

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.155 of 2016**

Suryakumar Bajpayee (wrongly typed as Suryaajpayee), S/o. Late Prabhakar Dutt Bajpaee, aged about 56 years, R/o Sadar Ward, Jagdalpur, Civil and Revenue District Jagdalpur, District Bastar (CG)

---- Appellant

Versus

Dr.Vijay H.Bhojwani, S/o. Late H.N. Bhojwani, aged about 44 years, R/o. Kumharpara, Jagdalpur, P.S. and Post Jagdalpur, Civil and Revenue District Jagdalpur, District Bastar (CG)

---- Respondent

For Appellant	:	Mr.Manoj Paranjape, Advocate
For Respondent	:	Mr.B.P.Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

14/07/2016

1. The substantial question of law involved, formulated and to be answered in this second appeal is as under:-

“Whether the first appellate Court is justified in dismissing the appeal as not maintainable in law ignoring the full Bench judgment of the MP High Court in the matter of **Bhagwan Singh Ramcharan vs. Mst. Kallo Maula Shah & Others**; reported in **1977 MPLJ 583**, in which it has been held that the order passed on the application under Section 18(3) of the Madhya Pradesh Accommodation Control Act is appellable as a decree.”

2. The appellant/plaintiff instituted a suit for eviction on the ground of bonafide need and for reconstruction. The suit was compromised by the parties in Lok Adalat and compromise decree

was passed with a condition that the tenant was required to vacate the suit premises and to hand over the vacant possession to the landlord/plaintiff within 15 days for reconstruction and thereafter, the landlord was required to raise construction and after reconstruction, one shop would be let out to the defendant/tenant on monthly rent of ₹ 1500/- to 1700/-. The landlord was required to complete the construction within six months. The defendant had vacated the said premises and reconstruction has already been made, but claim of the defendant was that he was not given possession of the suit premises as per compromise decree.

3. Thereafter, the defendant filed an application under Section 47 of the CPC seeking relief of re-entry and damages. Relief under Section 18 of the Chhattisgarh Accommodation Control Act, 1961 (henceforth 'the Act of 1961') was also claimed.

4. The trial Court by its order dated 18.9.2015 allowed the application for re-entry and damages to the extent of ₹ 1,02,000/- was granted.

5. Feeling aggrieved against the order granting right of re-entry and damages under Section 18(3) of the Act of 1961, the appellant/plaintiff filed first appeal under Section 96 of the CPC before the First Appellate Court. The First Appellate Court by its impugned order rejected the same holding the first appeal to be not maintainable in law.

6. Questioning that order holding the appeal to be not maintainable in law, the second appeal under Section 100 of the CPC has been filed, in which substantial question of law has been framed in the opening paragraph of this judgment.

7. Mr. Manoj Paranjape, learned counsel appearing for the appellant/plaintiff, would submit that against the order passed by the trial Court on the application under Section 18(3) of the Act of 1961 first appeal under Section 96 of the CPC was maintainable and therefore, the learned Third Additional District Judge, Bastar at Jagdalpur is absolutely unjustified in dismissing the appeal holding to be not maintainable in law. He would further submit that the Full Bench of the Madhya Pradesh High Court in the matter of **Bhagwan Singh Ramcharan vs. Mst. Kallo Maula Shah and others**¹ has struck similar proposition as still that judgment is holding the field and it is binding judgment, therefore, the impugned order be set aside and the matter be remanded back to the First Appellate Court for hearing on merits.

8. On the other hand, Mr. B.P. Sharma, learned counsel appearing for the respondent/defendant, would submit that the First Appellate Court is absolutely justified in holding the appeal to be not maintainable, therefore, the second appeal deserves to be dismissed.

9. I have heard learned counsel for the parties, considered the

¹ 1977 M.P.L.J. 583

rival submissions made therein and gone through the records of the Courts below with utmost circumspection.

10. The short question which arises for consideration is whether the order passed by the trial Court on the application filed under Section 18(3) of the Act of 1961, is appealable as a decree or not.

11. The issue raised and involved in this appeal is no longer res-integra and it stands concluded by the Full Bench decision of the Madhya Pradesh High Court in **Bhagwan Singh Ramcharan** (supra), in which the Madhya Pradesh while resolving the conflict between two earlier decisions of that Court concluded that order on the application under Section 18(3) of the Act of 1961 is appealable as a decree and held as under:-

“20. From the language of section 17(2), it is clear that the Rent Controlling Authority has been authorised to pass a similar order as is contemplated by section 18(3), in case an order for eviction is made under clause (e) or clause (f) of sub-section (1) of section 12 and such an order is appealable. It appears to me that the Legislature did not consider it necessary to make a separate provision for appeal from an order passed by the Court under section 18(3) as it is in the nature of a final decree and appealable as such.

21. Hence I would return the following answer to the question:-

An order passed on an application under section 18(3) of the M.P. Accommodation Control Act, 1961 is appealable as a decree.”

12. Since the proposition of law laid-down by the Full Bench of the Madhya Pradesh High Court in **Bhagwan Singh Ramcharan**

(supra) is binding and still holding the field in which it has categorically been held that order on the application under Section 18 of the Act of 1961 is appealable as a decree and against that order first appeal would lie under Section 96 of the CPC, it is held that the Third Additional District Judge is absolutely unjustified in dismissing the appeal summarily as not maintainable in law.

13. As a fall out and consequence of the aforesaid discussion, the second appeal is allowed and the impugned order passed by the First Appellate Court is set aside. The appeal is restored to the file of the Third Additional District Judge, Bastar at Jagdalpur for hearing and disposal on merits in accordance with law as early as possible preferably within a period of three months from the date of receipt of a copy of this Judgment. It is made clear that this Court has not expressed any opinion on merits of the case. Records of the Courts below be sent back forthwith.

Sd/-
(Sanjay K.Agrawal)
Judge

B/-