

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).7464 OF 2004
(From the judgement and order dated 28/11/2003 in CR No. 557/2003 of
The HIGH COURT OF M.P AT JABALPUR)

DAYARAM YADAV

Petitioner(s)

VERSUS

SANTOOLAL BACHWANI

Respondent(s)

(With appln(s) for permission to place addl. documents on record and
with prayer for interim relief)
(For Final Disposal)

Date: 04/03/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Petitioner(s)

Mr. Vivek K Tankha, Sr. Adv.

Mr. P C Sen, Adv.

Mr. Vishwajit Singh, Adv.

For Respondent(s)

Mr. Prakash Shrivastava, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed. The impugned judgment dated 28.11.2003 of the High Court is set aside and that of the Rent Controlling Authority is restored. However, to save the respondent from the peril of sudden eviction, it is directed that the order of eviction shall not be available for execution for a period of six months from today subject to the respondent filing the usual undertaking before the Executing Court and clearing all the arrears within a period of four weeks and continuing to clear subsequent dues month-by-month.

No order as to costs.

(D.P. WALIA)

COURT MASTER

(SHELLY SEN GUPTA)

COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1552 OF 2005

[arising out of SLP(C) No. 7464 of 2004]

Dayaram Yadav

... Appellant

vs.

Santoolal Bachwani

... Respondent

O R D E R

Leave granted.

An application under Section 23-A of the M.P. Accommodation

Control Act, 1961 (hereinafter referred to as "the Act", for short)

seeking eviction of the respondent from the suit accommodation which

is a shop held on tenancy for non-residential purpose, was allowed by

the Rent Controlling Authority. The tenant preferred a revision in

the High Court which has been allowed and the order of eviction

passed by the Rent Controlling Authority has been set aside. Feeling

aggrieved, the landlord has filed this appeal by special leave.

The landlord-tenant relationship is not disputed. The suit

accommodation is a shop wherein the tenant-respondent is running a

petty cloth shop. The appellant was a government servant and has

retired. The appellant does not have any other non-residential

accommodation of his own excepting the suit shop. These facts are not in controversy.

According to the appellant, he having retired from government service wanted to engage himself in a commercial activity for the purpose of availing additional earnings over and above his pension and also for keeping himself busy and, therefore, bonafidely required the suit shop for the purpose of starting grocery business of his own. This averment has been held to have been substantiated by the Rent Controlling Authority. In revision, the High Court has reversed the finding forming an opinion that the appellant being a retired person his need was not bonafide, inasmuch as he could happily survive on the pension and being an old-aged person the concept of his involving himself into a commercial activity did not commend to the High Court.

After hearing the learned counsel for the parties, we are satisfied that the High Court in exercise of its revisional jurisdiction could not have interfered with the finding of fact

arrived at by the trial court. The averments made in the application specifically spelled out a case for eviction within the meaning of clause (b) of Section 23-A of the Act. We have also been taken through the evidence by the learned counsel for the parties. Vide para 5 of the appellant's statement, he has clearly stated that after his retirement he was jobless and wanted to open a general store in the disputed shop which was situated just below his own residential premises. He had no other shop excepting the one with the tenant and his need was bonafide. He also stated that he wanted to live comfortably on his pension added by the earnings from the business which he wanted to open in the shop and that will also enable him making good use of his time. His testimony was corroborated by the statements of other witnesses who were examined.

There is nothing wrong in a retired government servant engaging himself in a commercial activity which he feels he can carry on so as to supplement his income and also to keep himself busy. The High Court has also overlooked the statutory presumption contained in sub-section (3) of Section 23-D of the Act which provides that in

respect of an application filed under Chapter IIIA (which will include Section 23A) it shall be presumed, unless the contrary is proved, that the requirement by the landlord is bonafide. Not only the presumption is there, evidence has also been adduced by the landlord and the tenant has failed in rebutting the effect of the plaintiff's evidence and the presumption which arises in his favour.

The High Court in exercise of its revisional jurisdiction ought not to have interfered with the finding of the trial court, moreso when the High Court has not arrived at a conclusion that the finding recorded by the trial court is perverse or is one which no reasonable person acting reasonably could have arrived at.

The appeal is allowed. The impugned judgment dated 28.11.2003 of the High Court is set aside and that of the Rent Controlling Authority is restored. However, to save the respondent from the peril of sudden eviction, it is directed that the order of eviction shall not be available for execution for a period of six months from today subject to the respondent filing the usual

undertaking before the Executing Court and clearing all the arrears
within a period of four weeks and continuing to clear subsequent dues
month- by-month.

No order as to costs.

.....CJI
(R.C. LAHOTI)

.....J
(D.M. DHARMADHIKARI)

New Delhi;

March 4, 2005.