

HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT
AT JABALPUR

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| Civil Revision No. | 413/2021 |
| Applicant | Himadri Pal Vs. Rajeev Rawat and another |
| Bench Constituted | Single Bench |
| Judgment delivered By | HON'BLE SHRI JUSTICE VISHAL DHAGAT |
| Whether approved for reporting | Yes. |
| Name of counsel for parties | For Applicant : Shri Ankit Saxena, Advocate. For Respondents : Shri R.S. Jaiswal, learned Senior Counsel with Shri Devashish Mathur, Advocate |
| Law laid down | Proviso to Section 23-C of M.P. Accommodation Control Act, 1961 gives power to Rent Controlling Authority to set aside 'ex-parte order.' Words used in proviso is 'ex-parte order' but not 'ex-parte order of eviction.' Rent Controlling Authority can set aside ex-parte order but not final ex-parte order of eviction. If a final order of eviction has been passed and in case tenant has not obtained permission for leave to defend, then civil revision under Section 23-E of M.P. Accommodation Control Act, 1961 will not be maintainable. |
| Significant paragraph number | 6 |

(O R D E R)

03/12/2021

Applicant has filed this revision petition challenging order of eviction dated 15.09.2021 passed by Rent Controlling Authority-S.D.O., Kolar, District Bhopal in Case No. 570/B-121/2021-22.

2. At initial stage, counsel appearing for the respondents opposed civil revision on the ground that civil revision filed by the applicant is not maintainable. It is submitted that tenant is required to file an application for leave to defend the case within 15 days from service of summons. It is submitted that applicant has not filed any application for permission to defend the case. Since application has not been filed and order of eviction has been passed in favour of the respondents, therefore, applicant can no longer file this revision challenging order passed by Rent Controlling Authority.

3. Counsel appearing for the applicant submitted that as per provision of Section 23-C of M.P. Accommodation Control Act, 1961, applicant can file an application for setting aside the order of eviction before the Rent Controlling Authority. It is submitted that he may be permitted to withdraw civil revision with liberty to file an appropriate application under Section 23-C of M.P. Accommodation Control Act, 1961.

4. Learned Senior Counsel appearing for the respondents submitted that application under Section 23-C can only be passed for setting aside the ex parte order but not against the order of eviction passed against the applicant. Therefore, civil revision is not maintainable.

5. Heard the counsel for the parties.

6. On perusing Section 23-C of M.P. Accommodation Control Act, 1961, it is clear that proviso to Section 23 gives power to Rent Controlling Authority to set aside 'ex-parte order' passed against the

tenant if he has not entered appearance and filed application for leave to defend. Proviso does not refer to ex-parte order of eviction. Word eviction cannot be read in Section 23-C of M.P. Accommodation Control Act, 1961. In view of same, Section 23-C of M.P. Accommodation Control Act, 1961 will not be applicable when final order of eviction has been passed.

7. No application for leave to defend is filed by the applicant, which is essential requirement to contest the case, therefore, civil revision filed by the applicant is not maintainable.

8. Considering the same, civil revision filed by the applicant is **dismissed.**

(VISHAL DHAGAT)
JUDGE