

CASE NO.:
Appeal (civil) 6321 of 1999

PETITIONER:
ASHOK KUMAR GUPTA

RESPONDENT:
VIJAY KUMAR AGRAWAL

DATE OF JUDGMENT: 28/02/2002

BENCH:
SYED SHAH MOHAMMED QUADRI & DORAISWAMY RAJU

JUDGMENT:
JUDGMENT

2002 (2) SCR 138

The following Order of the Court was delivered :

The appellant is the tenant of the premises - 1st Floor, 46 M.L.B. Colony, Gwalior (M.P.) (for short 'the accommodation') which was initially owned by one Sushil Kumar who sold it to the respondent. Thus, the appellant became the tenant of the respondent. The appellant filed a suit against the respondent being Case No. 453A of 1996 in the court of 9th Civil Judge, II Class, Gwalior, seeking injunction against the respondent. In the said suit the respondent filed a counter claim under Order VIII, Rule 6 of C.P.C. claiming eviction of the appellant, inter alia, under clause (e) of sub-section (1) of Section 12 of the M.P. Accommodation Control Act (for short 'the Act'). The appellant contested the counter claim filed by the respondent and pleaded that it was not maintainable. The trial court, after framing necessary issues and on considering the evidence adduced by the parties held that the counter claim under Order VIII, Rule 6 of C.P.C. was maintainable and that the respondent required the suit premises bona fide. Accordingly, it decreed the counter claim of the respondent and dismissed the suit for the relief of injunction filed by the appellant by judgment dated January 31, 1998. In regard to the decree of eviction passed on the counter claim of the respondent, an appeal was filed by the appellant before the court of the 6th Additional District Judge, Gwalior (M.P.). The learned Additional District Judge affirmed the findings of the trial court and dismissed the appeal on October 8, 1998. Against that judgment the unsuccessful appellant filed Second Appeal No. 621 of 1998 before the High Court. The Second Appeal was dismissed by the High Court by judgment dated March 15, 1999 which is assailed in this appeal by special leave.

Mr. S.S. Khanduja, the learned counsel for the appellant, contends that in view of the provisions of Chapter III-A the counter claim ought not to have been entertained by the Civil Court and that the respondent should have filed independent case in the court of the Rent Controller so the order under challenge is liable to be set aside. Mr. A.K. Chitale, the learned senior counsel appearing for the respondent, has argued that Chapter III-A which was inserted in the Act in 1983, was later amended and confined to specified landlord, defined in Section 23-J thereunder, and as such the Civil Court rightly entertained the counter claim with regard to eviction of the appellant on the ground of bona fide need for occupation as residence.

We may observe that maintainability of counter claim under Order VIII. Rule 6 of C.P.C. is not canvassed before us. The discussion centered round the jurisdiction of Civil Court to pass decree of eviction on the ground of bonafide requirement in the face of Section 23-A of the Act.

On the contentions urged before us the question that arises for consideration is : whether the High Court erred in confirming the decree of

eviction of the appellant passed by the Civil Court on the ground embodied in clause (e) of sub-section (1) of Section 12 of the Act.

A reference to clause (e) of sub-section (1) of Section 12, Section 45, Sections 23-A and 23-J (in Chapter III-A) and Section 11-A of the Act will be relevant for our purpose.

Section 12 occurs in Chapter III which deals with control of eviction of tenant. Section 12(1)(e), with which we are concerned here, is quoted hereunder :

"12. Restriction on eviction of tenants -

(1) Notwithstanding anything contained to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds :-

(a) *** ***

(b) *** ***

(c) that the accommodation let for residential purposes is required bonafide by the landlord for occupation as a residence for himself or for any member of his family, if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned."

A plain reading of the above provision discloses that sub-section (1) opens with a non obstante clause and provides that notwithstanding anything contained to the contrary, in any law or contract, no suit can be filed in civil-court against a tenant for his eviction from any accommodation except on one or more grounds enumerated in clauses (a) to (p) of sub-section (1) thereof.

In this context we may notice Section 45 of the Act which bars jurisdiction of Civil Court in respect of certain matters. The said provision reads as follows :

"45. Jurisdiction of Civil Court barred in respect of certain matters-

(1) Save as otherwise expressly provided in this Act, no Civil Court shall entertain any suit or proceeding insofar as it relates to the fixation of standard rent in relation to any accommodation to which this Act applies or to any other matter which the Rent Controlling Authority is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Rent Controlling Authority under this Act shall be granted by any Civil Courts or other authority.

