

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**

ON THE 31st OF JULY, 2025

SECOND APPEAL No. 1015 of 2003

***HOTCHAND LODHANI (DEAD) THROUGH LRS. SAVITRI AND OTHERS
Versus
SMT.RATNA BAI***

Appearance:

*Shri Ashok Lalwani - Senior Advocate assisted by Shri Anil Lala and Shri Yashraj Patel -
Advocate for the appellant.*

Shri Ishteyaq Hussain - Advocate for the respondent.

JUDGMENT

This second appeal is preferred by the appellant/defendant Hotchand Lodhani (now dead, through LRs), challenging the judgment and decree dated 28.08.2003 passed by 5th Addl. District Judge, Bhopal in RCA no.43A/2003 affirming the judgment and decree dated 25.01.2003 passed by 6th Civil Judge Class-II, Bhopal in civil suit no.306A/2000, whereby both the Courts below have decreed the respondent/plaintiff's suit for eviction on the grounds under Section 12(1)(a)&(k) of the M.P. Accommodation Control Act, 1961 (in short 'the Act'), filed on the grounds under Section 12(1)(a),(e),(g) & (k) of the Act.

2. In short the facts are that, the respondent/plaintiff instituted the suit for eviction of two rooms situated on first floor of house no.49, Silawat Road, Ghoda Nakkas, Bhopal, with the allegations that the plaintiff purchased the house on 17.02.1994 (Ex.P/14) from Ashok Kumar for consideration of Rs.1,05,000/- and having affection, he also executed a regd.

Will on 13.02.1994 (Ex.P/16) in favour of the plaintiff and at the same time he handed over possession of ground floor of the house. In the rooms on first floor, the defendant was tenant of Ashok Kumar on rent of Rs.130/- per month. Previously, Ashok Kumar instituted a suit against the defendant, but upon giving assurance by the defendant to vacate the rooms within six months, Ashok Kumar got the suit dismissed, but after lapse of the agreed period, the defendant did not vacate the rooms and also shown his ignorance about ownership of the plaintiff, whereupon the plaintiff got issued notice on 15.12.1994 through Ashok Kumar regarding change of ownership. Later on, Ashok Kumar died on 17.05.2000. The plaintiff has three daughters and three sons, out of them two sons and two daughters are already got married and the plaintiff is residing in two rooms in a rented accommodation, hence, the suit premises is required for residential need and there is no other alternative accommodation available with her. It is alleged that the defendant has caused loss to the house and when he also tried to raise construction of a room, the plaintiff opposed, then he abused also to the plaintiff, resultantly the plaintiff issued notice on 17.12.1999 terminating tenancy of the defendant w.e.f. 30.12.1999, which was replied wrongly by the defendant denying title of the plaintiff. On inter alia allegations, the suit was filed for eviction and arrears of rent of Rs.4,680/- for a period of three years, although the defendant is said to be in arrears of rent w.e.f. January, 1994.

3. Upon service of summons, the defendant appeared before Trial Court on 20.07.2000, thereafter, case remained pending on the interim applications filed by both the parties. Lastly vide order dated 09.11.2000 the case was posted for 23.11.2000 for filing written statement but on 23.11.2000 an application under Section 13(6) of the Act was filed by the plaintiff, which was decided vide order dated 18.12.2000 with observation

that if the defendant does not deposit arrears of rent upto 19.12.2000, his defence against eviction shall be struck out automatically. On 19.12.2000, Trial Court found that the defendant has not deposited entire rent, resultantly his defence was struck out and case was fixed for evidence of the plaintiff. On 24.01.2001 an application under Section 151 CPC was filed by the defendant to the effect that even after striking out of defence, he is entitled for defence available under the general law beyond the grounds of eviction provided under Section 12(1) of the Act and he be permitted to file written statement, but that application was dismissed vide order dated 15.02.2001 by mentioning specifically that after striking out of defence against eviction under Section 13(6) of the Act, the defendant cannot be permitted to file written statement because the suit has been filed on the grounds under Section 12(1) of the Act. Later on, vide order dated 16.03.2001 Trial Court also closed the defendant's right to cross-examine the plaintiff's witnesses and recorded their ex-parte statements and fixed the case for final arguments on 16.04.2001 and also passed judgment and decree of eviction, although, later on ex-parte judgment and decree of eviction was set aside and civil suit was restored, but again the suit was decreed vide judgment and decree dated 25.01.2003.

