

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 26th OF APRIL, 2023

MISC. PETITION No. 4844 of 2021

BETWEEN:-

**VIPIN KUMAR MEHTA S/O PRABHUDAYAL
MEHTA, AGED ABOUT 74 YEARS, R/O
GUJRAT LODGE, GHORA NIKKAS ROAD,
BHOPAL (MADHYA PRADESH)**

.....PETITIONER

(BY MS. SANJNA SAHNI- ADVOCATE)

AND

**RAJKUMAR JAIN S/O SOBHAGYAMAL JAIN
R/O E-3/85, ARERA COLONY, BHOPAL
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI MANISH KUMAR JAIN - ADVOCATE)

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*This petition coming on for admission this day, the court passed the
following:*

ORDER

1. This Petition under Article 227 of the Constitution of India has been filed against the order dated 06.12.2021 passed by 14th Additional District Judge, Bhopal in MJC No.276/2021 by which the order passed by the Rent Controlling Authority under Section 10 of M.P. Accommodation Control Act has been put for execution.

2. The facts necessary for disposal of this petition in short are that an order under Section 10 of M.P. Accommodation Control Act was passed by the Rent Controlling Authority thereby determining the standard rent. An appeal is pending against the said order. The order of fixing standard rent was put for execution. In the execution proceedings, the petitioner filed an application for stay of further proceedings. By the impugned order, the said application has been rejected.

3. Challenging the order passed by the Court below, it is submitted by the counsel for the petitioner that an order under Section 10 of M.P. Accommodation Control Act is not executable under Section 35 M.P. Accommodation Control Act. It is submitted that if the landlord/owner wants to execute the order passed under Section 10 of M.P. Accommodation Control Act, then he has to file a suit either for recovery of arrears or for eviction.

4. To buttress her contention the counsel for the petitioner has relied upon the order passed a Coordinate Bench of this Court in the case of **Triveni Bai (Smt.) Vs. Smt. Vimla Devi** reported in **2011(I) MPWN 86**.

5. *Per contra* the counsel for the respondent has supported the impugned order.

6. Heard the learned counsel for the parties.

7. The Coordinate Bench of this Court in the case of **Triveni Bai (Smt.) (supra)** has held that the order passed under Section 10 of M.P. Accommodation Control Act is not executable and if the landlord wants to recover the arrears, then he has to file a civil suit. Paragraph Nos. 6 and 7 of the said order reads as under:

“6. The Court in the case of *State of Madhya Pradesh v. Mulamchand* 1973 J LJ 489= 1973 MPLJ 632 has held in paragraph 26:-

“26. The above discussion leads to the following conclusions:-

(1) The bar of *res judicata* operates also as between two stages in the same litigation.

(2) A decision in a writ proceedings operates as *res judicata* in a subsequent suit based on the same cause of action between the same parties.

(3) The principle of *res judicata* is based on the need of giving finality to a judicial decision. Once a *res judicata*, it shall not adjudged again. The underlying principle is that the parties should not be vexed twice over.

(4) Even where section 11, Civil Procedure Code, does not apply, the principle of *res judicata* may apply for the purpose of achieving finality in litigation.

(5) A question of law is as much in issue as a question of fact. The expression "matter in issue" is not confined to issues of fact; it includes issues of law as well.

(6) But, for the purposes of the rule of *res judicata*, the issue of law must be an abstract question of law, it must be one relating to its applicability or non-applicability to the facts and circumstances of the particular case.

(7) Even an erroneous decision on an issue of law operates as *res judicata*. Exceptions to this rule are (i) where by a subsequent legislation, the law, as applied in the earlier decision, is altered. However, a different interpretation of the law as given in a subsequent binding preceeding is not the same thing as altering the law. (ii) Where the

question of law is one purely relating to the jurisdiction of the Court. (iii) Where the decision of the Court sanctions something which is illegal. 'Illegality' in this context refers to an act prohibited by law.

(8) As between a decision which operates as *res judicata* and another which is binding precedent, though not *res judicata*, the former prevails. (9) A decision of the Supreme Court is binding on all Courts by virtue of Article 141 of the Constitution, but it is not the same thing as to say that a decision of the Supreme Court alters the law. Article 141 does not confer on the Supreme Court any legislative function. The Supreme Court declares the law; it does not alter the existing law, or make a new law."

Since it was already held in Civil Revision No.465/2001 that the only remedy available to the landlord for recovery of the rent fixed by the Rent Controlling Authority was to file a civil suit for arrears of rent on the basis of rent fixed by the Rent Controlling Authority, it is not now open for the respondents to execute the order of fixation of rent. Such a recourse would be barred by the principle of *res judicata*, in view of *Mulamchand's* decision (supra) of this Court.

7. Even on merit, this Court is of the opinion that Section 35 of the M.P Accommodation Control Act, 1961 does not empower civil Court to execute the order of Rent Controlling Authority, fixing thereby standard rent. Section 35 Act may be reproduced below for convenience:-

"35. *Rent Controlling Authority to exercise powers of Civil Court for execution of other order* :- Save as otherwise provided in section 34, an order made by the Rent Controlling Authority or an order passed in appeal under this Chapter or in a revision

under Chapter III-A shall be executable by the Rent Controlling Authority as a decree of a Civil Court and for this purpose, the Rent Controlling Authority shall have all the powers of a Civil Court."

Perusal of the aforesaid goes to show that an order made by the Rent Controlling Authority or an order passed in appeal under Chapter V or in a revision under Chapter III-A shall be executed by the Rent Controlling Authority as a decree of a Civil Court. The respondents have put the order dated 26.8.1989 passed by the Rent Controlling Authority in exercise of powers under section 10 (4) of the said Act into execution. Section 10 of the Act empowers the Rent Controlling Authority to fix standard rent in respect of any accommodation. Sub-section (4) of it, empowers him to fix such rent, as would be reasonable, having regard to the situation, locality and condition of the accommodation and the amenities provided therein. It merely empowers him make fixation of rent and not to command the tenant to make payment at such rate of rent, which is fixed by him. This apart, it may be seen that the Rent Controlling Authority, vide his order dated 26.8.1989 fixed the rent at the rate of Rs. 75/- p.m. per room and Rs. 50/- p.m. in respect of the Varanda. He further held that the rent would be payable with effect from 16.8.1984. There was no order to the revisionist to make the payment to respondents at the rate on which the rent was fixed by the Rent Controlling Authority. The said order did not contain any command to the revisionist to make the payment to the present respondents. Executability of an order is adjudged from the language of the order itself. Order of the Rent Controlling Authority dated 26.8.1989 was merely about fixation of rent and was not executable, in view of the language employed in it."

8. Section 35 of M.P. Accommodation Control Act reads as under:

“35. Rent Controlling Authority to exercise powers of Civil Court for execution of other order.- Save as otherwise provided in section 34, an order made by the Rent Controlling Authority or an order passed in appeal under this Chapter or in a revision under Chapter III-A shall be executable by the Rent Controlling Authority as a decree of a Civil Court and for this purpose, the Rent Controlling Authority shall have all the powers of a Civil Court.”

9. Accordingly, this Court is of the considered opinion that the Court below erred in law by not staying the further proceedings in the execution proceedings.

10. Accordingly, the order dated 06.12.2021 is hereby **set aside**. The application filed by the petitioner to stay of the further proceedings in execution proceedings is hereby **allowed**. The further proceedings in execution proceedings shall remain stayed till the pendency of the appeal.

11. The petition succeeds and is hereby **allowed**.

(G.S. AHLUWALIA)
JUDGE

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