

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
S.A. No.1258/2017 (Dev Shankar Vs. Shashi) (-1-)

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE
SINGLE BENCH : HON'BLE SHRI JUSTICE S.C. SHARMA

S.A. No.1258/2017

Dev Shankar

Vs.

Shashi

Shri M.K Jain, learned counsel for the appellant.

Shri Brajesh Garg, learned counsel for the respondent.

J U D G M E N T

(Passed on this 21st Day of February, 2018)

Present second appeal has been filed against the judgment dated 04.09.2017 passed by the District Judge, Ratlam in Civil Suit No.47-A/16. Facts of the case reveal that the plaintiff-Shashi, respondent before this Court has filed a civil suit for eviction of the present appellant in respect of the house 16/427, Post Office Road, Shop No.17. A decree of eviction was sought on the ground of nonpayment of rent under Section 12(1)(A) of the M.P. Accommodation Control Act, 1961 and under Section 12(1) (B) on the ground of subletting.

2. The trial court has dismissed the suit by holding that after receiving the notice given by the landlord, the amount of rent was tendered through a cheque to the plaintiff and against the judgment and decree dated 25.06.2016 passed by the Civil Judge, Class-I in Civil Suit No.29-A/2013, a first appeal was preferred and the same was registered as F.A. No.47-A/2016. The trial court has allowed the appeal of the landlord and held that keeping in view the violation of Section 13(1) of M.P. Accommodation Control Act, 1961, the plaintiff is entitled for eviction under Section 12(1)(a) of the M.P. Accommodation Control Act, 1961.

3. Learned counsel for the appellant/tenant has argued before this Court that once the arrears of rent have been paid w.e.f. 01.04.2008 and as the cheque for Rs.4750/- was refused by the plaintiff, the ground of Section 12(1)(a) of the M.P. Accommodation Control Act, 1961 is not available to the plaintiff and in those circumstances, the appellate court could not have decreed the suit by allowing the appeal.

4. A specific question was asked to the learned counsel arguing the matter today i.e. whether there was any default in making payment during the pendency of the suit. He has fairly stated before this Court that as many as 10 defaults were there in making the payment of rent. He has further stated that at no point of time, any application for condoning the default in making delayed payment was filed and

undisputedly, there were defaults in making payment.

5. Section 12(1)(A) and Section 13(1) of the M.P. Accommodation Control Act, 1961 read as under:-

“Section 12(1)(a) : - Restriction on eviction of tenants.

- (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner;

Section 13. When tenant can get benefit of protection against eviction. -

[(1) On a suit or any other proceeding being instituted by a landlord on any of the grounds referred to in Section 12 or in any appeal or any other proceeding by a tenant against any decree or order for his eviction, the tenant shall, within one month of the service of writ of summons or notice of appeal or of any other proceeding, or within one month of institution of appeal or any other proceeding by the tenant, as the case may be, or within such further time as the Court may on an application made to it allow in this behalf, deposit in the Court or pay to the landlord, an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made ; and shall thereafter continue to deposit or pay, month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding, as the case may be.”

6. Learned counsel for the appellant has placed reliance upon a judgment delivered in the case of **Sardar @**

Jayendra Rao Vs. Omprakash, reported in 2008(1) MPWN, 123 and his contention is that this Court in light of the aforesaid case i.e. in Second Appeal No.917/06 has held that the trial court has rightly refused the decree of eviction as all arrears of rent were tendered within two months.

Paragraph No.3 of the judgment reads as under:-

“3. Learned counsel for the appellant has submitted that during the pendency of the suit, there was default in payment of rent by the defendant in the trial Court and, therefore, lower appellate Court has committed error in dismissing the suit of the plaintiff. It is not in dispute that notice for arrears of rent was issued vide Ex.P-3 dated 5.6.1998. The respondent/defendant received notice on 6.6.1998 and, therefore, he deposited the rent vide Ex.D-48 upto the period May, 1998 on 10.6.1998. The suit was filed on 21.9.1999 and on the date of filing of the suit, there was no arrears of the rent. The respondent has tendered the entire arrears of rent legally recoverable from him within two months from the date of service of notice and the appellant has no cause of action to file suit on the ground of Section 12(1)(A) of the Act nor there was any arrears of rent on 21.1.1999 on the date when the suit was filed and, therefore, the plaintiff has no cause of action to file the suit on the ground of Section 12(1) (a). In such a circumstances, the lower appellate Court has not committed any legal error in dismissing the suit of the plaintiff on the ground under Section (1)(a) of the Ac.”