4. Against the aforesaid judgment and decree passed by Trial Court, the defendant preferred regular civil appeal, which was also dismissed by the impugned judgment and decree dated 28.08.2003.

5. Against the aforesaid judgment and decree passed by Courts below, second appeal was preferred, which was admitted on 19.10.2011 for final hearing on the following substantial questions of law:-

"(i) When the demand notice (Ex.P-1) was sent to Kanhaiyalal as tenant, by not filing the suit against him but filing it against his father Hotchand, whether the suit of eviction is maintainable ?

(ii) Whether treating Kanhaiyalal as tenant, by not filing the suit against his heirs specified in Class-I, the present suit of eviction filed against his father Hotchand who is the heir of second class, is not maintainable ?

(iii) Even if the defence of defendant was struck off under Section 13(6) of the M.P. Accommodation Control Act, 1961 can he be debarred from filing the written statement on the relationship of landlord and tenant and further can he be debarred from cross-examining the plaintiff and his witnesses ?"

6. Learned senior counsel for the appellants submits that although vide order dated 19.12.2000 defence of the appellant/defendant against eviction was struck out, but in spite of order dtd.19.12.2000 the defendant was having right to file written statement taking the defence, if any, available to him under the general law and Trial Court committed an illegality in rejecting the application under Section 151 of C.P.C. seeking permission of filing written statement. He submits that even in absence of written statement, the defendant was having right to cross-examine the plaintiff and his witnesses, but just contrary to settled legal position, Trial Court committed an illegality in decreeing the suit after rejecting the prayer for filing written statement and cross-examination of plaintiff's witnesses. He submits that aforesaid submissions were reiterated before First Appellate Court also, but no heed was paid and it also affirmed the judgment and decree of Trial Court by the impugned judgment and decree dated 28.08.2003. In support of his submissions, he places reliance on the decisions in the case of Damadilal and others vs. Parashram and others, **(1976) 4 SCC 855**; Smt. Krishnabai vs. Smt. Laxmibai, **1970 MPLJ 674**; and Vikas and others vs. Smt. Nirmala

Sharma, **(2025) 1 MPLJ 95**. With these submissions, he prays for allowing the second appeal.

7. Learned counsel appearing for the respondent supports the impugned judgment and decree passed by Courts below and prays for dismissal of second appeal. He submits that in spite of providing several opportunities, the defendant did not file written statement, therefore, no illegality was done by Trial Court in closing right of the defendant to file written statement. He submits that in spite of granting/extending time, the defendant did not deposit the rent neither as per order of Trial Court nor as per provisions of Section 13(1) of the Act, so his defence was rightly struck out and consequently in absence of any written statement, Court below rightly rejected the prayer of defendant to cross-examine the plaintiff and her witnesses. In support of his submissions, learned counsel places reliance on the decisions in the case of *Modula India vs. Kamakshya Singh Deo*, **AIR 1989 SC 162**; *Smt. Krishnabai Babulal Mishra vs. Smt. Laxmibai*, **AIR 1970 MP 280**; *M/s. Mujawar and Co. vs. Fazlur Rehman*, **AIR 2008 Karnataka 32**; *Vasudha Shrivastava and other vs. Smt. Kamla Chauhan and another*, **AIR 1992 SC 1454**; and *Pragji Bhai vs. R.L. Mehta*, **1998 (1)MPWN 51**. With these submissions, he prays for dismissal of the second appeal.

8. Heard learned counsel for the parties and perused the record.

9. In the present case, first and foremost question is as to whether even after striking out of defence, by Trial Court vide order dated 19.12.2000, the defendant was having right to file written statement and if this question is answered in favour of the defendant, then the other two substantial questions of law no.1 and 2 formulated by this Court being based on defence of the defendant, would not be required to be decided that too in absence of written statement of the defendant.

