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SLP(C)No. 6267 OF 2000

ITEM No.2

Court No. 9

SECTION IVA  
A/N MATTER

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.6267/2000

(From the judgement and order dated 09/02/2000 in CR 814/97  
of The HIGH COURT OF M.P AT GWALIOR)

RAMESH CHAND & ORS.

Petitioner (s)

VERSUS

RAJ KUMAR

Respondent (s)

(With prayer for interim relief)  
( For Final Disposal )

Date : 15/01/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.P. MOHAPATRA  
HON'BLE MR. JUSTICE P. VENKATARAMA REDDI

For Petitioner (s) Mr. S.K.Gambhir, Sr.Adv.  
Mr. T.N. Singh, Adv.

For Respondent (s) Mr. E.C.Agarwala, adv.  
Mr. M.P. Shorawala, Adv.

UPON hearing counsel the Court made the following  
O R D E R

.....L.....I.....T.....T.....T.....T.....T.J  
.SP2

Leave granted.

Appeal is dismissed, but in the circumstances of  
the case without any order for cost.

.SP1

(Suman Wadhwa)  
Court Master

(S.Malkani)  
Court Master

Signed order is placed on the file.

.PA  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 508 OF 2002  
(Arising out of S.L.P. (Civil) No.6267 of 2000)

Ramesh Chand & Ors.

...Appellants

Vs.

Raj Kumar

...Respondent

O R D E R

Leave granted.

In this appeal filed by the tenant Govind Das Bansal (legal representative of the original tenant) the judgment rendered by the Division Bench of the Madhya Pradesh High Court in Civil Revision No.814 of 1997 is under challenge. In the said Judgment the High Court set aside the order passed by the Rent Control Authority dismissing the application filed by the present respondent and evicting the tenant from the premises in question. The premises in question are non-residential in character. An order for eviction of the tenant was passed on the ground of bona fide requirement of the landlord and with other consequential directions.

Brief facts necessary to appreciate the questions raised, may be stated thus :

Bhogi Ram and Nemi Chand were two brothers and jointly owned the four storeyed building of which the suit premises (two shop rooms) on the ground floor formed a part. By a registered document executed on 30th June 1989 Bhogi Ram relinquished his interest in the building in favour of his brother Nemi Chand. Nemi Chand by a registered document executed on 25th February 1989 (Ext. P.4) settled the suit property (ground floor of the building) in favour of his son Raj Kumar who is the respondent herein. Raj Kumar is undisputedly an insane person. Thereafter, Raj Kumar represented by his father and guardian Nemi Chand filed a petition under section 23A of the Madhya Pradesh Accommodation Control Act 1961 seeking the eviction of the appellant from the premises on the ground that it is required for starting a business for sale of utensils for benefit of the owner.

The appellants refuted the plea of bona fide personal requirement of Raj Kumar and also questioned the maintainability of the petition filed by him alleging that there was no relationship of landlord and tenant between the parties. He also questioned the validity of the arrangement/settlement made by Nemi Chand in favour of and for the benefit of his disabled son, Raj Kumar by the registered document dated 25th February 1989.

The Rent Control Authority, in its order, considered two questions- viz., maintainability of the eviction petition filed by Raj Kumar and acceptability of the plea of bona fide requirement, and held against the applicant on both the counts. It is evident from the discussions in paragraph 9 of the order that while considering the point - Whether the applicant has actually a bona fide need for the suit shop for carrying on business of sale of utensils, the Authority recorded the finding that there appears to be no justification for doing any business in utensils on behalf of the applicant.

In paragraph 10 of the order, the conclusion is summed up as follows:

"Even if this is presumed that applicant being in the category of Section 23J is eligible to carry on his application lawfully under Section 23A(B), even then the applicant being not the landlord of suit shop and his guardian having available other

alternative establishments and houses and object of applicant's father being mala fide and bona fide need for applicant being no proved."

The Rent Control Authority further observed that Nemi Chand, father of Raj Kumar, had other alternative accommodation available for the purpose of opening new business.

