

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**

**ON THE 22<sup>nd</sup> OF AUGUST, 2024**

**SECOND APPEAL No. 1081 of 2006**

***RAMESH KUMAR (DEAD) THROUGH LRS SHARAD KUMAR AGRAWAL AND  
ANOTHER***

*Versus*

***AZAD DUBEY***

.....  
**Appearance:**

*Shri Saransh Kulshresth - Advocate for the appellant*

*Shri Adil Usmani - Advocate for the respondent.*

.....

**J U D G M E N T**

This second appeal has been preferred by defendant/appellant/tenant (now dead, through LRs) challenging the judgment and decree dated 27.04.2006 passed by District Judge, Sagar, in civil appeal no.29-A/2006 affirming the judgment and decree dated 30.07.2005 passed by 2nd Civil Judge Class-I, Sagar in civil suit no.30-A/2003 whereby plaintiff's suit for eviction filed on the grounds under Section 12(1)(a) and (f) of the M.P. Accommodation Control Act, 1961 (in short 'the Act') has been decreed only on the ground under Section 12(1)(f) of the Act.

2. In short, the facts are that the plaintiff-Azad Dubey instituted a suit for eviction of rented shop admeasuring 8x35 sq. ft., of which on the date of suit, rent was being paid @ Rs.1200/- per month. The suit was filed for bonafide requirement of son Ramji Dubey for starting General Store business. By filing written statement the defendant denied existence of need of plaintiff's son and alleged that plaintiff is in possession of several other alternative accommodations in the township of Sagar and denying arrears of rent, prayed for dismissal of the suit.

3. After recording evidence and after hearing the parties, trial Court found that the defendant is not in arrears of rent, however, holding the plaintiff to be in bonafide need of the shop for starting General Store business by his son Ramji Dubey, decreed the suit. It was also held that proposed alternative accommodations are not available in vacant position with the plaintiff to satisfy the need of his son Ramji Dubey and ultimately decreed the suit vide judgment and decree dtd.30.07.2005. Upon filing civil appeal by defendant/tenant, the same was dismissed vide impugned judgment and decree dated 27.04.2006. Against which, instant second appeal was filed, which was admitted on 11.08.2006 for final hearing on the following substantial questions of law:-

"1. Whether the judgment and decree passed by the two Courts below under Section 12(1)(f) of the M.P. Accommodation Control Act, 1961 is vitiated inasmuch as they have ignored the testimony of Azad Dubey (P.W.1) in paras 12 and 13 ?

2. Whether the plaintiff is having a reasonably suitable alternative accommodation in view of his statement made in paras 12, 13 and 17 of his testimony ?

3. Whether the need of plaintiff's son can be said to be bona fide in view of documents Exs.D/29 to D/32 ?"

4. Learned counsel for the appellants/defendants submits that availability of alternative accommodation has been admitted by plaintiff-Azad Dubey (PW/1) in paragraphs 12, 13 and 17 of his testimony and Courts below ignoring the admissions made by plaintiff himself, have committed illegality in holding otherwise. He further submits that the documents (Ex.D/29 to D/32) show that in fact the plaintiff is not in bonafide need. With these submissions, learned counsel prays for allowing the second appeal.

5. Learned counsel appearing for the respondent/plaintiff/landlord supports the impugned judgment and decree passed by Courts below and submits that findings recorded by Courts below on the question of bonafide need do not raise any

substantial question of law and in second appeal, re-appreciation of evidence is not permissible. With these submissions, he prays for dismissal of the second appeal.

6. Heard learned counsel for the parties and perused the record.

**Substantial question of law no. 1 & 2:**

7. Both the substantial questions of law framed by this Court require re-appreciation of oral evidence of the plaintiff-Azad Dubey (PW-1) made by him in paras 12, 13 and 17 of his testimony. Although, in second appeal, re-appreciation of oral evidence is not permissible, but even re-appreciation of oral testimony of plaintiff-Azad Dubey made in paras 12, 13 and 17, does not suggest that Courts below have left/ignored any so-called admissions/evidence relating to available alternative accommodation, from consideration and upon perusal of entire testimony of plaintiff-Azad Dubey, this Court does not find any illegality in the concurrent findings on the question of availability of alternative accommodation, recorded by Courts below.

**Substantial question of law no. 3:**

8. The documents (Ex.D/29 to D/32) are in relation to the property belonging to plaintiff, situated in Village Jerwara, Tahsil Sagar, which are relating to residential property situated in said village and in respect of residence of the plaintiff, on the basis of which, it cannot be said that plaintiff's son has no need of the suit shop to start General Store business in the shop which is situated in main city of Sagar.

9. In view of aforesaid discussion, in my considered opinion, all the three substantial questions of law do not arise in this second appeal and are decided against the appellants/defendants/tenants.

10. At this stage, learned counsel for the appellants/defendants/tenants prays for grant of reasonable time to vacate the suit shop, which is initially opposed by learned counsel appearing for the respondent/landlord, however, after some time learned counsel for the respondent consented to grant of time of one year to appellants/defendants/tenants for vacating the suit shop.

11. In view of the aforesaid and declining interference in the impugned judgment and decree passed by Courts below, this Court deems fit to grant one year time i.e. up to 31.08.2025 for vacating the rented shop on the following conditions:-

(i) *The appellants/defendants/tenants shall vacate the tenanted/suit shop on or before 31.08.2025.*

(ii) *The appellants/defendants shall regularly pay rent to the respondent/landlord and shall also clear all the dues, if any, including the costs of the litigation, if any, imposed by Courts below.*

(iii) *The appellants/defendants shall not part with the suit shop to anybody and shall not change nature of the same.*

(iv) *The appellants/defendants shall furnish an undertaking with regard to the aforesaid conditions within a period of three weeks before Court below/Executing Court.*

(v) *If the appellants/defendants fail to comply with any of the aforesaid conditions, the respondent/plaintiff shall be free to execute the decree forthwith.*

(vi) *If after filing of undertaking, the appellants/defendants/tenants do not vacate the suit shop on or before 31.08.2025 and create any obstruction, they shall be liable to pay mesne profits of Rs.500/- per day, so also contempt of order/judgment of this Court.*

(vii) *It is made clear that the defendants/appellants shall not be entitled for further extension of time after 31.08.2025.*

12. With the aforesaid observations, this second appeal is hereby disposed off. No order as to costs. Misc. application(s), pending if any, shall stand closed.

**(DWARKA DHISH BANSAL)**  
**JUDGE**