10. Record of Trial Court shows that the suit remained posted for filing written statement by the defendant upto 23.11.2000. Thereafter, the suit remained pending for consideration of misc. applications including the plaintiff's application under Section 13(6) of the Act. Vide order dated 18.12.2000, the said application was decided/dismissed by passing peremptory order to the effect that in case the defendant does not deposit the rent upto 19.12.2000, his defence shall be struck out. Consequently, vide order dated 19.12.2000 Trial Court struck out defence of the defendant and fixed the case for plaintiff's evidence, however, till this date, defendant's right to file written statement was not closed. Moreover, immediately on the next date i.e. 24.01.2001, the defendant by filing application under Section 151 CPC also prayed for filing written statement on the grounds except the grounds of eviction available under Section 12(1) of the Act, but in the light of order dated 19.12.2000, Trial Court observed that after striking out of defence, the defendant cannot be permitted to file written statement. Thereafter vide order dated 16.03.2001 Trial Court also closed defendant's right of cross-examination on the plaintiff's witnesses. As such it is clear that neither the defendant was permitted to file written statement nor to cross-examine the plaintiff's witnesses in respect of defence, if any, available to him under the general law.

11. In so far as the question of effect of striking out of defence against eviction, is concerned, a Division Bench of this Court has, in the case of Smt. Krishnabai Babulal Mishra (**supra**), held as under :

"12. In the result, we answer the reference thus:-

(1) The effect of the striking out of the defence under Section 13(6) of the M. P. Accommodation Control Act, 1961, is that the suit thereafter proceeds ex parte to the extent that it relates to Section 12 of the Act. The written statement, so far as it relates to plaintiff's averments concerning Section 12 is overlooked, the defendant is precluded from cross-examining the plaintiff or his witnesses and he is also precluded from producing any evidence on any question relating to the

Accommodation Control Act. The plaintiff's burden to establish at least one of the grounds under Section 12 of the Act becomes light.

(2) However, the effect of the striking out of the defence under Sec. 13(6) is not to confer any additional right on the plaintiff or to make the provisions of Section 12 inapplicable to the suit. The plaintiff has still to establish that he is entitled to a decree for eviction (a) under the general law; and (b) also under the Accommodation Control Act. And, in spite of his defence having been struck out under Section 13(6), the defendant can still contest the suit as regards (a), although it will proceed ex parte as regards (b).

(3) If the defence is struck out under Section 13(6) in the appellate Court, the appellate Court will still have to see whether on the plaintiff's evidence produced in the Trial Court, a ground under Section 12 has been made out. The defendant will be heard on that point to the limited extent of showing that the plaintiff's evidence is not enough to prove any ground under Section 12, but his written statement and the evidence on that aspect of the case will not be considered."

- In the case of *Modula India vs. Kamakshya Singh Deo (supra)*,
Hon'ble Supreme Court held as under :

"For the above reasons, we agree with the view of Ramendra Mohan Datta, ACJ, that, even in a case where the defence against delivery of possession of a tenant is struck off under Section 17(4) of the Act, the defendant, subject to the exercise of an appropriate discretion by the Court on the facts of a particular case, would generally be entitled :

- (a) to cross-examine the plaintiff's witnesses; and
- (b) to address argument on the basis of the plaintiff's case.

We would like to make it clear that the defendant would not be entitled to lead any evidence of his own nor can his cross-examination be permitted to travel beyond the very limited objective of pointing out the falsity or weaknesses of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses."

- In the case of *Kewal Kumar Sharma vs. Satish Chandra Gothi and another, 1991 MPLJ 458*, a Division Bench of this Court held as under :

"6. In Premdas's case (supra), the Division Bench of this Court has in quite unequivocal terms stated that the issues other than those relating to eviction based on the grounds Under Section 12(1) of the Act can all be tried and even if the defence against eviction is struck out, the tenant shall have a right to contest all other issues. Therefore, in a suit, where apart from the relief of ejectment, although based on the ground Under Section 12(1)(a) of the Act, a decree for arrears of rent is also claimed and if the tenant denies the arrears of rent or claims adjustment, an issue shall have to be struck down relating to arrears of rent. The tenant can well demonstrate that the arrears, as claimed, are not due. When the issues in the suit are tried in those proceedings in the suit, the defendant-tenant shall get a right to properly contest those issues. If this is not permitted, the tenant shall have to suffer a decree for ejectment, because his defence against' eviction

