Sharma -
Advocate for respondent No.1.*

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ORDER

By way of this petition, challenge is made to the order dated 26.08.2019 and 22.11.2019 passed by the executing Court, whereby the executing Court has proceeded to issue possession warrant against the present petitioner.

2. It is contended by counsel for the petitioner that the impugned orders passed by the executing Court are bad in law because the executing Court has failed to see that the arrears of rent were duly paid in October, 2017 and prior to that the landlord had been avoiding to receive the rent. Therefore, there were no arrears of 5 months of rent as per the compromise decree and if the arrears were there, then those were on account of the refusal of the landlord to accept the rent for which there were sufficient pleadings on record before the executing Court but the executing Court has failed to see all these pleadings on record.

3 . *Per contra*, it is contended by the counsel for the respondents that the executing Court has rightly proceeded to issue possession warrant in compliance of the compromise decree dated 30.10.2013 and no error has been committed by



the executing Court. It is contended that the rent had not been paid after October, 2016 and the last rent was paid up to 30.10.2016. Thereafter, no rent had been paid and the next rent was paid in October, 2017 which was with delay of 11 months and, therefore, in terms of compromise decree, the executing Court has rightly issued the possession warrant.

4. Upon hearing counsel for the rival parties and on perusal of the record, it is seen that the husband of the petitioner was a tenant in a shop owned by the respondent No.1/Trust. Earlier eviction suit was filed and in that eviction suit, a compromise decree was framed on 31.10.2013 as per which from November, 2013, the monthly rent of the suit shop shall be Rs.800/- per month and if the defendant does not pay rent for a continuous period of 5 months in future, then the eviction decree would become executable. There were certain other terms and conditions also in the said compromise decree including enhancement of rate of rent which are not relevant for the purpose of present petition.

5. As per the last rent receipt dated 15.12.2016, the rent was paid up to 30.10.2016 by some person on behalf of the tenant. The original tenant had already expired on 15.10.2016 and even after his death, the rent was paid on 15.12.2016 and, therefore, it can be safely inferred that the knowledge of the compromise decree was very much available to his legal representatives.

6. Thereafter, when the rent was not paid, then an execution petition was filed as per the terms of compromise decree against the son of the deceased tenant and in the said proceedings, the present petitioner being wife of the deceased tenant also appeared and later on she has been impleaded in the execution proceedings.

7. The counsel for the petitioner tenant has vehemently argued that it was the landlord who was refusing to accept the rent from the tenant and, therefore, the



tenant had deposited a cheque in the account of the landlord on 20.09.2017 but as the account had been blocked, therefore, the cheque had been bounced back on same date. The counsel for petitioner had vehemently relied on account statement Annexure P-5 to buttress this fact.

8. Upon going through the said account statement, it is seen by this Court that though cheque of Rs.1,11,040/- was tendered on 20.09.2017 but it was bounced back on 20.09.2017 itself as the account of the landlord was blocked and thereafter the tenant had paid an amount of Rs.11,960/- on 25.10.2017.

9. Therefore, it is clear that the tenant first attempted to pay the rent on 20.09.2017 and then actually paid the rent on 25.10.2017. Even if the date on which earlier cheque was submitted in the Bank account of the landlord but it was bounced back is considered to be a *bona fide* attempt of the tenant to pay the rent, then also it was on 20.09.2017 whereas the last rent had been paid up to 30.10.2016 and, therefore, the default of 5 months had come into operation on 01.04.2017. Even the execution petition in terms of the compromise decree had been filed on 01.05.2017 by the landlord after waiting for another one month after the decree had become executable. This execution application was filed against the son of the tenant but, later on, the wife of the tenant has also been impleaded in the execution proceedings.

10. Though the learned counsel for the petitioner has vehemently argued before this Court that the landlord was avoiding to receive the rent but even if the landlord had been avoiding to receive the rent, the tenant could have deposited cheque in the Bank account within the breathing time of 5 months but he deposited the cheque also after 11 months of the last payment of rent by depositing the cheque on 20.09.2017 while the last rent was paid up to 30.10.2016.



11. Upon refusal of the landlord to accept the rent, the rent could have been paid before the Rent Controlling Authority, or tendered by money order, but the tenant even did not opt for this course of action available with the tenant.

12. Therefore, it is a clear case of the tenant defaulting to pay the rent and violating the terms of the compromise decree which made the decree of eviction executable upon a continuous default of 5 months in payment of rent. Even the attempts to pay the rent by way of cheque were undertaken in September, 2017 which is after receiving notices of execution. Therefore, the executing Court has not erred in issuing warrant of possession against the petitioner by holding the compromise decree to have become executable.

13. Consequently, finding no ground to interfere in the impugned order passed by the executing Court, the petition fails and is *dismissed*.

(VIVEK JAIN)
JUDGE