

WP No. 4249/15

12/8/2015

Shri V.K. Gangwal learned counsel for petitioner.

Shri M. Bhachawat, learned counsel for respondents.

Heard finally with consent.

This writ petition under Article 227 of the Constitution of India is at the instance of the defendant tenant challenging the order of trial court dated 22/4/14 whereby the defence of petitioner has been struck off under Section 13(6) of MP Accommodation Control Act.

Having heard the learned counsel for the parties and on perusal of the record, it is noticed that respondent landlord had filed an application under Section 13(6) of Act stating that petitioner had not deposited the rent since September 2013. Trial court while allowing the said application has noted the different dates when the rent was deposit and has come to the conclusion that there was a delay on the part of the petitioner in depositing the rent and has struck off the defence on the ground that rent has not been deposited in terms of Section 13(1) of Act.

Trial court while passing the impugned order has only mentioned the different dates on which rent was deposited and the fact that there was a delay in deposit of the rent but has failed to appreciate that the order of striking of the defence is not to be passed mechanically in every case of default of deposit of rent but Section 13(6) of Act confers discretionary powers on the court which are to be exercised judicially after considering the facts and circumstances of the case having regard to the nature and extent of default, subsequent deposit of rent and considering the fact if the

default is deliberate or if there is contumacy or positive malafide on the part of tenant in not depositing the rent within time.

Supreme court in the matter of **Kamla Devi (smt) Vs. Vasdev reported in (1995) 1 SCC 356** while considering the similar provisions of Delhi Rent Act has held that it is not obligatory to strike off defence of the tenant if tenant fails to make the payment. It depends upon the facts of the case and discretion of the authority whether such a drastic order should or should not be passed. Full bench of this court in the matter of **Jagadish Kapoor Vs. New Education Society through Director and Secy. K.L. Pandey, reported in AIR 1968 MP Page 1** has settled that provision contained in Section 13(6) is discretionary and not mandatory and it is not compulsory for the court to strike off the defence on finding that tenant has failed to deposit or pay any amount as required by Section 13. The court has discretion in the matter of striking out of the defence and that discretion has to be exercised judicially having regard to the facts and circumstances of each case. This court in the matter of **Bachchoobhai Vs. Premanand Bhiogadhe, reported in AIR 1976 MP 8** has noted the two consequences of non compliance of Section 13(1) as under:

“(5) The consequences of non-compliance with either the first part or the second part of Section 13(1) are two:-

(a) The defendant automatically forfeits the protection under section 12(3) and section 13(5), even when there is a single default. The Court has no power to condone any delay or default for the purposes of Section 12(3) or Section 13(5).

(b) His defence is liable to be struck out under

Section 13(6). But it is not automatic. The provisions are not mandatory. The court has been given a wide discretion to strike out the defence or not to strike it out, in case where there is one default or more than one default, or any amount of delay in depositing the amounts due under the first part and the second part of Sec. 13(1). If at the time that the court is disposing of the application under Section 13(6), rent has been deposited, or the tenant seeks a reasonable time to deposit all amount of rent due under both the parts of Section 13(1), the Court shall not strike out the defence, except when there is :-
(i) contumacy, or
(ii) positive mala fide.”

As per the aforesaid judgment also the court is required to see contumacy or positive malafide while deciding the application under Section 13(6) of Act.

This court in the matter of **Manoharlal Gopilal Pande Vs. Dr. Abdul Mazid Khan, reported in 1997(1) MPLJ 232** has taken the view that if entire rent is already deposited and delay caused in payment of rent is not such as would cause a material injury to the landlord, the delay in payment of rent is liable to be condoned. In the matter of **Smt. Mumtaz Bee Vs. Smt. Salma Bee, reported in 2001(I) MPACJ 155** it has been held that provisions under Section 13(6) is of penal nature and must be resorted to only when it is shown that the default was deliberate. Similar is the view expressed by this court in the matter of **Gayaprasad Vs. Pooranchand and another reported in 1972 JLJ Short Note 49** and in the matter of **Girishchandra Vs. Prabha Dani, reported in 1980(1) MPWN 239.**

Counsel for respondents has relied upon the judgment of this

court in the matter of **Ramchandra Pande Vs. Ramcharanlal Nema, reported in 1979-II MPWN 26** but in that case contumacy and positive malafide on the part of the tenant was found.

Similarly in the matter of **Harak Chand Vs. Smt. Lata Rani Through LRS reported in 1987 MPRCJ Note 78** relied upon by counsel for respondents the tenant was found to be depositing rent as and when he had chosen to do and therefore, the order of striking out of defence was upheld.

In the light of the aforesaid position in law, it is found that trial court was not justified in mechanically striking of defence noting that default was committed by petitioner in timely depositing the rent. There is no finding by the trial court that the default was deliberate or the conduct of petitioner was contumacious or malafide. It has also been pointed out that petitioner has deposited the entire rent and trial court has not considered its effect.

In these circumstances the impugned order passed by the trial court striking of the defence under Section 13(6) of Act cannot be sustained and is hereby set aside.

Writ petition accordingly stands allowed.

C.C. as per rules.

(Prakash Shrivastava)
Judge

BDJ