This Court has carefully gone through the aforesaid judgment. The judgment does not deal with non-payment of rent under Section 13(1) of the M.P. Accommodation Control Act, 1961, therefore, the judgment relied upon by the appellant is distinguishable on facts.

7. Learned counsel has also placed reliance upon the judgment delivered in the case of **Madan S/o Laxmanji**

Gurjar Vs. Shantilal, reported in 2011 (I) MPACJ, 1 (S.A. No.60/2006).

In the aforesaid case also, rent was tendered and in those circumstances, it was held that the decree cannot be granted taking shelter of Section 12 (1)(a) of the Act. In the aforesaid case, the issue of Section 13(1) of the Act was not at all considered, hence, it is distinguishable on facts.

8. Learned counsel has also placed reliance upon another judgment delivered in the case of **Manisha Lalwani Vs. Dr. D.V. Paul**, reported in 2007(2) MPLJ, 52. In the aforesaid case also, it has been held that once the plaintiff has received arrears of rent through draft, the plaintiff is not entitled for a decree of eviction under Section 12(1)(a) of the Act. It is true that the plaintiff has received rent after receiving the notice within the time framed worked, the ground under Section 12(1)(a) of the Act is not available but, at the same time, in the present case, there is a total non-compliance of Section 13(1) of the M.P. Accommodation Control Act, 1961, hence, again the judgment relied upon is of no help.

9. Learned counsel for the respondent/landlord has vehemently argued before this Court that the plaintiff was under an obligation to pay rent on 15th day of every month during the pendency of the suit and during the pendency of the appeal, however, same was not done. There were as many as 10 defaults and, therefore, Section 13(1) of the Act

comes into play. The Apex Court in the case **Jamnalal Vs. Radheshyam**, reported in 2000(2) MPLJ, 385 in paragraph Nos.11, 12, 15, 23 and 25 has held as under:-

“(11) The scheme of Section 13 of the Act suggests that the provisions thereof are intended for the benefit of both the tenant as well as the landlord. While Section 13 affords protection to a defaulting tenant, willing to abide by the obligation to pay the rent regularly, against eviction on the ground of default in payment of rent, it also ensures payment of rent to the landlord, which he is entitled to receive for both the pre- litigation period as well as during the pendency of the litigation. A perusal of Sub-section (1) of Section 13 discloses that it imposes twin obligations on the tenant against whom a suit or proceeding is instituted on any of the grounds mentioned in sub-section (1) of Section 12. The first is that within one month of the service of the writ of summons on him or within such further time as the Court may, on an application made to it, allow in this behalf, the tenant shall deposit in the Court or pay to the landlord an amount, representing (a) arrears of rent for the period for which the tenant may have made default and (b) rent for the period subsequent thereto upto the end of the month previous to that in which the deposit or payment is made, duly calculating the same at the rate of rent at which it was paid. And the second is payment/deposit of rent for the period thereafter, that is, future rent which he shall continue to deposit or pay, month by month, by the 15th of each succeeding month, at that rate. For the purpose of depositing the amount of rent, sub-section (1) refers to three periods in chronological order, i.e.,

- (i) period for which arrears of rent are due, which is the subject matter of notice of demand served on the tenant;
- (ii) period for which rent became due subsequent to the notice of demand till the date of deposit of rent in Court; and
- (iii) period for which rent will become due in future, after the date of deposit as aforementioned, till the decision of suit or appeal.

