



**HIGH COURT OF MADHYA PRADESH**

**PRINCIPAL SEAT AT JABALPUR**

**Single Bench: Hon'ble Shri Justice Ashok Kumar Joshi**

Second Appeal No.1158/2012

Bhaiya Lal Rajak S/o Babulal Rajak ...Appellant/defendant

Versus

Moh. Shamim S/o Abdul Gaffur ...Respondent/plaintiff

Shri Satish Shrivastava, advocate for the appellant.

Shri A.K.Shrivastava, advocate for the respondent.

Whether approved for reporting: Yes/No

**ORDER**

(Pronounced on 10.1.2017)

1. The appellant/original defendant has filed this second appeal under Section 100 of the Code of Civil Procedure against the judgment and decree passed by the Eighteenth Additional District Judge, Jabalpur on 24.9.2012 in regular Civil Appeal No.9-A/2011 reversing the judgment and decree passed by the trial Court of Fourth Civil Judge Class-I, Jabalpur in Civil Suit No.22-A/2009 passed on 10.5.2011, whereby the suit filed by the present respondent/original plaintiff has been decreed against the appellant for eviction of the tenant and getting vacant possession of the suit accommodation, arrears of rent and mesne profit on the ground of Section 12(1)(a) of the M.P. Accommodation Control Act, 1961.
2. Admittedly, the appellant is tenant of the respondent/plaintiff in the

suit accommodation, though rate of rent is disputed. In this order, the appellant is being referred as defendant and respondent as plaintiff in forthcoming paras.

3. The plaintiff filed a suit of eviction in the trial Court on 31.7.2009 on pleadings that he is owner of the house bearing no.826 (old house no.523) situated at Bhantalaiya, Khairmai Ward, Jabalpur, which is a two storeyed building. The defendant is tenant in relation to two rooms situated at ground-floor and one room at upper-floor and latrine and bathroom are common. The defendant executed rent-note on 1.8.2004, by which the rate of rent was fixed at Rs.650/- per month. The tenancy of eleven months had ended on 30.6.2005, thereafter defendant remained continued as tenant with permission of the plaintiff. The defendant had stopped payment of rent from the month of March, 2006. By a registered notice dated 9.5.2008 sent prior to the suit through the advocate, arrears of rent were demanded, but the defendant had not paid the arrears of rent and had not vacated the suit accommodation. By the suit, only legally recoverable arrears of rent for three years were being demanded. Thus, the reliefs of eviction of tenant and getting vacant possession of the suit accommodation, arrears of rent and mesne profit were claimed.
4. The defendant pleaded that he is tenant from the life time of plaintiff's father in the suit accommodation at the rate of Rs.35/- per month, but in the year 2002, rate of rent was increased to Rs.60/- per month. The defendant was regularly paying rent, but receipts were not being given by the plaintiff. No any rent-note was executed by the defendant on 1.8.2004. With permission of the plaintiff's father, the defendant got installed an electricity meter in the year 1983 and had constructed latrine and bothroom

expending Rs.20,000/-. The plaintiff is not entitled for any relief.

5. The trial Court framed issues on pleadings of the parties and after hearing, recorded findings in its judgment that it was not proved that the defendant was tenant from 1.8.2004 at the rate of rent of Rs.650/- per month; it was not proved that on 1.8.2004 any rent-note was executed by the defendant; it was not proved that defendant is not paying rent regularly from March, 2006; the alleged arrears of rent were not proved; plaintiff is not entitled for eviction of tenant on the ground of Section 12(1)(a) of the M.P. Accommodation Control Act, but the plaintiff is entitled to get the arrears of rent for the period of 27 months prior to filing of the suit at the rate of Rs.60/- per month and in the result the plaintiff's suit was dismissed. The regular appeal filed by the plaintiff remained successful and the Appellate Court reversed the decree of the trial Court and decreed the suit of the plaintiff for eviction of the appellant/defendant on the above mentioned ground.
6. Learned counsel for the appellant/defendant vehemently contended that it was not proved by the plaintiff that the notice demanding arrears of rent sent prior to filing of the suit was received by the tenant and thus the learned Appellate Court has erred in decreeing the suit of the plaintiff on the ground envisaged under Section 12(1)(a) of the M.P. Accommodation Control Act. In this regard reliance has been placed on the case of **Babulal and others Vs. Mahendra Swarup Saxena** (1983 J.L.J. 287). It was also contended that the plaintiff did not examine the postman regarding the alleged service of the notice sent through registered post.
7. It was the case of plaintiff before the trial Court that by executing rent-note on 1.8.2004, rate of rent was increased upto Rs.650/- per



addressed and sent by registered-post with acknowledgement. The appellant has not stated that the postman had recorded a wrong endorsement. The citation relied on by the appellant's learned counsel is not helpful in the present case as the sent registered notice with envelope article 'A' regarding demand of arrears of rent prior to filing of the suit is on record and duly proved.

10. Learned Appellate Court had categorically analysed the oral and documentary evidence produced by the parties and recorded findings that the defendant did not comply with the provision of Section 13(1) of the M.P. Accommodation Control Act and did not deposit regularly interim rent at the rate of Rs.300/- per month fixed by the trial Court. The learned Appellate Court has also referred several citations on this point and it is clear that it has not committed any error, illegality or irregularity in decreeing the suit for eviction against the appellant/defendant on the ground envisaged under Section 12(1)(a) of the M.P. Accommodation Control Act.
11. In view of aforesaid discussion, I have not found any substance or circumstance in the matter giving rise to any question of law rather than substantial question of law and consequently, the appeal being devoid of any merit deserves to be and is hereby dismissed at the stage of motion hearing.

**(ASHOK KUMAR JOSHI)**  
**JUDGE**

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