

PARWATI BAI

v.

RADHIKA

MAY 1, 2003

[R.C. LAHOTI AND B.N. AGRAWAL, JJ.]

Rent and Eviction:

Madhya Pradesh Accommodation Control Act, 1961:

S.3(1)(b)—Non-residential premises belonging to Municipality—Exemption from applicability of Act—Non-residential Municipal premises—Given on lease to appellant—Appellant further sub-let it to respondent—Tenancy of respondent terminated by appellant by giving notice u/s 106 of the Transfer of Property Act—Suit filed by appellant for non-payment of rent and her need to occupy it for herself—Both the courts below holding that the Madhya Pradesh Accommodation Act applied to the premises and grounds for eviction u/s 12 thereof were not made out—Appellant's plea that since ownership of premises vests in Municipality, the applicability of Rent Act was not attracted and entitlement for eviction was to be decided under the Transfer of Property Act, rejected—Suit dismissed—High Court dismissed landlord's appeal in limine—Held, qua the municipality, appellant is the tenant and the respondent is sub-tenant and as between the latter two, appellant is the landlord and respondent is the tenant—If a tenant in municipal premises lets out the premises to another, a suit by the tenant for ejection of his tenant and arrears of rent would not be governed by the Act as the premises are exempt under s.3(1)(b) of Act though the suit is not between the municipality as landlord and against its tenant—The singular question to be examined in the present case is whether the tenancy was terminated in accordance with the provisions of s.106 of the Transfer of Property Act—The receipt of notice by the defendant is admitted in the written statement—The defendant has not raised any specific objection as to the validity of the notice—An objection as to invalidity or infirmity of notice under s.106 of the Transfer of Property Act should be raised specifically and at the earliest; else it will be deemed to have been waived even if there exists one—It cannot, therefore, be said that the notice in the present case suffered from any infirmity—The judgments and decrees of the trial court, first appellate court and the High Court are set

A *aside—Instead the suit filed by the plaintiff for eviction of the defendant-respondent is directed to be decreed—Notice—Validity of—Objection regarding—Transfer of Property Act, 1882—s.106.*

Bhatia Cooperative Housing Society Ltd. v. D.C. Patel, [1953] 4 SCR 185, relied on.

B *Radhey Lal Somsingh v. Ratansingh Kishansingh, (1977) MPLJ 335, approved.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2704 of 2000.

C From the Judgment and Order dated 1.12.99 of the Madhya Pradesh High Court in S.A.No. 289 of 1999.

S.S. Khanduja for the Appellant.

D Niraj Sharma for the Respondent.

The following Order of the Court was delivered :

E A suit for eviction filed by the appellant against the respondent has been directed to be dismissed by the two courts below. The High Court has dismissed the landlord's appeal in limine. This is an appeal filed by the landlord by special leave.

F Vide notice Exh. P-4 issued on 1.11.1990 and served on 5.11.1990, the appellant terminated the tenancy of the respondent giving the latter more than 15 day's time for vacating the suit premises, whereafter the suit was filed. Non-payment of rent by the respondent and the need of the plaintiff to occupy the suit premises for herself were pleaded as grounds of eviction. The Trial Court and the First Appellate Court formed an opinion that the suit premises were governed by the provisions of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter 'The Act', for short) and inasmuch as any ground for eviction under Section 12 of the Act was not made out as the appellant failed in proving the tenant to be a defaulter and the appellant's need for self occupation, the suit was directed to be dismissed. **G** One of the pleas raised by the landlord from the very beginning was that because the ownership in the suit premises vested in the municipality, the applicability of the Madhya Pradesh Accommodation Control Act, 1961 was not attracted and entitlement for eviction was to be decided under the **H**

provisions of the Transfer of Property Act, 1961 only. Both the courts below held that though the ownership of the premises vests in the municipality yet as the plaintiff was not a municipality the applicability of the Act was not excluded. In our opinion, the courts below have committed a gross error of law and, therefore, their judgments are vitiated. The High Court ought to have entertained the appeal and should not have dismissed the same in limine.

It will suffice for the purpose of this appeal to state the admitted relevant facts in brief. The suit premises are non-residential, situated in the city of Khargaon in the State of Madhya Pradesh. The ownership of the premises vests in the municipal council. The appellant took the premises from the municipal council on lease and sub-let the same to the respondent herein. Thus qua the municipality, appellant is the tenant and the respondent is sub-tenant and as between the latter two, appellant is the landlord and respondent is the tenant.

Section 3(1) of the Act provides as under:-

“Sec. 3. Act not to apply to certain accommodation.- (1) Nothing in this Act shall apply to-

- (a) accommodation which is the property of the Government [Central Govt. or any State Govt.]
- (b) accommodation which is the property of a local authority used exclusively for non-residential purposes.”

It is well settled by a decision of this Court in *Bhatia Cooperative Housing Society Ltd. v. D.C. Patel*, [1953] 4 SCR 185 wherein *pari materia* provisions contained in the Bombay Rents, Hotel and Lodging House rates Control Act, 1947 came up for consideration of this Court. It was held that the exemption is not conferred on the relationship of landlord and tenant but on the premises itself making it immune from the operation of the Act. In identical facts, as the present case is, the decision of this Court was followed by the High Court of Madhya Pradesh in *Radhyelal Somsingh v. Ratansingh Kishansingh*, (1977) MPLJ; 335 and it was held that the immunity from operation of the Madhya Pradesh Accommodation Control Act, 1961 is in respect for the premises and not with respect to the parties. If a tenant in municipal premises lets out the premises to another, a suit by the tenant for ejection of his tenant and arrears of rent would not be governed by the Act as the premises are exempt under Section 3 (1)(b) of Act though the suit is not between the municipality as landlord and against its tenant. We find

A ourselves in agreement with the view taken by the High Court of Madhya Pradesh in *Radhyelal's* case. It is unfortunate that this decision binding in the State of Madhya Pradesh was not taken note of by the courts below as also by the High Court.

B The singular question to be examined in the present case is whether the tenancy was terminated in accordance with the provisions of Section 106 of the Transfer of Property Act. The receipt of notice by the defendant is admitted in the written statement. The defendant has not raised any specific objection as to the validity of the notice. An objection as to invalidity or infirmity of notice under Section 106 T.P. Act should be raised specifically and at the earliest; else it will be deemed to have been waived even if there exists one. C It cannot, therefore, be said that the notice in the present case suffered from any infirmity. A copy of the notice was exhibited and proved by the plaintiff as Exh. P-4.

D For the foregoing reasons the appeal is allowed. The judgments and decree of the Trial Court, First Appellate Court and the High Court are set aside. Instead, the suit filed by the plaintiff for eviction of the defendant-respondent is directed to be decreed. So far as the amount of rent in arrears is concerned, the Trial Court has recorded a finding, vide para 11 of its judgments, that the defendant-tenant was paying or depositing in the Court, rent as ordered by the court. So far as the finding is concerned, the plaintiff E has not raised any objection. The amount deposited by the defendant for payment to the plaintiff in the Court shall be available to be withdrawn by the plaintiff if not already withdrawn. If there are any arrears, the defendant-respondent shall continue to remain liable to pay the same Rs. 300 per month, which rate is undisputed. If there is any dispute as to the quantum of arrears, F the same shall be determined by the Executing Court.

The respondent-tenant is allowed six month's time for vacating the suit premises subject to his filing usual undertaking within a period of four weeks from today before the Executing Court.

G No order as to costs.

R.P.

Appeal allowed.