The following illustration will help in elucidating the import of the provisions under consideration; if a tenant has last paid rent of tenanted premises, say, @ Rs.1000/- for the months of January and did not pay for February, March and April and notice of demand claiming arrears of rent for those months was served on him in May; the Act permits

him to pay the arrears of rent within two months of service of demand, i.e., till end of July. Assuming he has failed to do so and the landlord files the suit under Section 12(1)(a) of the Act of which writ of summons is served on the tenant on September 15, for his appearance in the Court, he has the second opportunity to pay arrears of rent in Court within one month of service of summons on him i.e. till October 14 or within such further time as the Court may allow; but at that stage along with arrears of rent for the said months he has also to pay/deposit rent for the months from May to the end of September. The second obligation of depositing the future rent continuously from month to month covers the period commencing from October and ending with the decision of suit or appeal. The arrears of rent and the future rent for each month, in the illustration, have to be calculated at the rate of Rs.1000/-.

(12). The abovestated two obligations are independent of each other. Compliance of the second does not depend upon fulfilment of the first obligation. It is evident that [Section 13\(1\)](#) applies on institution of a suit on any of the grounds in clauses (a) to (p) of [Section 12\(1\)](#) and not merely to one under clause (a) default in payment of rent. In cases under clauses other than (a), the tenants might have been paying the rent regularly and the question of payment/deposit of arrears of rent or rent for the period subsequent to service of summons, may not arise. Can then, based on the word thereafter, it be argued that there will be no liability to deposit future rent the second obligation noted above. In our view such a contention will be defeating the object of the provision and will be impermissible. Having stated how the amount of rent payable by the tenant for the periods specified therein should be calculated and deposited, the provision imposes further obligation to deposit the rent month by month till the termination of the suit or proceedings. The word thereafter is merely indicative of sequence of the second obligation to deposit the future rents; it is certainly not suggestive of the fact that if the first obligation for any reason cannot be complied with then the occasion to comply with the second obligation does not arise or that it automatically comes to an end. It would be unthinkable that that could be the intention of the legislature.

(15) A careful reading of the sub-section shows that the Court is enjoined to fix a reasonable provisional rent, in relation to the accommodation, to be deposited or paid in accordance with the provision of sub-section (1) if there is a dispute as to the amount of rent payable by the tenant. The clause the court shall fix a reasonable provisional rent in relation to the accommodation clearly indicates that any dispute as to the amount of rent is confined to a dispute which depends on the rate of rent of the accommodation either because no rate of rent is fixed between the parties or because each of them pleads a different sum. Where the dispute as to the amount of rent payable by the tenant has no nexus

with the rate of rent, the determination of such dispute in a summary inquiry is not contemplated under sub-section (2) of [Section 13](#). Such a dispute has to be resolved after trial of the case. Consequently, it is only when the obligations imposed in [Section 13\(1\)](#) cannot be complied with without resolving the dispute under sub-section (2) of that Section, that [Section 13\(1\)](#) will become inoperative till such time the dispute is resolved by the Court by fixing a reasonable provisional rent in relation to the accommodation. It follows that where the rate of rent and the quantum of arrears of rent are disputed the whole of [Section 13\(1\)](#) becomes inoperative till provisional fixation of monthly rent by the Court under sub-section (2) of [Section 13](#), which will govern compliance of Section 13(1) of the Act. But where rate of rent is admitted and the quantum of the arrears of rent is disputed, (on the plea that the rent for the period in question or part thereof has been paid or otherwise adjusted), sub-section (2) of [Section 13](#) is not attracted as determination of such a dispute is not postulated thereunder. Therefore, the obligation to pay/deposit the rent for the second and the third period aforementioned, referred to in [Section 13\(1\)](#), namely, to deposit rent for the period subsequent to the notice of demand and for the period in which the suit/proceedings will be pending that is (future rent) does not become inoperative for the simple reason that [Section 13\(2\)](#) does not contemplate provisional determination of amount of rent payable by the tenant. As resolution of that category of dispute does not fall under [Section 13\(2\)](#) the tenant has to take the consequence of non payment/deposit of rents for the said periods. If he fails in his plea that no arrears are due and the Court finds that the arrears of rent for the period in question were not paid, it has to pass an order of eviction against the tenant as no provision of Section 13 of the Act protects him.

