

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 26<sup>th</sup> OF APRIL, 2024**

**MISC. PETITION No. 2590 of 2023**

**BETWEEN:-**

**BHARTIYA BHANDAR PRO. MANISH KUMAR  
JAIN S/O SHRI SUSHIL KUMAR JAIN AGED  
ABOUT 52 YEARS OCCUPATION BUSINESS R/O  
V15, GOLE BAZAR NEAR DATT MANDIR  
JABALPUR DISTRICT JABALPUR (MADHYA  
PRADESH)**

**.....PETITIONER**

**(BY SHRI J. L. SONI - ADVOCATE)**

**AND**

**SHRI MAHADEV JI MANDIR TRUST POLIPATHAR  
JABALPUR THROUGH THE MANAGER/TRUSTEE  
SHRI KUNJBIHARI SONI S/O SHRI RAJABHAIYA  
SONI AGED ABOUT 64 YEARS R/O NEW ANAND  
JEWELLERS SARAFI JABALPUR DISTRICT  
JABALPUR (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI AVINASH ZARGAR - ADVOCATE)**

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*This petition coming on for admission this day, the court passed  
the following:*

**ORDER**

This petition under Article 227 of Constitution of India has been filed against the order 27.04.2023 passed by XIVth Civil Judge, Senior Division, Jabalpur in Civil Suit No.131A/2009 by which the application filed by the petitioner under Order 14 Rule 5 of CPC for

framing of additional issue has been dismissed on the ground that the application has been filed belatedly and the proposed issues are already covered by the issues framed in the suit.

2. It is submitted by counsel for the petitioner that by filing of an application under Order 14 Rule 5 of CPC, the petitioner had sought the framing of additional issue with regard to fact as to whether the respondent/plaintiff is entitled to file the suit as per the provisions of under Section 3(2) of M.P. Accommodation Control Act. The issues, which have already been framed by the trial Court would not cover the issues proposed by the petitioner. It is true that the amendment in the written statement was allowed by the trial Court in the year 2013 but it was the duty of the trial Court to find out as to whether the amended pleadings were covered by the existing issues or not. If the petitioner has filed the application at belated stage, then the entire burden cannot be placed on him.

3. *Per contra*, the petition is vehemently opposed by counsel for respondents. It is submitted that evidence of the parties is already over and case is already fixed for final arguments and by filing this application, the petitioner has adopted a delaying tactics. Once, the trial Court has already observed that the proposed issue No.7 is covered by the existing issues, then it is clear that a finding will also be recorded with regard to the applicability of Section 3(2) of M.P. Accommodation Control Act.

4. Heard the learned counsel for the parties.

5. It appears that a civil suit has been filed by the plaintiff/respondent for eviction. The suit was filed in the year 2009. 15

long years have already passed and the civil suit has not come to an end. It is true that the amendment was allowed in the year 2013 and it was for the trial Court to frame the additional issue but even then the petitioner/defendant was also under obligation to bring it to the notice of the Court that an additional issue is required.

6. The only apprehension of the petitioner is that in absence of issue, the Court may not adjudicate the question with regard to the maintainability of the suit in the light of Section 3(2) of M.P. Accommodation Control Act. Once, the trial Court has already observed that the proposed issue No.7 is covered by the existing issues, then it is clear that the trial Court shall certainly dwell upon the question with regard to applicability of Section 3(2) of M.P. Accommodation Control Act.

7. Accordingly, this Court is of considered opinion and considering the stage of trial and considering the fact that in case if an additional issue is framed, then the entire trial will be reopened and once the trial Court has already held that it is covered by the pre-existing issues, no case is made out warranting interference.

8. The petition fails and is hereby **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

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