

ITEM NO.105

COURT NO.8

SECTION IV

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

CIVIL APPEAL NO(s). 1388 OF 2003

RAM BABU AGARWAL

Appellant (s)

VERSUS

JAY KISHAN DAS

Respondent(s)

(With appln(s) for exemption from filing O.T., permission to place addl. documents on record, permission to file rejoinder affidavit, permission to file additional documents and under section 13(6) of The Madhya Pradesh Accommodation Control Act, 1961 for striking out defence in the appeal and with office report)

Date: 07/10/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU

HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s)

Mr. Sushil Kumar Jain, Adv.

Mr. Niraj Sharma, Adv.

Mr. Vikrant Singh Bais, Adv.

Ms. Eshita Barua, Adv.

For Respondent(s)

Mr. Anup G.Choudhary, Sr. Adv.

Mr. Prashant Kr. Roy, Adv.

Mr. Ashwani Kumar, Adv.

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

The Appeal is allowed on the question of bona fide need only to the extent indicated in the reportable signed order, which is placed on the file. No costs.

(Parveen Kr. Chawla)
Court Master

(Indu Satija)
Court Master

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1388 OF 2003

Ram Babu Agarwal

..Appellant

versus

Jay Kishan Das

..Respondent

O R D E R

Heard learned counsel for the parties.

This Appeal has been filed against the impugned judgment of the High Court of Madhya Pradesh dated 23.8.2002 passed in First appeal No. 224 of 1997.

The appellant is the landlord of the premises in question and the respondent is a tenant therein. The appellant filed a suit for eviction against the tenant on two grounds (i) default in payment of rent; (ii) bonafide need.

As regards the first point, the High Court has recorded a finding of fact that the entire rent has been deposited by the tenant in compliance with the order of the High Court passed in a revision petition and hence we cannot interfere with the finding of the High Court on that point.

Shri S.K.Jain, learned counsel for the appellant submitted that even if the tenant has paid the rent up to the proceedings in the High Court, if he has committed

default in payment of rent after the judgment of the High Court and during the pendency of the special leave

-2-

petition/appeal under Article 136 of the Constitution of India before this Court, the provisions of Section 13(6) of the Madhya Pradesh Accommodation Control Act, 1961 (for short 'the Act') will apply and the defence of the tenant will have to be struck off. We do not agree. In our opinion, the provisions of section 13(6) of the Act will apply only to the statutory appeals under the Act and not to the constitutional remedy under Article 136 of the Constitution.

It is well settled that a statutory provision cannot control a constitutional provision. An appeal is a creature of the statute and the conditions mentioned in Section 13(6) of the Act will apply to the statutory appeal and not to the constitutional remedy. That is because a constitutional provision is on a higher pedestal as compared to a statutory provision. A statute cannot control the constitutional provisions. Hence, we reject the first submission of Shri S.K.Jain.

However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the

premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in

-3-

the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also.

Hence, we are of the opinion that the High Court should have gone deeper into the question of bona fide need and not rejected it only on the ground that Giriraj has no experience in foot wear business.

For the reasons given above, we set aside the impugned judgments of the High Court and the trial Court on the question of bona fide need and remand the matter to the trial Court only to decide the issue of bona fide need afresh. Parties may lead fresh evidence on their pleadings and the trial Court shall decide the matter expeditiously thereafter.

The Appeal is allowed on the question of bona fide need only to the extent indicated above. No costs.

.....J.
[MARKANDEY KATJU]

NEW DELHI;
OCTOBER 07, 2009.

.....J.
[ASOK KUMAR GANGULY]