(23) In *Anandilal Vs. Shiv Dayal Pandey* [1977 MPLJ 822], for non- payment of rent within two months from the service of notice of demand, the landlord terminated the tenancy. The tenant disputed that he was in arrears of rent. The trial court found that the tenant had committed default in payment of rent and decreed the suit. However, the Appellate Court reversed the decree holding that the landlord failed to prove that the tenant was in arrears of rent. In view of the difference of opinion between Vyas, J., in *Jhammanlals case* [Second Appeal No.179 of 1970 decided at Gwalior (M.P.) on 5-8-1976] who, relying on the Full Bench decision (supra), held that on raising of dispute by the tenant the operation of the whole of Section 13(1) of the Act was arrested and Oza, J., in *Dewabais case* [1977 M.P.L.J. 446] opining that only that part of [Section 13](#) (1) of the Act which is subject matter of dispute raised under Section 13(2) of the Act, will be arrested and that compliance of the remaining part of the provision by the tenant is mandatory, two questions were referred to Division Bench. The Division Bench answered the questions referred to it as follows:-

" (1) Even when there is no dispute with regard to the rate of rent and the dispute is only with regard to the arrears of rent, on such a dispute, till the Court passes an order under sub-section (2) of Section 13 of the Act is arrested. To be more specific, the liability of the tenant to deposit monthly rent for the preceding month under the second part of [Section 13\(1\)](#) does not commence until an order under sub- section (2) of [Section 13](#) is made.

(2) The order contemplated under sub-section (2) of Section 13 of the Act is the one with regard to that part of deposit under [Section 13\(1\)](#), for which there is a dispute."

(25) In the instant case, the findings of the courts below are : that the tenant did not pay the rent for the period from March to July 1976; indeed, the finding of the trial Court which was confirmed by the Appellate Court is that the tenant forged receipts (Exs.:D1 to D4) for the said months and that he had committed default in payment of rent. It appears that on the application of the landlord the trial court fixed provisional rent @ Rs.60/- per month and left the question of arrears of rent to be decided on trial. Consequently, non-determination of provisional rent by the trial Court under sub-section (2) of Section 13 of the Act becomes inconsequential. There is thus non-compliance of Section 13(1) of the Act and the tenant is not entitled to the benefit of [Section 13\(5\)](#) read with Section 12(3) of the Act."

In the aforesaid case, the decree of eviction was passed taking into account Section 13(1) of the M.P. Accommodation Control Act, 1961 and, therefore, in the considered opinion of this Court, in light of the judgment delivered by the Apex Court, as there was a default in making payment of rent during the pendency of the suit, the appellate Court was justified in allowing the appeal of the landlord and decreeing the suit.

10. In the case of **Rajendra Kumar Vs. Kasturibai**, reported in 2009(1) MPLJ, 413, this Court in paragraph Nos.6 and 7 has held as under:-

“(6) From a perusal of section 13 (3) of the act, it is clear

that a tenant cannot be evicted on a ground mentioned in **section 12 (1) (a)** for arrears of rent only in case he complies with the **provisions of section 13 (1)** of the act. Section 13 (1) requires that immediately on service of summons of the suit a tenant is required to deposit the rent and continue to deposit future rent by 15th of each succeeding month or in the alternative, is required to file an application seeking extension of time for depositing the rent. In the instant case, the appellants in spite of admittedly committing default in depositing the rent as required by section 13 (1) , did not file any application for extension of time before the first appellate court. In such circumstance, the first appellate court has rightly recorded a finding to the effect that the appellants were liable to be evicted on the ground mentioned under **section 12 (1) (a)** of the act.

(7) As far as the application for condonation of delay filed by the appellants is concerned, the supreme court in the case of *aayeda akhtar vs. Abdul ahad (supra)* , has held that the application for condonation of delay cannot be entertained after lapse of a long period of time of committing the default in the following terms, in paragraph 9: -

"9. The high court in its impugned judgment did not point out as to how the court of appeal committed an error of records in arriving at the said finding. Admittedly, there had been two defaults, i. E. , rent for the month of november, 1985 and rents for the months of may and june, 1988. The high court purported to have recorded that the appellant had applied for condonation of delay in payment of rent on 5 - 2 - 1990 in relation to default to deposit rent for the month of november, 1985 and for the months may and june, 1988. An application for condonation of delay could not have been entertained on 5 - 2 - 1990 for commission of default in depositing the rent. We, therefore, arc of the opinion that the high court was not correct in interfering with the findings of fact arrived at by the first appellate court."

