

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

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 24th OF JANUARY, 2024

MISC. PETITION No. 43 of 2024

BETWEEN:-

**RAJ JAISWAL S/O LATE RAJEEV JAISWAL, AGED
ABOUT 20 YEARS, OCCUPATION: PROPRIETOR
RAJU TAYARE R/O 306 GAHDI CHOWK VIJAY
NAGAR JABALPUR (M.P)**

.....PETITIONER

(BY SHRI R.K TIWARI - ADVOCATE)

AND

- 1. SHRI GOPAL LAL JI MAHARAJ TRUST
REGISTERED THROUGHT MUKHTYARAAM
SHRI PORASHANT SHARMA S/O SHRI
GOVIND LAL SHARMA AGE 51 OFFICE
HANUMANTAL JABALPUR (MADHYA
PRADESH)**
- 2. NAND KISHORE SAHU S/O RAJARAM SAHU
H.NO.273, UTTAR MILLONIGANJ (MADHYA
PRADESH)**

.....RESPONDENTS

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

ORDER

This misc. petition has been preferred by the petitioner/defendant/tenant challenging the order dated 25.09.2023 passed by 7th Civil Judge Junior Division, Jabalpur in RCSA No.8124/2020 whereby trial Court has dismissed petitioner's application under Order 7 Rule 11 read with Section 151 CPC.

2. Learned counsel for the petitioner submits that the respondent 1/plaintiff has instituted a suit for eviction of shop as well as for arrears of rent w.e.f. April 2020 and has valued the suit and paid requisite court fees for eviction only, but has not valued the suit in respect of arrears of rent and also not paid requisite court fees and by filing application under Order 7 Rule 11 CPC, this illegality was brought to the notice of trial Court but the Court has also not taken cognizance of it and has dismissed the application holding that the plaintiff has rightly valued the suit and paid requisite court fee. With these submissions learned counsel prays for allowing the misc. petition.

3. Heard learned counsel for the petitioner and perused the plaint and impugned order.

4. Perusal of relief clause 10(ii), as claimed in the plaint, shows that the plaintiff in addition to the relief of eviction, has claimed arrears of rent also w.e.f. month of April 2020 along with compensation of Rs.100/- per day, but has not valued the suit for that purpose and has also not paid

any court fees. Undoubtedly the instant suit would be governed by section 7(xi)(cc) of the Court Fees Act, 1870.

5. For due appreciation, provision contained in section 7(xi) of the Court Fees Act, 1870 is quoted as under:-

"Between landlord and tenant- (xi) In the following suits between landlord and tenant:-

- (a) for the delivery by a tenant of the counterpart of lease,
- (b) to enhance the rent of a tenant having a right of occupancy,
- (c) for the delivery by a landlord of a lease,
- [(cc) for the recovery of immoveable property from a tenant, including a tenant holding over after the determination of a tenancy,]
- (d) to contest a notice of ejection,
- (e) to recover the occupancy of [immoveable property] from which a tenant has been illegally ejected by the landlord, and
- (f) for abatement of rent- according to the amount of the rent of the [immoveable property] to which the suit refers, payable for the year next before the date of presenting the plaint".

6. So far as the question of valuation of suit for purpose of arrears of rent (prior to suit) is concerned, a coordinate Bench of this Court has, in the case of Shri Ramkrishan Trading Co. v. Smt. Shakuntla Devi, **1982 MPWN 401**, held as under :-

“The learned counsel for the non-applicant has vehemently argued before me that there is no need of paying Court fees for the amount of arrears of rent, as has been held by the Courts below. It has been alleged in the plaint that if the defendant fails to deposit the amount of arrears of rent, a decree for the said amount be also passed in favour of the plaintiff and he will pay the Court fees subsequently. This sort of prayer, which, amounts for asking for arrears of rent, even though made in a very clear language, cannot be said to be sufficient so as to evade the payment of Court fee and, in my opinion, payment of Court- fees, arrears of rent is absolutely essential and the order of the Courts below in this regard is correct. If the plaintiff does not want to pay

the Court-fee for the said relief, then she will have to delete the said prayer for passing a decree for arrears of rent.”

7. Aforesaid view of coordinate Bench of this Court in the case of Shri Ramkrishan Trading Co. (**supra**) has already been affirmed by Division Bench of this Court in the case of Omprakash Gupta (Dr.) vs. Ram Prakash and others **1994 JLJ 26 = 1993 MPLJ 869** (DB). Relevant paragraph 15 of which is as under :

“15. The question still remains to be decided whether on such transfer, in view of the law laid down in Baijnath 's case (*supra*), a landlord can seek eviction on the ground of default in payment of arrears of rent under Section 12(1)(a) and, if he can, then certainly, as rightly contended by Shri V.K. Bharadwaj, learned counsel for the tenants, placing reliance on short-noted decision of a learned Single Judge of this Court in 1982 MPWN 401, Shri Ramkrishan Trading Co. v. Smt. Shakuntala Devi, that, as the suit will not only be for possession but for arrears of rent also, the court-fees payable on the former relief would be under Sub-clause (cc) of Clause (xi) of Section 7 of the Court Fees Act, and for the latter ad valorem court-fees on the money claimed.”

8. In view of the aforesaid, it is clear that if the plaintiff prays for relief in respect of recovery of arrears of rent, then he is required to value the suit for that purpose and has to pay requisite/ad-valorem court fee on the amount of arrears of rent claimed by him.

9. As in the instant suit, no valuation has been made in respect of arrears of rent and no court fee has been paid, therefore, in my considered opinion trial court has committed illegality in dismissing the application holding thereby that the plaintiff has valued the suit properly and has paid requisite court fee.

10. Resultantly, impugned order deserves to be and is hereby set aside and matter is remanded back to trial Court for decision of application under Order 7 Rule 11 CPC afresh.

11. It is pertinent to mention here that if the plaintiff does not want to value the suit and pay court fee for aforesaid purpose, he would be at liberty to delete the relief clause 10(ii) of the plaint.

12. With the aforesaid, this misc. petition is **allowed** partly and disposed off. Pending application(s), if any, shall stand disposed off.

(DWARKA DHISH BANSAL)
JUDGE

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