

Prem Narayan Barchhiha

Vs

Hakimuddin Saifi

Civil Appeals Nos. 999-1000 of 1998

(V. N. Khare, S. M. Quadri JJ)

03.08.1999

JUDGMENT

SYED SHAH MOHAMMED QUADRI, J. - \

1. These appeals, by special leave, are from the judgments and decrees of the High Court of Madhya Pradesh at Jabalpur in Second Appeals Nos. 408 and 409 of 1989 passed on 9-7-1997. The appellant is the landlord and the respondent is the tenant of two shops in House Nos. 23/507 and 23/508 situated at Azad Chowk Handipara, Raipur (hereinafter referred to as "suit premises").

2. On 2-5-1985, the appellant filed two suits in the Court of IIInd Civil Judge Class II, Raipur, against the respondent for his eviction from the suit premises on the ground of bona fide requirement of his unemployed son for establishing a provision store under Section 12(1)(f) of the Madhya Pradesh Accommodation Control Act, 1961 (for short "the Act"). He stated that he had no alternative reasonably suitable non-residential accommodation in the city of Raipur for the said purpose. The respondent's plea was one of denial of bona fide requirement of the landlord. After framing necessary issues and considering the evidence on record, the learned trial Judge came to the conclusion that the appellant failed to prove his bona fide requirement and observed that he had only a desire to establish the business for his son. However, he recorded the finding that the appellant had no reasonably suitable accommodation in Raipur city. Consequently both the suits were dismissed by the learned trial Judge by a common judgment on 27-1-1987. Dissatisfied with that judgment and decree of the trial court the appellant filed two appeals in the Court of Ist Additional District Judge, Raipur. The learned District Judge, on appreciating the evidence, held that the appellant had proved bona fide requirement for establishing a business for his son. In that view of the matter he allowed the appeals and decreed the suits against the respondent on 6-9-1989. The tenant questioned the correctness of the said judgment and decree of the learned District Judge before the High Court in Second Appeals Nos. 408-09 of 1989.

3. The High Court, at the time of admission of the second appeals, framed the following question of law for determination :

"Whether the court below was justified in granting a decree under Section 12(1)(f) of the M.P. Accommodation Control Act, 1961, under the facts and circumstances of the case ?"

4. At the stage of final hearing of the second appeals, the following additional substantial question of law was formulated :

"Whether the respondent has proved all the ingredients of Section 12(1)(f) of the M.P. Accommodation Control Act, 1961 in order to get a decree of eviction against the appellant ?"

The answer to these questions recorded by the High Court is that the appellant failed to prove all the ingredients of Section 12(1)(f) of the Act and his claim that he bona fide required the suit premises cannot be sustained as he suppressed the fact that he was in possession of an alternative vacant accommodation in the same building. The High Court thus allowed the appeals of the respondent and dismissed both the suits of the appellant for the same reasons but by separate judgments dated 9-7-1997. It is against those judgments and decrees of the High Court that the present appeals are filed.

5. Mr. S. S. Khanduja, learned counsel for the appellant contended that the High Court fell into an error in reappreciating the evidence and answering the questions in the negative - against the appellant. The High Court should have, submitted the learned counsel, recorded answers to the questions on the basis of the facts found by the first appellate court.

6. Mr. B. S. Bantia, learned counsel appearing for the respondent argued that the appellant/landlord, before filing the eviction petition, had in his possession two residential portions of the house which he let out to others but he did not plead that he was in possession of the other accommodation and that it was not suitable for non-residential purposes. So the High Court was right in coming to the conclusion that as the appellant suppressed the facts his plea for bona fide personal requirement could not be accepted.

7. On the contention urged before us, the question that needs to be adverted to is :

"Whether it is incumbent upon a landlord, seeking eviction of the accommodation let out for non-residential purposes under Section 12(1)(f) of the Act, to disclose if he is in possession of residential accommodation and further prove that it is not suitable for non-residential purposes."

8. The definition of "accommodation" in Section 2(a) of the Act, reads as under :

"2. (a) 'accommodation' means any building or part of a building, whether residential or non-residential and includes, -

(i) any land which is not being used for agricultural purposes;

(ii) garden, grounds, garages and outhouses, if any, appurtenant to such building or part of the building;

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof,

(iv) any furniture supplied by the landlord for use in such building or part of building."

