

HIGH COURT OF MADHYA PRADESH : BENCH

AT INDORE

SINGLE BENCH : HON'BLE SHRI N.K. Mody, J.

Second Appeal No.548 of 2011

Radhabai w/o Late Hiralal

Vs.

Tarachand S/o Khyaliram

Appellant by Shri. B.S.Gandhi, advocate.

Respondents by Shri Ashok Garg, senior advocate with Shri
G.S.Yadav, advocate.

J U D G M E N T

(Delivered on 31st day of January,2012)

Being aggrieved by the judgment and decree dated 16th Sep.2011 passed by XII Additional District Judge, Indore in Civil Regular First Appeal No.58/2010, whereby judgement and decree dated 6/08/2007 passed by XII Civil Judge, Class 1, Indore in CS No.167-A/2004, whereby suit filed by respondent under Section 12(1)(a) and (f) of the of M.P. Accommodation Control Act (which shall be referred hereinafter as “Act”), was decreed, was maintained, present appeal has been filed.

2. Short facts of the case are that the respondent filed a suit for eviction on 11/11/2003 alleging that the appellant is tenant in the suit shop which is situated at 52-B, Prem Nagar, Indore @ Rs.50.00 per month. It was alleged that appellant is in arrears of rent w.e.f. 31/01/1985, which has not been paid in spite of demand. It was alleged that the respondent requires the suit accommodation bonafidely for carrying out

the business of his son for which the respondent has no other alternative accommodation. It was prayed that a decree of eviction be passed. Suit was contested by the appellant on various grounds. After framing of issues and recording of evidence, learned court below decreed the suit against which an appeal was filed which was also dismissed. Hence this appeal.

3. Learned counsel for the appellants argued at length and submits that the impugned judgment and decree passed by the Courts below are illegal, incorrect and deserve to be set aside. It is submitted that appellant filed 7 (seven) applications u/o VI r.17 CPC and 2 (two) u/o XLI r.27 CPC whereby the appellant prayed to amend the pleadings and to bring the facts to the notice of the Court which were based on subsequent events to demolish the case of the respondent on the ground of bonafide requirement. It is submitted that the appellate Court dismissed the applications for which there was no sufficient ground. It is submitted that so far as decree under Section 12(1)(a) of the Act is concerned, since arrears of rent were deposited by the appellant, therefore, no decree could have been passed under Section 12(1)(a) of the Act. It is submitted that appeal filed by the appellant be allowed and the impugned judgment and decree be set aside.

3. Learned counsel for the respondent submits that the findings recorded by the learned courts below are concurrent findings of facts which require no interference. It is submitted that the appellant has deposited the rent but not in

time, there is also no application for condonation of delay. It is submitted that in the facts and circumstances of the case, appeal filed by the appellant be dismissed.

4. From perusal of the record, it is evident that the rent was not deposited by the appellant as per Section 13(1) of the Act as there was delay in depositing the amount. It also appears from the record that no application was filed by the appellant u/s 13(1) of the Act for condonation of delay. In the facts and circumstances no illegality has been committed by the learned Court below in granting decree under Section 12(1)(a) of the Act. It is true that the appellant has filed number of applications u/o VI r.17 CPC and u/o XLI r.27 CPC whereby the appellant prayed to amend the pleadings to bring the facts to the notice of the Court which are based on subsequent events and to demonstrate that alleged bonafide need is not in existence. Since the decree is also u/s 12(1)(a) of the Act, therefore, there is no necessity to interfere with the judgment and decree passed by the learned Court below. In view of this, appeal filed by the appellant stands dismissed. Since in consequence the appellant/tenant has to vacate the suit accommodation, therefore, to save the appellant from peril of eviction, two years time is granted to the appellant/tenant to vacate the suit accommodation, provided appellant/tenant furnishes an undertaking within a period of eight weeks to the effect that appellant/tenant shall handover the vacant possession of the suit accommodation peacefully on or before 31st January, 2014 to the respondent and shall also deposit the entire arrears of rent

and cost, if any, within the period of 8 weeks and shall pay the rent regularly to the respondent as per law. In case of failure on the part of appellant/tenant in submitting the undertaking or in complying the other conditions, respondent shall be at liberty to get the suit accommodation vacated forthwith. No order as to costs.

(N. K. MODY)
J U D G E

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