

IN THE HIGH COURT OF MADHYA

PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 7th OF AUGUST, 2023

MISC. PETITION No. 4686 of 2022

BETWEEN:-

M/S ESPIC CONSULTING PVT. LTD. THROUGH ITS MANAGING DIRECTOR EKLAVYA SINGH S/O SHRI PARMAL SINGH, AGED ABOUT 58 YEARS, R/O 3RD FLOOR SAPPHIRE TWINS P.U. 3 PLOT NO. 17SCHEMEM NO. 54 A.B. ROAD INDORE (MADHYA PRADESH)

.....PETITIONER

(SHRI AJAY KUMAR ASSUDANI, LEARNED COUNSEL FOR THE PETITIONER)

AND

NEERAJ PANJWANI S/O SHRI SHRICHAND PANJWANI, AGED 1. ABOUT 41 YEARS, OCCUPATION: BUSINESS R/O 115, JANKI NAGAR EXTENSION DIST. INDORE (MADHYA PRADESH)

SMT. NILIMA SINGH W/O SHRI EKLAVYA SINGH, AGED ABOUT 53 2. YEARS, OCCUPATION: DIRECTOR, M/S ESPIC CONSULTING PVT. LTD. 3RD FLOOR SAPPHIRE, TWINS P.U. 3 PLOT NO. 17 SCHEME NO. 54 A.B. ROAD.DISTIRCT INDORE (MADHYA PRADESH)

.....RESPONDENTS

(SHRI V.K. JAIN- LEARNED SENIOR COUNSEL WITH SHRI ARPIT KUMAR OSWAL, LEARNED COUNSEL FOR THE RESPONDENT [CAVEAT])

This petition coming on for admission this day, the court

passed the following:

ORDER

This miscellaneous petition under Article 227 of the Constitution of India has been filed by the petitioner being aggrieved by the order dated 01.09.2022 passed by XVI Additional District Judge, Indore in COS No.243-A/2021 by which the application under Section 13(2) of Accommodation Control Act, 1961 has been dismissed.

02. Learned counsel for the petitioner submits that the trial court has failed to appreciate the true import and purpose of the application filed under Section 13(2) of the Accommodation Control Act, 1961 (hereinafter referred to as "the Act"). He further submits that the trial court has not considered whether there has been an oral agreement entered between the parties and whether the parties had reached a conclusion that the amount of Rs.5 Crore needs to be adjusted against the monthly rent, is the matter of trial which would only be decided after the evidence but the trial court has given finding in favour of the respondent No.1. The trial court has gone beyond the prayer made by the petitioner and has granted relief in favour of respondent which the respondent has never prayed for, hence, the order passed by the trial court deserves to be quashed.

03. Heard the learned counsel appearing on behalf of the parties and perused the record.

04. On perusal of the impugned order, it is found that the petitioner is tenant and the respondent No.1 is landlord. The tenancy originally commenced since 01.02.2007 for a period of 5 years and thereafter, it

was renewed for further 5 years. The petitioner filed a lease deed executed on 01.02.2017. On perusal of the application under Section 13 (2) of M.P. Accommodation Control Act, 1961 filed before the trial court, it seems that the petitioner is claiming adjustment of the alleged expenditure.

Section 13 (2) of M.P. Accommodation Control Act, 1961 reads as under:-

“(2) If in any suit or proceeding referred to in sub-Section (1), there is any dispute as to the amount of rent payable by the tenant, the Court shall, on a plea made either by landlord or tenant in that behalf which shall be taken at the earliest opportunity during such suit or proceeding, fix a reasonable provisional rent, in relation to the accommodation, to be deposited or paid in accordance with the provisions of sub-Section (1) and no Court shall, save for reasons to be recorded in writing, entertain any plea on this account at any subsequent stage.”

05. In the present petition, the legal question to be considered is that what is covered by the dispute under Section 13(2) of M.P. Accommodation Control Act. Whether the alleged claim of adjustment of which there is no stipulation in any of the lease deeds either with regard to providing such facilities or for adjustment of any alleged expenditure, is covered under Section 13(2) of the Act.

06. Paragraph No.1 (a) of the Lease Agreement dated 01.02.2017 reads as under:-

“That the LESSEE shall pay to the LESSOR (Second Floor Rent is Rs.2,15,000/- & Third Floor & fourth Floor Rent is 3,33,801/-) Rs.5,48,801/- (Rupees Five Lacs Forty Eight Thousand Eight Hundred One Only) per month from the demised premises towards rent fro the lease

period. The rent shall be paid by the LESSEE monthly, in advance by the 10th day of every month, deducting TDS and other levies, as may be applicable at the relevant time. The LESSEE shall forward the relevant TDS certificate to the LESSOR at the end of financial year.”

07. Learned counsel for the respondent has placed reliance upon judgments delivered by the Apex Court in the cases of **Jamnallal Vs. Radheshyam, 2000 (4) SCC, 380** and **Ajeeta Vs. State of M.P., 2010 (1) MPLJ, 438**.

The Apex Court in the case of **Jamnallal (supra)** in paragraph No.16 and 17 has held as under:-

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.

17. Where the rate of rent payable by the tenant for the accommodation is not in dispute and the quantum of arrears of rent is not paid/deposited either because the tenant pleads that he has paid the arrears of rent or adjusted the same towards the amounts payable by the landlord or in the discharge of his liability, the tenant succeeds or fails on his plea being accepted or rejected in that behalf by the court. In such a case sub- section (2) is not attracted because the plea taken by the tenant has to be adjudicated by full fledged trial and not in a summary inquiry postulated for fixing a reasonable provisional rent in relation to the

accommodation in question. This being the position a tenant takes the risk of suffering an order of eviction by raising a dispute in regard to the amount of rent payable by him while admitting the rate of rent and not making payment or deposit under sub-section (1) because where the dispute raised by the tenant is outside the ambit of sub-section (2), sub-section (1) of Section 13 of the Act does not become inoperative.

08. In the opinion of this Court, the monthly rent on the disputed property is not in dispute in view of para No.1 (a) of the agreement and in view of the settled position of law as held by the Apex Court in the case of **Jamnallal Vs. Radheshyam, 2000 (4) SCC, 380** and further in the case of **Ajeeta Vs. State of M.P., 2010 (1) MPLJ, 438** that only the dispute relating to rate of rent is covered by the dispute prescribed in Section 13 (2) of the Accommodation Control Act, 1961 and the dispute related to arrears, quantum and adjustment are outside of the scope of Section 13 (2) of the Act.

09. In view of the aforesaid discussion, this Court is of the considered opinion that the order passed by the trial court is correct in the eye of law and does not warrant any interference by this Court in the present petition filed under Article 227 of the Constitution of India. Accordingly, the present petition is dismissed.

No orders as to cost.

**(HIRDESH)
JUDGE**

N.R.