In view of the aforesaid facts and circumstances, the first substantial question of law on which the appeal was admitted, does not arise in the present appeals as no fault can be found with the conclusion of the first appellate court in this regard.

In the aforesaid case also, there were large number of defaults in paying the rent and Section 13(1) came into play

and in those circumstances, High Court has upheld the decree awarded by the appellate court on the ground of Section 12(1)(a) of the M.P. Accommodation Control Act, 1961.

11. This Court in the case of **Bachchoobhai Vs. Premanand**, reported in AIR 1976 MP 8 in paragraph No.8 has held as under:-

“8. But the learned trial Judge has been in error in striking out the defence merely on the ground that the provisions of Section 13 (1) were not complied with by the defendant. Striking out the defence is not a necessary consequence of non-compliance with the **provisions of section 13 (1)**, either part. The learned trial Judge has confused between the consequence of non-compliance, with Section 13(1), so far as it relates to the benefit which has been provided by the statute under **section 12 (3) and section 13 (5)**, and the penalty with which the defendant may be visited as a consequence of such default. The two are separate and distinct. The first is a necessary consequence, the second is not.”

In the aforesaid case also, there was a default committed by the tenant as per Section 13(1) and it was held that plaintiff is entitled for a decree of eviction.

12. In the case of **Vinay Kumar and others Vs. Radheshyam and others**, reported in 2005(2) MPACJ, 276, there was a default in making payment during the pendency of the appeal and this Court has held that the landlord is entitled for decree of eviction. In the case of **Gangadevi Vs. Rukmanidevi**, reported in 173 MPWN, 277, a similar view has been taken. The tenant therein has committed several defaults in depositing the rent. The delay was never

condoned and it was held that he is a defaulter under Section 12(1)(a) of the Act, and decree of eviction was granted.

13. In the case of **Munnasing & another Vs. Ramesh Chand Sharma & others**, reported in 2005 (1) MPACJ, 75, learned Single Judge has held that the tenant did not comply with both the limbs of Section 13 (1) to claim protection against the eviction as non-compliance of Section 13 (1) entitles the landlord for grant of decree of eviction. In the case of **Narayandas Vs. Shri Sakal Dasha Neema**, reported in Weekly Notes, 1982, 226 Note 161, similar view has been taken by this Court as the rent was not deposited in time as required under Section 13(1).

14. The Apex Court in the case of **R.C. Tamrakar Vs. Nidi Lekha**, reported in AIR 2001 SC 3806 in paragraph No.8 has held as under:-

“8. Reading both the sub-sections together, we are of the opinion that the benefit of sub-section (5) shall be available to a tenant provided he tenders the arrears of rent or deposit it in the court within one month of service of writ of notice or notice of appeal or any other proceeding or within one month of the institution of the appeal or any other proceeding by the tenant or within such further time as the court may on an application made to it allow in this behalf. In the case in hand the tenant did not deposit the arrears of rent either prior to filing of the suit or during its pendency before the Trial Court. In the First Appellate Court rent was deposited and it was not clear whether he continued to deposit the rent as per sub-section (1) of Section 13. The First Appellate Court set aside the findings of defaulter on the ground that the rent was deposited in the Appellate Court. The High Court was of opinion that after the Trial Court passed the decree holding that the tenant was in the arrears of rent, mere depositing the amount without filing an application for extension of time for payment of all the arrears of rent due, the finding of the Appellate Court that tenant was not a defaulter is not

sustainable. The High Court further recorded that the First Appellate Court did not give any finding that entire amount of arrears of rent was paid. This finding of the High Court cannot be faulted in view of clear provision of sub-section (1) of Section 13 and, there- fore, tenant is not entitled to get protection under sub-section (5).”

