

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.3595-3596 OF 2017
(@ Special Leave Petition (C)Nos.35737-38/2015)

SONA BAI

...APPELLANT(S)

Vs.

KU. KUSUM BHARDWAJ (SINCE DEAD)
THROUGH LRS.

...RESPONDENT(S)

O R D E R

1. Leave granted.

2. The original plaintiff, sought the eviction of the appellant herein, by filing a suit before the 3rd Civil Judge Class-II, Jabalpur, inter alia on the ground of bonafide personal necessity, under Section 12(1)(e) of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as the "1961 Act"), and additionally on the ground, that the premises was unfit for human habitation, under Section 12(1)(g) of the Act, and also on the ground of causing nuisance under Section 12(1)(c) under the 1961 Act. The trial court vide its order dated 21.12.2012, rejected the prayer made by the plaintiff on the ground of nuisance, but accepted the plaintiff's prayer, of bonafide personal necessity, and on the ground that the premises was unsafe and unfit for human habitation.

3. The order passed by the trial court on 21.12.2012 was assailed by the appellant (before this Court) by preferring an appeal. The appeal was partly accepted by the 19th Additional District Judge, Jabalpur, by an order dated 12.2.2014. By the above order, the first appellate court set aside the eviction order passed by the trial court, on the ground of bonafide personal necessity (under Section 12(1) (e), of the 1961 Act), but, upheld the conclusions drawn by the trial court, that the premises was unsafe and unfit for human habitation (under Section 12(1)(g) of the 1961 Act).

4. The appellant assailed the orders passed by the trial court dated 21.12.2012, and the first appellate court dated 12.2.2014, by preferring a second appeal, before the High Court of Madhya Pradesh at Jabalpur. The High Court, in the first instance, upheld the order passed by the first appellate court (vide order dated 23.4.2015). Review Petition No.293/2015 filed before the High Court by the appellant herein was dismissed by the High Court on 11.09.2015, wherein the High Court reiterated its earlier order, dated 23.4.2015.

5. The above two orders dated 23.4.2015 and 11.9.2015, are the subject matter of challenge through the instant appeals.

6. It was the contention of the learned counsel for the

appellant, that while accepting a prayer for eviction under Section 12(1)(g) of the 1961 Act, it was imperative for the High Court to have considered the mandate of Section 18 of the above Act. To understand the tenor of the submissions advanced at the hands of the learned counsel, it is imperative to extract hereunder Sections 12(1)(g) and 18 of the 1961 Act, which are reproduced hereunder :

"12(1)(g). That the accommodation has become unsafe, or unfit for human habitation and is required bonafide by the landlord for carrying out repairs which cannot be carried out without the accommodation being vacated.

18. Recovery of possession for repairs and re-building and re-entry.- (1) In making any order on the grounds specified in clause (g) or clause (h) of sub-section (I) of section 12, the Court shall ascertain from the tenant whether he elects to be placed in occupation of the accommodation or part thereof from which he is to be evicted and, if the tenant so elects, shall record the fact of the election in the order and specify therein the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs or building or re-building, as the case may be.

(2) If the tenant delivers possession on or before the date specified in the order, the landlord shall on the completion of the work of repairs or building or re-building place the tenant in occupation of the accommodation or part thereof, as the case may be, within one month of the completion of such work.

(3) If, after the tenant has delivered possession on or before the date specified in the order, the landlord fails to commence the work of repairs or building or re-building within one month of the specified date or fails

to complete the work in a reasonable time or having completed the work fails to place the tenant in occupation of the accommodation in accordance with sub-section (2), the Court may on an application made to it in the behalf by the tenant within such time as may be prescribed order the landlord to place the tenant in occupation of the accommodation or part thereof or to pay to the tenant such compensation as the Court thinks fit."

A perusal of Section 18, extracted hereinabove, leaves no room for doubt, that while making an order inter alia under Section 12(1)(g), it is imperative for the Court concerned, to ascertain from the tenant, the postulated conditions recorded therein.

7. It was submitted by learned counsel for the appellant, that the order under Section 12(1)(g) was passed without following the postulated procedure under Section 18, extracted above.

8. We have given our thoughtful consideration to the submissions advanced at the hands of learned counsel for the rival parties. Having perused the impugned orders, referred to hereinabove, we are satisfied, that the mandated conditions provided for in Section 18 of the 1961 Act, were not adhered to, while accepting the prayer made by the plaintiff (respondent, herein), while passing the order under Section 12(1)(g) of the 1961 Act. In view of the above, the impugned orders passed by the High Court, dated 23.4.2015 and

11.9.2015, are liable to be set aside, on the limited ground, raised by the appellant, under Section 18 of the 1961 Act. It would be in the fitness of the facts arising for consideration in the instant matter, that the readjudication of the dispute between the parties is determined at the level of the High Court. Ordered accordingly. S.A.No.349 of 2014 is ordered to be restored for reconsideration before the High Court.

9. Needless to mention, that by the instant order, we have not interfered with the findings of fact recorded by the courts below, with reference to the premises being unsafe and unfit for human habitation. In fact the above finding is expressly affirmed.

10. Parties are accordingly directed to appear before the High Court, for the limited consideration emerging from Section 18 of the 1961 Act. Such being the position, we also consider, that it would be in the fitness of the matter to allow the respondent(s) (in case the respondent is/are so advised), to move an appropriate application under Order XLI Rule 22 of the Civil Procedure Code, to file cross objections before the High Court, on the ground of bonafide personal necessity (under Section 12(1)(e), of the 1961

Act), as such intention was expressed before us, on behalf of the respondent-landlord during the course of hearing.

11. The civil appeals are disposed of in the above terms.

.....CJI.
[JAGDISH SINGH KHEHAR]

.....J.
[Dr. D.Y. CHANDRACHUD]

.....J.
[SANJAY KISHAN KAUL]

New Delhi;
2nd March, 2017.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).35737-35738/2015

(Arising out of impugned final judgment and order dated 23/04/2015 in SA No.349/2014 and order dated 11/09/2015 in RP No.293/2015 passed by the High Court Of M.P. At Jabalpur)

SONA BAI

Petitioner(s)

VERSUS

KU. KUSUM BHARDWAJ (SINCE DEAD) THROUGH LRS
(With office report)

Respondent(s)

Date : 02/03/2017 These petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. Kartik Seth,Adv.
Mr. Kunal Verma,Adv.
Mr. Prasana Mohan,Adv.

For Respondent(s) Mr. Divyakant Lahoti,Adv.
Mr. Parikshit Ahuja,Adv.
Mr. Amrita Grover,Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are disposed of in terms of the signed order. Pending applications stand disposed of.

(Sarita Purohit)
Court Master

(Renuka Sadana)
Assistant Registrar

(Signed order is placed on the file)