

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

FIRST APPEAL No. 299 of 2022

(Air Plaza Retail Holdings Pvt Ltd.

Vs

Jayesh Shah & others)

Appearance:

(Shri Ajay Bagadiya Senior Advocate with Shri Vivek Nagar Advocate for appellant)

(Shri R.S. Chhabra Senior Advocate with Shri Proneesha Nayyar Advocate for respondents no. 1 to 3)

(None for respondent no. 4)

(Service on respondent no. 5 has been dispensed with)

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JUDGMENT

(20/07/2024)

1/ This first appeal has been filed by appellant/tenant under Section 96 of Code of Civil Procedure, 1908 (in short CPC) against the impugned judgment and decree dated 20.12.2021 passed by IInd District Judge Indore in RCAS No. 1108/2018, whereby the civil suit filed by respondents no. 1 to 3/plaintiffs for eviction and recovery of

arrears of rent has been partly decreed.

2 Facts leading to the controversy are as under:-

Respondent no. 1 to 3/plaintiffs have filed a civil suit for eviction, recovery of arrears of rent against the appellant/defendants no. 4 and 5 under section 12(1)(a), 12(1)(b), 12(1)(c) and 12(1)(f) of MP Accommodation Control Act, 1961(in short MPAC Act) by contending that plaintiffs are landlord of the suit premises and the suit premises was let out to defendants for non residential purpose. But the appellant was irregular in paying the rent, the suit accommodation is required for bonafide and genuine requirement of plaintiff's son Mr. Sonik Shah for starting his business of electronic goods and no other alternative suitable accommodation is available for him for said purpose. The rent is due on the appellant since January 2012. The suit premises are in three parts which are interconnected and total rent of suit premises is Rs. 1,05,800/- per month. Therefore, the plaintiffs have given notice to defendants for vacating the suit premises. The defendants also made certain modifications in the way without obtaining any prior permission of plaintiff and accordingly committed nuisance.

3/ The appellants/defendants have denied all averments made in the plaint by contending in their written statement that they are regularly paying the rental amount and appellant No. 2 is conducting business in the suit property. The son of plaintiff Sonik Shah already carrying business of electronic items in the name of Sony World which is situated at AB Road, therefore, an alternative accommodation is available to him for the above business as the subject property is owned by three

different owners, therefore, the eviction suit should for the three, should be filed separately for each. Plaintiff with intention to increase the rent filed the civil suit which deserves to be dismissed.

4 On the basis of aforesaid pleadings, the trial court framed the issues and after adducing evidence on record and the fact that the plaintiffs have bonafide need of suit premises for doing electronic business of his son Sonik Shah and for this purpose no alternative suitable shop was available to him, has partly allowed the suit by the impugned judgment and decree and directed the appellant to vacate the suit premises. Being aggrieved by the impugned judgment and decree, the appellant has preferred this first appeal.

5 It is submitted by appellant in appeal memo that the impugned judgment and decree passed by the trial court is against law and fact, the alternative accommodation was available with the respondents/plaintiff for doing business of his son. The trial court has dismissed the suit for eviction on the ground under Section 12(1)(a) of MP AC Act and suit has been decreed only on the ground of 12(1)(f) of MPAC Act. The plaintiffs have failed to prove the bonafide requirement of suit premises, two alternative shops one at AB Road and second at Mahu Naka have been vacated in which the son of plaintiff is already running his business, therefore, it is prayed that appeal be allowed and impugned judgment and decree passed by the trial court be set aside. Reliance in this regard can also be placed on following judgments:-

1/ Ragavendra Kumar Vs. Firm Prem Machinery & co. (2000) 1 SCC 679

2/ Draupadi Bai Vs. Prem Singh 1991 MPLJ 426

3/ Rishi Kumar Govil Vs. Maqsoodan (2007) 4 SCC 465.

6 Counsel for respondents no. 1 to 3 opposes the prayer by submitting that impugned judgment and decree passed by the trial court is based upon cogent evidence and does not deserve for any interference.

7 Nobody appeared on behalf of respondent no. 4. Although on 12.7.2024, at the stage of final arguments, nobody had appeared on behalf of appellant, but later on, Shri Ajay Bagadiya Senior Advocate with Shri Vivek Nagar Advocate has filed written submission which has been taken for consideration.

8 I have heard learned counsel for the respondents no. 1 to 3 at length and perused the written submission filed by counsel for appellant and record of the trial court with due care.

9 The first contention raised by counsel for appellant is that as the subject property is owned by three different owners, therefore, the eviction suit should be filed separately for each. The plaintiff Jayesh (PW-1) in para 13 of his cross examination admits that rent agreement has been executed by respondent no. 1 with him for all three premises (G+1,2 & 3), but later on in para 20 of his cross examination he again admits that he is owner of premises G1 and his wife Smt. Heena Singh is the owner of the premises G2 and premises G3 is the joint property of Hindu undivided family and he is Karta of the HUF.

10 In the case of **Bake Lal Vs. Madho Prasad reported in 1997(II) MPJF 303** coordinate bench of this court has held that 'a single suit for eviction is good in law and also prevents multiplicity of proceedings'.

Therefore, in view of the law laid down in case of Bake Lal (supra) the contention raised by appellant is not tenable.