In the aforesaid case also, the tenant did not deposit the rent keeping in view Section 13 (1) and he was treated as defaulter hence liable for eviction.

15. In the case of **Wahidulla Vs. Kamrunissa and another**, reported 2017 (4) MPLJ, 584, this Court in paragraph No.17, 18 and 19 has held as under:-

“17. Counsel for appellant has placed reliance upon judgment of the Supreme court in the matter of **Shyamcharan Sharma Vs. Dharamdas reported in AIR 1980 SC 587** but that is a judgment mainly on the issue of striking off defence for non payment of rent under Section 13(6) of the Act. He has also placed reliance upon Single Bench judgment of this court in the matter of **Gopalds and others Vs. Rajesh and another reported in 2005(4) MPLJ 352** but in that case the defendant had tendered the entire arrears of rent legally recoverable from him within two months from the date of service of notice, therefore, it was found that plaintiff/landlord had no cause of action to file the suit under Section 12(1)(a) of the Act. Similarly the Single Bench judgment in the matter of **Manisha Lalwani Vs. Dr.D.V. Paul reported in 2007(2) MPLJ 52** relied upon by counsel for appellant is also of no help to the appellant since in that case the tenant within 11 days of the receipt of notice of demand for the arrears of rent had sent the amount by bank draft. These judgments are distinguishable on fact and the benefit of these judgments cannot be granted to the appellant since in the present case the courts below have concurrently found that appellant had not only committed default in depositing the rent after service of notice of demand but had also committed default in depositing the arrears of rent within one month from service of summons in terms of first part of Section 13(1) of the Act and had repeatedly committed default in depositing the rent not only pending the suit but also pending the

appeal in terms of second part of Section 13(1) of the Act.

18. In view of the concurrent finding of fact recorded by the two courts below in respect of above defaults in payment of rent and the fact that nothing has been pointed out to show that these findings are incorrect or erroneous, I am of the opinion that the questions framed by this court are to be answered in favour of respondent and against the appellant and the same are accordingly answered.

19. The appellant has also filed IA No. 1007/17 for condonation of delay in depositing the rent but after rejection of similar applications by the trial court and by the first appellate court and upholding orders of rejection by this court for the same purpose another application is not maintainable. That apart it is noticed that no proper explanation in the said application has been furnished. Hence IA No. 1007/17 is rejected.”

In the aforesaid case, the rent was not deposited keeping in view Section 13 (1) of the M.P. Accommodation Control Act, 1961, there was a default committed by the tenant and in those circumstances, it was held that the landlord is entitled for decree of eviction. Similar view has been taken by this Court in the case of **Smt. Ram Kunwar Bai and Others Vs. Smt. Hussaina Bai**, reported in 2005(II) MPACJ, 43.

16. Full Bench of this Court in the case of **Rampiyari Vs. Ramautar**, reported in 1968 JIJ 146 has taken a similar view in paragraph Nos.7 and 8 and the same read as under:-

“7. We are unable to accede to this contention. The main part of Sub-section (3) of Section 12 lays down that if a tenant makes payment or deposit of rent as required by Section 13, then no order for his eviction shall be made on the ground of default in the payment of rent, that is, on the ground specified in Section 12 (1) (a) of the Act. In order to avoid a decree for eviction on the aforesaid ground, the tenant has to make not only the initial

deposit as required by Sub-section (1) or Sub-section (2), but has also to continue to deposit rent during the pendency of the suit as enjoined by Sub-section (1) or Sub-section (2) of Section 13 of the Act. The same provision has been repeated in Sub-section (5) of Section 13, albeit with the addition "but the Court may allow such costs as it may deem fit to the landlord". Neither the main part of Sub-section (3) of Section 12, nor Section 13 (5) admit of any qualification on account of a default in the making of any payment or deposit as required by Section 13. Indeed, it is the compliance of Section 13 that gives to the tenant the benefit of avoiding a decree on the ground stated in Section 12 (1) (a) of the Act.