In Civil Revision filed by the landlord under Section 23-E of the Act, the High Court on a fairly detailed discussion of the pleadings, the contentions raised on behalf of the parties and the legal position, came to hold that neither the petition could be dismissed on the ground of maintainability nor could it be held, on the facts and circumstances of the case that the landlord had no bona fide need for the premises in question. The High Court summed up the position in paragraph 20 of the judgment in these words:

"Taking overall facts and circumstances into consideration especially the fact that the applicant to have separate business for his subsistence, in the opinion of this Court, it has been proved by the evidence of Nemi Chand AW-1, Bhogi Ram AW-2 and Devendra Agarwal AW-3 that the need is bona fide. The tenants/respondents though examined Shiv Dayal DW-1, Brij Kishore DW-2 and Ashok Kumar DW-3 could not demolish the evidence led by the applicant on bona fide requirement. In this case it is pertinent to note that learned Rent Control Authority has not only failed to consider but ignored the material pleadings contained in the written statement that the tenant has not challenged the title of the plaintiff. The Rent Control Authority further, as noted above, broadly considered the case as if the need is of Nemi Chand and Bhogi Ram. The need pleaded is that of Raj Kumar, the mentally retarded person."

It is relevant to note here that the High Court was not right in making the observation that the tenant has not challenged the title of the plaintiff. This observation, we are constrained to observe was based on a misreading and misconsideration of the written statement. The position was also not seriously disputed before us.

Mr. S.K. Gambhir, learned senior counsel appearing for the appellants strenuously contended that the Rent Control Authority was right in holding that there was no relationship of landlord and tenant between the parties since the document Ex P-4 could not be accepted as a valid family arrangement/family settlement nor it could be construed to be a document of partition. Shri Gambhir further contended that Raj Kumar had no title in the property in question and therefore the petition was rightly rejected as not maintainable. Regarding the question of bona fide requirement Shri Gambhir contended that the Trial Court, on consideration of the facts and circumstances of the case recorded the finding that the arrangement made by Nemi Chand by the document Ex.P.4 was a device to get over the undisputed factual position that Nemi Chand has a number of other accommodations available to be used for the purpose. Therefore, according to Shri Gambhir, a subterfuge was adopted and the petition for eviction was filed purportedly on behalf of Raj Kumar a mentally unsound person.

Mr. E.C. Agarwala, learned counsel appearing for the respondent equally strenuously refuted the contentions raised by Shri Gambhir and contended that Raj Kumar was a mentally unsound person for whose benefit his father wanted to settle certain property

and open a business, so that the disabled son may have regular income for his sustenance; in the circumstances the motive in making the arrangement could not be questioned. In any view of the case the appellant as the successor of the original tenant could not raise such objection. He drew our attention to the provisions of Section 23-D(3) of the Act wherein it is provided that in respect of an application made by a landlord it shall be presumed, unless the contrary is proved, that the requirement of the landlord with reference to clause (a) or clause (b) as the case may be, of Section 23-A is bona fide. It was the contention of Sri Agarwal that in this case the statutory presumption in favour of the landlord has not been sought to be rebutted by any acceptable evidence from the side of the tenant. Therefore the High Court was right in holding that there was bona fide need on the part of the landlord for seeking eviction of the tenant from the premises in question.

We have considered the rival contentions raised by the learned counsel for the parties. Chapter III-A of the Act including Sections 23-A to 23-J contains a set of special provisions for eviction of tenants on the ground of bona fide requirement. Section 23-A(b) under which the petition for eviction was filed by the respondent reads as follows:

"Section 23-A(b) : 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 hereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-accommodation of his own in his occupation in the city or town concerned:

Provided that where a person who is a landlord has acquired any accommodation or any interest therein by transfer, no application for eviction of tenant of such accommodation shall be maintainable at the instance of such person unless a period of one year has elapsed from the date of such acquisition."

