

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

**HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**

**ON 18<sup>TH</sup> OF JUNE, 2025**

**SECOND APPEAL No. 1913 of 2006**

***SEJUMAL KHATWANI (DEAD) THR. LRS.***

*Versus*

***PREMLAL AND OTHERS***

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**Appearance**

*Shri Choudhary Mayank Singh - Advocate for the appellants.*

*Shri Bhoop Singh - Advocate for respondents*

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**JUDGMENT**

This second appeal has been preferred by the appellant/plaintiff – Sejumal Khatwani (now dead, through LRs) challenging the judgment and decree dated 29.08.2006 passed by Second Additional District Judge, Jabalpur in regular civil appeal No.34-A/2006 affirming the judgment and decree dated 28.09.2005 passed by Fifth Civil Judge Class-II, Jabalpur in civil suit No.201/2005 whereby suit filed by the plaintiff on the grounds available under Section 12(1)(a)&(e) of the M.P. Accommodation Control Act, 1961 (in short 'the Act') has been dismissed by Courts below.

2. In short the facts are that original plaintiff Sejumal Khatwani (now dead) instituted a suit for eviction on the grounds of defaults in making payment of rent and bonafide requirement of residence available under Section 12(1)(a)&(e)

of the Act, with the allegations that the plaintiff purchased the suit house vide registered sale deed dated 13.03.1979 and informed the original defendant – Premlal (who died during pendency of suit and is represented by LRs) about making payment of rent to him. Premlal, who is tenant in one room did not pay monthly rent. Upon issuance of notice dated 08.06.1983 (Ex. P/5) and after service of second notice dated 23.06.1983 also defendant did not pay the rent. Vide amendment, eviction was also sought on the ground of bonafide requirement with the allegations that plaintiff is in need of the rented room, as he has three children and wife and has no other alternative accommodation in the township of Jabalpur. With these allegations the suit was prayed to be decreed.

3. Despite service of summons the defendant did not appear, therefore, trial Court proceeded ex parte against him and decreed the suit on 09.08.1986. Upon filing application under Order IX Rule 13 CPC, the same was dismissed on 31.08.1994. Misc. Appeal filed was also dismissed on 23.11.1995. In Civil Revision No.304/1996 this Court vide order dated 30.01.2002 allowed the application under Order IX Rule 13 CPC and set aside ex-parte judgment and decree dated 09.08.1986. Consequently, the defendant appeared and filed written statement denying the plaint averments contending monthly rent of Rs.4/- in place of Rs.6/- alleged by the plaintiff. It is also denied that any notice was issued and served upon him and contended that he has already paid entire

rent to Radha Krishna Temple Trust, Jabalpur. It is also contended that the plaintiff is not in need of the rented room for residence because he has several other alternative accommodations in the township of Jabalpur. With these submissions the suit was prayed to be dismissed.

4. On the basis of pleadings of parties, trial Court framed issues and recorded evidence of the parties and upon due consideration of the same and while deciding issue No.1 found that notice dated 08.06.1983 (Ex.P/5) was not served on the defendant and the plaintiff has not been able to prove issuance and service of second notice dated 23.06.1983 and that the defendant has already paid entire rent. While deciding issue No.2 and 3, trial Court also considered the evidence in respect of vacation of other rooms in the same house and other alternative accommodations in the township of Jabalpur and concluded that the plaintiff is not in need of the rented room for his need and dismissed the suit on both the grounds vide judgment and decree dated 28.09.2005.

5. Upon filing regular civil appeal, first appellate court has dismissed the same and affirmed the judgment and decree of trial court vide impugned judgment and decree dated 29.08.2006.

6. Against the aforesaid judgment and decree passed by courts below instant second appeal was filed by the plaintiff, which vide order dated 30.07.2015 was admitted for final hearing on the following substantial questions of law :-

“(1) Whether both the Courts below have erred in not granting a decree under Section 12(1)(a) of M.P. Accommodation Control Act in favour of appellants/plaintiffs ?

(2) Whether both the Courts below have erred in not granting decree under Section 12(1)(e) of M.P. Accommodation Control Act in favour of appellants/plaintiffs ?”