9. The word "accommodation" takes in both residential as well as non-residential building or part of a building. In Section 12(1)(e) and (f), the expressions "accommodation let for residential purposes" and "accommodation let for non-residential purposes" are used distinctly in clear and

unmistakable terms.

10. Now, it will be apt to refer to clauses (e) and (f) of Section 12(1) of the Act which run as under :

"12. Restriction on eviction of tenants. - (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :

(a) to (d) * * *

(e) that the accommodation let for residential purposes is required bona fide by the landlord for occupation as a residence for himself or for any member of his family, if he is the owner thereof, or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned;

(f) that the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned."

11. A plain reading of the provisions, extracted above, makes it clear that the Act maintains a clear distinction between the accommodation let for residential purposes and the accommodation let for non-residential purposes. Clause (e) deals with ground of eviction of a tenant from accommodation let for residential purposes. Under this clause eviction of a tenant can be sought if the landlord bona fide requires the accommodation let for residential purposes for occupation as a residence for himself or for any member of his family, provided he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. Clause (f) deals with ground of eviction of a tenant from accommodation let for non-residential purposes and provides that the tenant can be evicted, if the landlord requires accommodation let for non-residential purposes, bona fide for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned. They [clauses (e) and (f)] are thus distinct and independent grounds having different ingredients and are thus mutually exclusive. That this is the purport of the said provisions has been endorsed by this Court in *Panjumal Daulatram v. Sakhi Gopal* ((1977) 3 SCC 284) and in *Hasmat Rai v. Raghunath Prasad* ((1981) 3 SCC 103 : AIR 1981 SC 1711).

12. Now the ingredients of clause (f), with which we are concerned here, are :

(1) the accommodation from which the tenant is sought to be evicted has been let out for non-residential purposes;

(2) the landlord is the owner thereof and requires that accommodation bona fide for the purpose of continuing or starting (i) his business or (ii) business of any of his

major sons or unmarried daughters; or

(3) the landlord requires the accommodation for any person for whose benefit the accommodation is held by him; and

(4) the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city/town concerned.

13. Admittedly, here requirements (1) and (2) are satisfied [(2) and (3) are alternative]. In regard to (4) what is necessary for the appellant is to satisfy the Court/Rent Controller that he or such person for whom eviction is sought, has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned. On this aspect the learned District Judge correctly recorded the finding in favour of the appellant. It follows that the landlord seeking eviction of a tenant from non-residential accommodation on the ground that he required the same for the purpose of continuing or starting his business or that any of his major sons or unmarried daughters has to prove that he has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town. It is no part of the obligation of the landlord seeking eviction of a tenant under clause (f) of Section 12(1) of the Act to aver in his plaint/petition the facts that he is in occupation of residential accommodation and that it is not suitable for non-residential purposes. These facts are not the requirement of clause (f) and are irrelevant to make out a case under that clause. To read such a requirement in the said clause (f) would amount to doing violence to the language of the clause nay rewriting the clause which is far beyond the principle of ironing out the creases and is clearly impermissible.

14. It is futile to contend that accommodation is a neutral word taking in its fold both residential as well as non-residential purposes; the landlord ought to disclose the residential accommodation in his possession and show that it is not reasonably suitable for non-residential purposes when he is seeking eviction of the tenant from accommodation let for non-residential purposes. The court cannot burden the landlord with additional conditions of disclosing particulars of residential accommodation in his possession and proving that it is not reasonably suitable for non-residential purposes. Non-suiting him on such grounds will mean non-suiting him on extraneous grounds. It follows that the appellant has fulfilled the fourth requirement of clause (f) also.

15. It is, however, contended that there is no provision in the Act which prohibits use of the residential accommodation let for non-residential purposes, and therefore, it is the duty of the landlord to show if he has in possession residential accommodation, even when he is seeking eviction of tenant for non-residential accommodation. Neither on principle nor on authority can such a contention be countenanced. We have no hesitation in rejecting the same.

16. From the above discussion, it follows that the appellant has satisfied all the requirements of clause (f) of Section 12(1) of the Act. The impugned judgments and decrees of the High Court on this aspect are, therefore, erroneous and are liable to be set aside.

17. We accordingly set aside the impugned judgments and decrees of the High Court and restore the orders of the first appellate court dated 6-9-1989. The appeals are allowed and the suits of the appellant for eviction of the respondent from suit premises are decreed. There shall be no order as to costs.