Section 23-D in which the procedure to be followed by Rent Control Authority is laid down provides in sub-section(3) regarding the statutory presumption of bona fide requirement to be raised in favour of the landlord. It is relevant to note here that in this chapter there is no provision for an appeal against the order passed by the Rent Control Authority, but a revision is provided to the High Court under section 23-E. The said section reads as follows:

"Section 23-E: Revision by High Court  
(1) Notwithstanding anything contained in Section 31 or Section 32, no appeal shall lie from any order passed by the Rent Controlling Authority under this Chapter.

(2) The High Court may, at any time 'suo motu' or on the application of any person aggrieved, for the purpose of satisfying itself as to the legality, propriety of correctness of any order passed by or as to the regularity of the proceedings of the Rent Controlling Authority, call for and examine the record of the case pending before or disposed of by

such Authority and may pass such order in revision in reference thereto as it thinks fit and save as otherwise provided by this section, in disposal of any revision under this section, the High Court shall, as far as may be, exercise the same powers and follow the same procedure as it does for disposal of a revision under Section 115 of the Code of Civil Procedure, 1908 (V of 1908) as if any such proceeding of the Rent Controlling Authority is of a Court subordinate to such High Court.

Provided that no powers of revision at the instance of person aggrieved shall be exercised unless an application is presented within ninety days of the date of the order sought to be revised."

On a fair reading of the provisions of the afore quoted Section, it is clear that the revisional power vested in the High Court is wider than the power vested under Section 115 of the Code of Civil Procedure. However, it has to be kept in mind that the revisional proceeding under Section 23-E cannot be equated with appeal and the High Court cannot act as an appellate authority in the matter.

On perusal of the judgment of the High Court we are satisfied that the Court has not exceeded its limits under Section 23-E of the Act. Even assuming that in case Nemi Chand himself had filed the petition for eviction of the tenant he would have been faced with the difficulty in getting an order of eviction since he had other alternative accommodations at his disposal, that does not mean that the family arrangement/ settlement which he made in favour of his disabled son Raj Kumar by the registered document Ex. P-4 was a sham transaction or a cover up arrangement. Our attention has not been drawn to any material on record which would show that the family arrangement was not for the benefit of Raj Kumar. In the circumstances no exception can be taken to the finding of the High Court that the need of the landlord, as pleaded in the petition for eviction, is a bona fide one, particularly, in view of the statutory presumption under Section 23 of the Act.

Coming to the question, whether the document Ex.P-4 can be said to be a family arrangement /family settlement we are of the view that in stricto sensu it cannot be said to be a family arrangement/ settlement for the simple reason that all the members of the family are not signatories to the document. Nothing has been indicated therein that the arrangement was purportedly to settle any existing dispute or apprehended dispute amongst the members of the family. Even if it is not a family arrangement or settlement, the arrangement made by father, who is undisputedly the owner of the property, in favour of his mentally retarded son for the benefit of the latter cannot be said to be an arrangement not permissible in law. In our view prima facie the arrangement incorporated in the document can be viewed as a settlement of the property by Nemi Chand in favour of Raj Kumar. We make it clear here that we have not considered the question of title to the property nor do we intend to hold that Raj Kumar has perfect title to the property by virtue of the arrangement. Suffice it to say that for the purpose of the proceeding under the Rent Control Act, Raj Kumar has become the landlord as defined in Section 23-J which defines, inter alia, landlord, as a physically handicapped person. In any view of the matter, it is not open to the tenant to question the necessity for the arrangement/settlement or the legality of the title vested in the landlord. Coming to the finding of the Rent Control Authority that there was alternative accommodation available to the landlord, we consider it fit to observe that the finding was not that Raj Kumar had alternative accommodation available with him but the finding was that his father Nemi Chand had other accommodation in

which he could open his business. Such a finding does not affect in any manner the bona fide requirement of Raj Kumar who is the landlord in the case.

On the discussions in the foregoing paragraphs and for the reasons stated therein, this appeal is devoid of merit and it is accordingly dismissed, but in the circumstances of the case without any order for cost.

.....J.  
(D.P. MOHAPATRA)

.....J.  
(P.VENKATARAMA REDDI)

New Delhi  
January 15, 2002

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