has been struck out and, at the same time, shall also have to suffer a decree for certain amount allegedly due as arrears of rent, but without any opportunity to him to contest that fact in issue. This, in our opinion, shall condemn the defendant without due opportunity. We are, therefore, of the opinion that even where the defence against eviction in a suit, also based on the ground Under Section 12(1) (a) of the Act, is struck out in terms of Section 13(6), for non-payment of reasonable provisional rent, as fixed Under Section 13(2) of the Act, the tenant shall still be entitled to contest the issue as regards the quantum of rent, which, in our opinion, is different from the ground upon which eviction may be sought Under Section 12(1) of the Act. Even otherwise, we find that the defendant shall be entitled, in terms of the decision of the Supreme Court in *Modula India's case* (supra), to cross-examine the plaintiff to show that his Claim of arrears of rent is false or untrue and also to address the Court in that regard.

7. We may refer to a decision of a Single Bench of this Court in *Gurmukhdas v. Shaliram Grover*, C. Re. No. 541 of 1975 decided on 20-2-1975. We have gone through the full text of that decision. After quoting from *Premdas's case* (supra), the learned Single Judge rightly concluded that the 'defence against eviction', as used in Section 13(6) of the Act, is restricted only to the defence available to the tenant Under Section 12 of the Act. The learned Judge, however, went on to observe, "it appears to me clear that the defendant could not do indirectly what he was precluded to do directly. The question of arrears of rent is a ground on which the tenant could be evicted, which occurs in Section 12 of the Act. Now; if the defendant was permitted to lead evidence on the question of quantum of arrears of rent, he was certainly permitted to agitate the question of arrears itself, which if his defence was struck out, was precluded from raising. The defendant was, therefore, precluded from leading any evidence as regards arrears of rent, even though it was for the limited purpose of establishing quantum." With due respect to the learned Single Judge, who decided that case, we find ourselves unable to agree with the conclusion so reached. In reaching that conclusion, the learned Single Judge missed the true import of the provisions of Section 13(2) and Section 13(6) of the Act. A tenant is entitled to contest the arrears of rent which may be claimed in a suit for ejectment based on grounds Under Section 12(1), including the ground under clause (a) thereof. If he does not contest that issue, he shall suffer two decrees, one for ejectment and the other for arrears of rent. This shall be, of course, when the plaintiff proves his case. If, however, the defence against eviction is struck out, the defendant is precluded from leading evidence on those issues. Even so, he is entitled to cross-examine the plaintiff to demolish his case and to address arguments. That is the effect of striking out the defence. He can contest any other issue in the suit and can get the suit dismissed for any other relief, which may include the claim as to the arrears of rent. Although, at first sight, it appears incongruous that a tenant may suffer a decree for non-payment of arrears of rent because the defence against eviction is struck out, still he may get the relief against the actual amount of arrears of rent claimed. But a little deeper probe into the matter would demonstrate that the tenant suffers a decree not because the issue as to quantum of rent is tried, but because of the special provision of the Act, namely, Section 13 and its various sub-sections, including Sub-section (6), which vests a discretion in the Court to strike out the defence against eviction. We, therefore, hold that the case in *Gurmukhdas's case* (supra) was not correctly decided and is hereby overruled.

8. For the aforesaid reasons, we allow this petition and quash the order (Annexure-A). The defendant shall be permitted to contest the issue as to

quantum of arrears of rent and the adjustment claimed. There shall be no order as to costs.”

