

M/s Chhotelal Pyarelal, the Partnership Firm and Others

Vs

Shikarchand

Civil Appeal No. 3027 of 1984

(P. N. Bhagwati, Sabyasachi Mukharji JJ)

27.07.1984

JUDGMENT

BHAGWATI, J. -

1. The respondent filed an application under Clauses 13(3)(vi) and (vii) of the C.P. and Berar Letting of Houses and Rent Control Order of 1949 (hereinafter referred to as HRC Order) to evict petitioner 1 firm of M/s Chhotelal Pyarelal. The respondent alleged that the firm was a tenant in respect of the premises and eviction of the firm was sought on the ground of bona fide requirement of the respondent for the purpose of his occupation under paragraph (vi) as also for the purpose of making essential repairs under paragraph (vii) of Clause 13(3). The firm of Chhotelal Pyarelal raised a preliminary contention that no application could be maintained against a partnership firm and such an application was liable to be rejected. This contention ultimately came to be considered by a learned Single Judge of the High Court at Nagpur. The learned Single Judge being under the impression that there was still operative a judgment of another Single Judge of the High court taking the view that such an application against a partnership firm was not maintainable, referred this question to a larger Bench. This question accordingly came up before a Division Bench of the High Court. It was pointed out before the Division Bench that undoubtedly a view was at one time taken by a learned Single Judge that an application for eviction against a partnership firm was not maintainable but this view was overhauled by a Division Bench of the High Court in a Letters Patent appeal filed against that decision. The Division Bench accordingly held that an application for eviction under the HRC Order was maintainable against a partnership firm without joining any partner constituting the partnership firm as a respondent to the application. This view taken by the Division Bench is assailed in the present appeal filed by the first of M/s Chhotelal Pyarelal with special leave obtained from this Court.

2. Now, there can be no doubt that since the Code of Civil Procedure does not apply to proceedings under the HRC Order, no application for eviction can be maintained against a firm in the firm name. The firm is merely a compendious name for the partners constituting it and it is only by virtue of the provisions of Order 30 of the Code of Civil Procedure that a firm can sue and be sued in its own name without the partners being impleaded eo nomine. It is therefore clear that the firm of M/s Chhotelal Pyarelal could not be sued in the firm name by the respondent insofar as the application for eviction under the HRC Order was concerned. But we agree with the Division Bench of the High Court that this cannot by itself result in the dismissal of the application. It would be merely a case of misdescription of the respondents to the application and this misdescription can be corrected at any stage of the proceedings. There can be no doubt that the partners of the firm are before the Court though in a wrong name.

3. The learned counsel appearing for the respondent has, therefore, applied to us for leave to amend the cause title of the original application by adding the names of the partners of the firm of M/s Chhotelal Pyarelal as respondents along with the firm of M/s Chhotelal Pyarelal and carrying out necessary consequential amendments in the body of the application. We allow the application for amendment and remit the case back to the Rent Controller so that he may dispose it of on merits. The respondent will carry out the amendment in the application for eviction within two weeks from the date of receipt of this Order by the Rent Controller and the newly added respondent will file their written statement in answer to the application for eviction within a further period of four weeks thereafter. The Rent Controller will then proceed to dispose of the application for eviction as expeditiously as possible and in any event before the expiration of a period of 6 months. There will be no order as to costs of the appeal.

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