7. Learned counsel for the appellants/plaintiff taking this Court to the notice (Ex.P/5) submits that service of notice was refused by the defendant, therefore, as per section 27 of the General Clauses Act the service of notice ought to have been presumed/accepted and Courts below have committed illegality in dismissing the suit without taking into consideration the aforesaid legal provision. He submits that the defendant did not pay the monthly rent despite service of demand notice as per section 13(1) of the Act, therefore, in the light of findings of the Courts below to the effect that there is relationship of landlord and tenant in between the parties, suit ought to have been decreed. As regards substantial question of law No.2 he submits that although in the same premises 7 - 8 rooms were vacated by other tenants, but they have already fallen down and are not available for residence of the plaintiffs, therefore, also Courts below have committed illegality in dismissing the suit without considering this aspect of the matter. In support of his submissions, learned counsel placed reliance on the decision given by Hon’ble Supreme Court in the case of C.C. Alavi Haji vs. Palapetty Muhammed and Ors., **(2007) 6 SCC 555** and by coordinate Benches of this Court in Ashok Kumar vs. Shyambabu Garg, **2019 SCC OnLine MP**

**7126**, Harishankar Sharma vs. Shrikrishnan Dubey, **2008(1) MPLJ 614** and Kabeer Ahmed (Dead) Through LRs Javeed Ahmad and Ors. vs Sheikh Habib (Dead) Through LRs. Smt. Abida Bi and Ors., **Second Appeal No.1222/1999 decided on 06.03.2025 (at Jabalpur)**. With these submissions he prays for allowing the second appeal.

8. Learned counsel appearing for respondents/defendants supports the impugned judgment and decree passed by learned Courts below with the further submissions that the concurrent findings of fact arrived at by learned courts below are not liable to be interfered with within the limited scope of second appeal available under Section 100 of CPC. With these submissions he prays for dismissal of second appeal.

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

**Substantial Question of Law No.1:**

10. In the present case both the courts below have concurrently found that there is relationship of landlord and tenant in between the parties and the defendant is tenant in the room on rent of Rs.6/- per month. It is well settled that for seeking eviction of rented accommodation on the ground under Section 12(1)(a) of the Act, the landlord is required to serve notice of demand of arrears of rent and in absence thereof no decree of eviction can be passed. In the present case although the notice was issued on 08.06.1983 (Ex.P/5), but note put on the

envelope of notice (Ex.P.5) shows that it was not served on the defendant, which is also clear from the averments of plaint made in para-4. Resultantly, the plaintiff issued fresh/second notice dated 23.06.1983 which has been alleged to be refused by the defendant. Undisputedly no copy of notice dated 23.06.1983 has been placed on record. In absence of which both the courts below have refused to pass decree of eviction on the ground under Section 12(1)(a) of the Act. As the second notice dated 23.06.1983 has not been placed on record necessary for seeking decree of eviction on the ground under Section 12(1)(a) of the Act, therefore, this Court does not find any illegality in the judgment and decree passed by courts below denying the relief of eviction on the ground under Section 12(1)(a) of the Act. Resultantly, substantial question of law No.1 is decided against the appellant/ plaintiff/landlord.

**Substantial Question of Law No.2 :**

11. In the present case, the house in question was having 11 rooms, which was purchased by the plaintiff from previous owner/landlord and the defendant is in occupation of one room only, which was sought to be vacated on the ground of bonafide requirement of residence of the plaintiff, his wife and three children. As has been admitted by counsel for the appellants and observed by courts below that after purchasing the house and during pendency of suit, several rooms were vacated by existing tenants but those rooms were not occupied by the plaintiff for his alleged need of residence. First appellate court

in paragraphs 13 to 17 and trial court in paragraphs 9 to 11 have also observed that there are other alternative accommodations available with the plaintiff in the township of Jabalpur and there is no explanation available on record on the part of plaintiff/landlord as to why they are not suitable to satisfy his need. At the same time it is well settled that the findings on the question of bonafide requirement do not give rise to any substantial question of law.

**12.** From perusal of the decisions relied upon by learned counsel for the appellant it is clear that all the decisions are distinguishable on facts and do not provide any help to the appellants.

**13.** As a result thereof, instant **second appeal fails and is hereby dismissed.**

**14.** Misc. application(s), pending if any, shall stand closed.

**(DWARKA DHISH BANSAL)**  
**JUDGE**