- In the case of **Ram Khiladi Parashar vs. Hotilal Gupta, 2010 (III)**

MPWN 22, another Division Bench of this Court held as under :

“4. After hearing learned counsel for the parties, it is apparent that admittedly the defence of the petitioner/defendant has been struck out by the Trial Court as per the provisions of section 13 (6) of the Act because of non-compliance of the provisions provided under section 13 (1) of the Act for deposit of the entire arrears of rent in the Trial Court and also on the ground that defendant/tenant has also not deposited regularly the monthly rent of the suit premises. Now, the only question remains for consideration that after striking out of the defence of the defendant/tenant up-to what extent the defendant/tenant can lead evidence in the Trial Court. This point has already been considered and decided by the apex Court in the case of *Modula India v. Kamaksdhyia Singh Deo*, AIR 1989 SC 162, wherein under the similar situation when the defence of the defendant/tenant has been struck out with regard to non-compliance of the provisions for deposit of the rent in the Court, the Hon'ble apex Court while dealing with the similar provisions of West Bengal Premises Tenancy Act, 1956 held in para 12 with regard to the scope of cross-examination on the plaintiff's witness by the defendant whose defence has been struck out, herein as under :

"For the above reasons, we agree with the view of Ramendra Mohan Datta, ACJ, that even in a case where the defence against delivery of possession of a tenant is struck off under section 17 (4) of the Act, the defendant, subject to the exercise of an appropriate discretion by the Court on the facts of a particular case, would generally be entitled.

(a) to cross-examine the plaintiff's witnesses; and

(b) to address argument on the basis of the plaintiff's case.

We would like to make it clear that the defendant would not be entitled to lead any evidence of his own nor can his cross-examination be permitted to travel beyond the very limited objective of pointing out the falsity or weakness of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses."

5. Similar view has also been taken by division Bench of this Court in *Kewal Kumar Sharma v. Satish Chandra Gothi* and another, 1991 JLJ 86 also.

6. Considering the aforesaid case law on the point, we are of the considered opinion that the impugned order can be modified and a direction can be given to the Trial Court to allow the petitioner/defendant to cross-examine the plaintiff and his witnesses on the truthfulness of the assertion made by them in support of their case.”

12. In the present case, in the light of order of striking out of defence, the defendant has not been permitted to file written statement or to cross-examine the plaintiff's witnesses in respect of defence, if any, available to him under the general law, but in view of the aforementioned settled legal position, in my considered opinion even after striking out of defence of the defendant against eviction on the grounds provided under Section 12(1) of the Act, he has right to file written statement taking defence available under the general law, however, beyond the grounds available to the landlord under Section 12(1) of the Act and at the same time, he has right to cross-examine the plaintiff and his witnesses in respect of defence, if any, available to him under the general law. Accordingly, the substantial question of law no.3 is decided in negative and in favour of the appellants/defendants.

13. Another question which appears to be involved is, as to whether even before filing written statement, defence against eviction provided under Section 13(6) of the Act can be struck out. In the present case prior to date of filing application under Section 13(6) of the Act, no written statement was filed, so there was no question of striking out of defence of the defendant even before filing written statement, because in absence of written statement, there was no question of taking defence by the defendant, even the general defence, if any, hence the order striking out of defence is hereby set aside, however, the Trial Court would be at liberty to decide the application under Section 13(6) of the Act afresh, if required.

14. As such, the judgment and decree of eviction passed by Courts below on the grounds available under Section 12(1) of the Act being unsustainable are hereby set aside and the matter is **remanded** to Trial Court for decision of civil suit afresh after granting opportunity to the

appellants/defendants to file written statement and for this purpose, the defendants are granted further 30 days' time.

15. It is made clear that no further time shall be granted to the defendants for filing written statement, and if they do not file written statement within the aforesaid period or on the date fixed by this Court i.e. 07.09.2025, this second appeal would be deemed to have been dismissed and the respondent/landlord shall be entitled to execute the decree of eviction.

16. Needless to mention that if the defendants file written statement within the aforesaid period, Trial Court shall proceed with the suit in accordance with law and shall take every endeavor to decide the suit as expeditiously as possible without giving unnecessary adjournments to the parties to the suit.

17. In view of the aforesaid discussion and in view of the decision of substantial question of law no. 3, the substantial questions of law no. 1 & 2 are not required to be decided, certainly in absence of written statement.

18. With the aforesaid, this second appeal stands **allowed and disposed of**.

19. Pending application(s), if any, shall also stand disposed of.

20. Parties are directed to remain present before trial Court on 07.09.2025.

21. Registry of this Court is directed to send back the record of Courts below immediately, positively within a period of 7 working days from the date of uploading of the judgment.

(DWARKA DHISH BANSAL)
JUDGE