8. Now, the proviso to Sub-section (3) of Section 12 only carves out an exception to the main provision of Sub-section (3). It does not exclude anything by Implication what the main part of Sub-section (3) of Section 12 provides. It cannot be construed as taking away what the main part of Sub-section (3) of Section 12 of the Act gives. What it says is that the benefit of the main part of Sub-section (3) of Section 12 shall not be given to a tenant even if he makes payment or deposit as required by Section 13 if, after having obtained "such benefit once in respect of any accommodation, he again makes & default in the payment of rent of that accommodation for three consecutive months". It is easy to see that the default spoken of in the proviso is not a default occurring in the suit itself. It refers to default before the institution of the suit. The benefit of the main part of Sub-section (3) of Section 12 being available only when there is full compliance by the tenant of Section 13 in the matter of payment or deposit of rent, if the tenant makes a default in the payment or deposit of rent in the suit itself, the question of giving him the benefit of the main part of Sub-section (3) of Section 12 or of Section 13 (5) cannot obviously arise. This makes it plain that the default referred to in the proviso to Sub-section (3) of Section 12 is not a default occurring in the suit itself."

In the aforesaid case also, there was a default in paying rent as required Section 13 (1) and it has been held that the landlord is entitled for decree of eviction.

17. In the case of **Rajendra Kumar Vs. Laxmi Bai**, reported in 2006 (4) MPLJ, 115, it has been held that the

benefit of Section 12(3) cannot be claimed by the tenant without compliance of Section 13(1). Paragraph No.8 of the aforesaid judgment reads as under:-

“8. To consider the rival contention of the parties, the order dated 19-3-1998 passed by the Trial Court may be seen. This order was passed by the Trial Court on an application filed by the landlord under Section 13(6) of the Act in which it is alleged that the tenant has not deposited the entire rent nor has furnished the receipts of deposit of the rent. On the aforesaid application, the Trial Court very specifically passed the order that one week time is allowed to the tenant to furnish the deposit receipts in compliance of the order dated 6-1-1998 and shall also furnish the particulars of deposit of the rent to the Court, otherwise the defence of the tenant shall be struck out. From the perusal of the entire order, nowhere the Trial Court had extended the time to deposit the amount to the tenant in continuation to order dated 6-1-1998. When time period was not extended by the Trial Court, the tenant on deposit of the rent on 20-3-1998 was under an obligation to file an application for seeking condonation of delay or extension of time for depositing the rent. In the absence of which, it can very well be presumed that the tenant has failed to comply with the provisions of Section 13(1) of the Act or order dated 6-1-1998 by the Trial Court and the landlord was entitled for decree under Section 12(1)(a) of the Act. The benefit of Section 12(3) of the Act is available only when the provisions of Section 13(1) of the Act are complied with. In the absence of which the tenant could not invoke benefit under Section 12(3) or 13(5) of the Act and the landlord was entitled for a decree under Section 12(1)(a) of the Act. The Appellate Court considering the aforesaid aspect has granted decree under Section 12(1)(a) of the Act in which there is no infirmity nor any substantial question of law arises in this appeal.”

18. In the case of **Vinay Kumar & Ors. Vs. Radheshyam & Ors.**, reported in 2006 (II) MPJR 143, similar view has been taken. The tenant committed default in depositing rent and the Court has held that the tenant is liable to be evicted. In the case of **Sobhagyamal and another Vs. Gopal Das**

Nikhra, reported in 2008 (2) SCCD 669(SC), similar view has been taken by the Hon'ble Supreme Court. In the case of **Imdad Ali Vs. Keshav Chand**, reported in 2003(4) MPLJ, 115, the Apex Court has again held that the tenant liable to be evicted on account of non-payment of rent.

19. In light of the aforesaid judgments, undisputedly, the tenant has committed default in making payment of rent keeping in view Section 13(1) of the M.P. Accommodation Control Act, 1961. In the considered opinion of this Court, the appellate court was justified in passing the impugned judgment and decree dated 04.09.2017, no substantial questions of law arise in the present second appeal. Resultantly, the admission is declined. A decree be drawn accordingly.

(S.C. Sharma)
Judge

N.R.