(2) Nothing in sub-section (1) shall be construed as preventing a Civil Court from entertaining any suit or proceeding for the decision of any question of title to any accommodation to which this Act applies or any question as to the person or persons who are entitled to receive the rent of such accommodation."

A perusal of this section shows that it bars the jurisdiction of the civil court to entertain any suit or proceeding relating to the fixation of standard rent in relation to any accommodation or to any other matter which the Rent Controlling Authority is empowered by or under the Act to decide. It also puts an embargo on the civil court or other authority to grant injunction in respect of any action taken or to be taken by the Rent Controlling Authority under the Act by any civil court. Sub-section (2),

however, clarifies that sub-section (1) shall not be so construed as to prevent a civil court from entertaining any suit or proceeding for the decision of any question of title to any accommodation to which the Act applies or any question as to the person or persons who are entitled to receive the rent of such accommodation. This takes us to the question, what are other matters which the Rent Controlling Authority is empowered to decide by or under the Act. They are : (i) fixation of standard rent under Section 10; and (ii) eviction of tenants on the ground of bona fide requirement under Chapter III-A of the Act.

Here, it is pertinent to note that by Act 27 of 1983 Chapter III-A was inserted in the Act with effect from August 16, 1983. That chapter had nine sections - Sections 23-A to 23-I as originally enacted. Section 23-J to which reference will be made presently, was inserted in 1985. The ground of eviction for bona fide requirement contained in Section 23-A has two limbs; clause

(a) applies when the accommodation is let for residential purpose and clause

(b) applies when the purpose of letting is non-residential. Section 23-A also opens with a non obstante clause and says that notwithstanding anything contained in any other law for the time being in force or contract to the contrary a landlord may submit an application to the Rent Controlling Authority on one or more of the grounds contained in clauses (a) and (b) referred to above. It is provided that the accommodation let out for residential purposes, if required, bona fide by a landlord for occupation as residence for himself or for any member of his family or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable accommodation for his occupation in the same city or town, the application seeking eviction of the accommodation has to be made by the landlord to the Rent Controlling Authority. In other words, the jurisdiction to pass order of eviction on the ground mentioned in Section 23-A was conferred on the Rent Controlling Authority and the Civil Court's jurisdiction was ousted impliedly in that behalf. But that position remained in existence only for a short period till January 16, 1985 when by Act 7 of 1985 Section 11-A was inserted in Chapter III and Section 23-J was inserted in Chapter III-A. Section 11-A says that the provisions of Chapter III so far as they relate to the matter specially provided in Chapter III-A shall not apply to the landlord defined in Section 23-J. Section 23-J enumerates five categories of landlords. They are as under :

- (i) a retired servant of any Government or a retired member of defence services;
- (ii) a retired servant of a company owned by any Government;
- (iii) a widow or a divorced wife;
- (iv) Physically handicapped person; and
- (v) A Government servant etc. not entitled to Government accommodation.

The position after January 16, 1985 is that only in respect of the aforementioned categories of the landlords the Rent Controlling Authority has jurisdiction to order eviction of a tenant on grounds of bona fide requirement under Section 23-A. A conjoint reading of Section 11-A, 12, 23-A, 23-J and Section 45 would show that in regard to the bonafide personal requirement of the landlord who does not fall within the specified categories in 23-J, the Civil Court has jurisdiction to entertain a suit and pass decree under clause (e) of sub-section (1) of Section 12 of the Act. It follows that the Civil Court rightly entertained counter claim under Section 12(1)(e) of the Act so the decree passed by it is not vitiated for want of jurisdiction.

In the result, though we do not agree with the reasoning of the High Court, in view of the above discussion, we are not inclined to interfere with the judgment of the High Court under challenge but hold that the High Court has rightly dismissed the second appeal. Consequently, this appeal is dismissed but in the facts and in the circumstances of the case with no order as to costs.

At the close of the hearing the learned counsel for the appellant prays six month's time to vacate the premises. Having heard the learned senior counsel for the respondent we are of the view that the interest of justice would be met if a period of six months is granted to the appellant to vacate the suit premises and hand over peaceful possession of the same to the respondent. Accordingly, we grant time till August 31, 2002, subject to his filing an usual undertaking within a period of four weeks from today.

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