11 So far as the main ground of eviction under section 12(1)(a) of MPAC Act is concerned, it is contended by respondent that appellant/defendant no. 2 has failed to pay the rent of the suit premises for the period 1.2.2012 to 31.3.2012 amounting to Rs. 1,05,800/- per month. From perusal of the record, it appears that Plaintiff Jayesh had filed an application under Section 13(6) of MPAC Act before the trial court and had objected that defendants had paid total rent of Rs. 3,56,353/- in the year 2019-20 and 2020-21 and the aforesaid amount has been deposited before the trial court on 4.10.2021 in compliance of the order dated 15.9.2021. The application did not specify any other amount due from the defendants. Certainly, if there was any other amount due from before the aforesaid period, the plaintiffs would have stated it in the said application. Therefore, the trial court has rightly held that appellant/defendant has regularly paid the rent due as per section 13(1) of the Act. Thus the appellant is entitled to get protection under section 13(3) of MPAC Act which provides that if the tenant regularly deposits the rent in compliance with section 13(1) of the Act, therefore, appellant/tenant is entitled to get protection from eviction under Section 12(1)(a) of the MPAC Act. Accordingly the trial court has rightly held that issues no. 2 and 3 are not proved in favour of plaintiff/respondent.

12 So far as ground under section 12(1)(f) of MPAC Act is concerned, the plaintiff Jayesh Shah categorically deposed in his evidence that son of Sonik Shah, plaintiff's No.1 has bonafide requirement of suit property for starting his own business of electronic

showroom. At present Sonik Shah assists plaintiff no.1 in their business, but Sonik Shah now wants to open business of his son. It is also deposed that neither the plaintiff nor Sonik Shah owns any other suitable vacant residential house or commercial property for the purpose of conducting business. Although Mukesh Budana (DW-1) in para 5 of his examination in chief deposed that Sonik Shah conducting business of Sony Electronic Showroom at AB Road owned by plaintiffs. But Amit Jha (DW-2) in para 13 of his cross examination admits that he does not see any document regarding alleged alternative accommodation of the plaintiffs. Although Amit contended that plaintiff's one show-room is at Ranjeet Hanuman Mandir Road near Mahu naka but he failed to specify any house number or street number in which said show room situated. Therefore, statement of appellant/defendant cannot be relied upon.

13 The plaintiff Jayesh (PW-1) in para 28 has categorically stated that at present his son Sonik Shah is not doing anything and after completion of his MBA in 2011 has not started any work. Although counsel for appellant contended that contents of this paragraph have been molded and changed suitably to grant a decree to the plaintiff for eviction where no ground for grant of decree exists. But statement of plaintiff Jayesh Shah (PW-1) is supported by other plaintiff's witness and also stood the scrutiny of cross examination and no material was brought on record to show that they were making false statements.

14 This court in the matter of **Radheshyam Soni Vs. Kamta Prasad Shukla reported in ILR 2001 MP 1374** it has been held as under:-

“The concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. Though these observations have been made in the context of section 12(1)(e) of the Act same would apply while considering the case under section 12(1)(f) of the Act.”

15 The Coordinate Bench in case of **Mohan Vs. Babulal (dead) through L.R. Dilip Kumar reported in 2015(2) MPLC 125 (MP)** has held that the choice is that of the landlord and not that of the tenant and it cannot be said that merely because alternative accommodation is available in a different place, need explained by respondent was not bonafide.

16 In case of **Buddhprakash Sharma Vs. Sanjeev Jain ILR 2015 MP 998** it has been held that 'ownership of the suit property of the plaintiff grants the plaintiff the right to use his property as per his wish or priority or choice or suitability or compatibility and he cannot be asked to settle with whatever property the defendant may state is alternative/suitable.'

17 On the basis of forgoing analysis and the law laid down by the Apex court and High court, it is clear that landlord is the best judge of his requirement. Merely because it is shown by other party that landlord has some other vacant premises in his possession, that itself will not be sufficient to negative the landlord's claim because the choice is that of the landlord and not that of the tenant.

18 The term bonafide or genuine speaks the state of mind of the landlord. Therefore, on the basis of the cogent evidence of plaintiff,

bonafide need of landlord has been duly proved. The trial court while deciding issue No. 4 and 5 in favour of respondent/plaintiff has rightly held that appellant/defendant is liable to be evicted on the ground of bonafide requirement of plaintiffs.

19 In view of the aforesaid, this court is of the considered opinion that the trial court has rightly concluded that plaintiff succeeded in establishing his bonafide need of the suit premises and was also right in holding that there was no other suitable accommodation available to the plaintiff's son for his bonafide requirement for starting electronic business. The finding recorded by the trial court is duly supported by evidence available on record.

20 So far as other ground is concerned, the plaintiffs/respondent has failed to prove the ground of subtenancy and nuisance made by appellants/defendants. Therefore, the trial court has rightly decided the issue No. 5.

21 Hence no illegality or perversity is found in the impugned judgment and decree passed by the trial court.

22 Accordingly, this first appeal fails and is hereby dismissed and judgment and decree dated 20.12.2021 passed by the trial court is hereby affirmed. Appellant is granted three month's time from the date of receipt of certified copy of this order, to vacate the suit premises and put respondents/plaintiffs in possession.

No order as to costs.

(ANIL VERMA)
JUDGE

BDJ