

CHANAN LAL AND ORS.

v.

SMT. AZIZUNISHA

APRIL 20, 1990

[T. KOCHU THOMMEN AND R.M. SAHAI, JJ.]

M.P. Accommodation Control Act, 1961: S. 12(1)(f)—Bona fide requirement—Comparative hardship of landlady—High Court ordering eviction—Interference declined.

The respondent landlady sought eviction of the appellant under s. 12(1)(f) of the M.P. Accommodation Control Act, 1961 on the ground of *bona fide* requirement for continuing tailoring business of her son, being carried on in a small room of the same premises. The trial court accepted the claim. The appellate court, however, allowed the appeal on the ground that the business of the landlady's son was very poor and not growing at all and, therefore, the accommodation in his possession was not at all insufficient. The High Court found that the need of the landlady was genuine and *bona fide*.

Dismissing the tenant's appeal, this Court,

HELD: The landlady whose husband at one time had a flourishing business was now in dire circumstances. To keep both the ends meet the family depended not only on meagre income from rent and tailoring shop but the landlady had even to part with possession of another room of the same house adjacent to the shop in dispute to another tenant. Financial difficulty apart, the tenant admittedly had two shops each with spacious accommodation facing the road while the landlady's son had one with comparatively small and irregular dimension in a lane in most unhygienic conditions, with not enough place for 3 or 4 machines with two or three helpers, what to say of trial room or other facilities for customers. The pathetic and pitiable condition of the landlady with no injury to the tenant except that he shall be required to carry on business from one shop only, do not call for interference with the order of the High Court. [569A-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3488 of 1988.

From the Judgment and Order dated 14.7.1988 of the Madhya Pradesh High Court in Second Appeal No. 17 of 1985.

A G.L. Sanghi, S.K. Mehta, Aman Vachher and Atul Nanda for the Appellants.

Pramod Swarup for the Respondent.

The Judgment of the Court was delivered by

B R.M. SAHAI, J. This tenant's appeal is directed against order passed by Madhya Pradesh High Court in proceedings arising out of Section 12(1)(f) of the M.P. Accommodation Control Act, 1961.

C In 1976, the landlady filed an application for eviction under Section 12(1)(f) of the Act as the accommodation in occupation of appellant was required *bona fide* for continuing tailoring business of her son who was doing it since 1970 in a small room of the same premises in the lane which was both unsuitable and inadequate. Her claim was accepted by the Trial Court as necessity was valid and the landlady had a right to reside in any part of the house. In appeal various objections raised on behalf of tenant, namely, feasibility of shifting business to one more room in the house or that additional accommodation was available were repelled. It was further found that landlady's husband had a flourishing tailoring business during British days but it suffered setback and he later became blind. The appeal was, however, allowed and the application was dismissed as in opinion of Appellate Court the Trial Court had incorrectly understood the dimension of the shop. It did not find any merit in the submission that the shop was irregularly built and was unsuitable for doing business. After discussing the evidence it found that the business of landlady's son was very poor and not growing at all. Therefore, the accommodation in his possession was not at all insufficient and unsuitability was also not proved. In Second Appeal by the landlady the High Court did not agree with the Appellate Court and found that the need of the landlady was genuine and *bona fide* as the shop in dispute was not sufficient for four machines and two or three servants.

G Principal attack was on jurisdiction of High Court to interfere with finding of fact in second appeal. Defence was equally vehement. But it appears unnecessary to examine it as out of various aspects highlighted one was sufficiency of accommodation with tenant even if he vacated the shop in dispute. Since it was not clear from order of any Court time was granted on conclusion of argument to learned counsel for parties to file affidavit explaining the extent of accommodation and the status of the tenant. Without going into status as that is disputed it

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is apparent rather undisputed that landlady whose husband at one time had flourishing business is now in dire circumstances. To keep both the ends meet the family depends not only on meagre income from rent and tailoring shop but the landlady had even to part with another room of the same house adjacent to shop in dispute to one Rataley which is now in possession of tenant. Financial difficulty apart the tenant admittedly has not only this shop with 27'6'' on one side and 20' on the other, but another shop of approximately the same dimension. May be the wall in between the two rooms has been removed and entire has been converted into a big shop. But the tenant has two shops each with spacious accommodation facing the road and the landlady's son has one with irregular dimension of 10'9'' in front and 3.8' in back in a lane in most unhygienic conditions, in front of which many doors of latrines of other houses open. Therefore, on the one hand is the tenant in occupation of two big rooms in which he is carrying on business luxuriously whereas the landlady's son is sandwiched in back of her own house in unhealthy surroundings with not enough place for 3 or 4 machines with two or three helpers what to say of trial room or other facilities for customers. The pathetic and pitiable condition of the landlady with no injury to the tenant except that he shall be required to carry on business from one shop only are circumstances which prevent this Court from interfering with the order of the High Court as in our opinion substantial justice has been done between parties. Therefore it appears unnecessary to examine if the High Court committed any error in exercise of jurisdiction under Section 100 Civil Procedure Code.

In the result the appeal fails and is dismissed. But there shall be no order as to costs.

P.S.S.

Appeal dismissed.