

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

**BEFORE**

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

**ON THE 8<sup>th</sup> OF MAY, 2025**

**SECOND APPEAL No.552 of 2012**

***ABDUL SATTAR (DEAD) THROUGH LRS BILKISH JAHAN AND  
OTHERS***

*Versus*

***MOHD. ASHRAF AND ANOTHER***

.....  
**Appearance:**

***Shri Pramendra Sen, Advocate for appellants.***

***Ms. Jaylakshmi Aiyer with Shri Ratnesh Yadav, Advocates for respondent 1.***

.....

**JUDGMENT**

This second appeal has been preferred by the appellants/plaintiff/landlord challenging the judgment and decree dtd. 29.02.2012 passed by 1<sup>st</sup> Additional Judge to the Court of 1<sup>st</sup> Additional District Judge, Bhopal in Regular Civil Appeal No.142A/09 reversing the judgment and decree dtd. 09.04.2009 passed by 1<sup>st</sup> Civil Judge Class-II, Bhopal in RCS No.888-A/2008 whereby trial Court decreed the original plaintiff/Abdul Sattar (now dead, through LRs)/ landlord's suit for eviction on the grounds under Section 12(1)(a) & (f) of the M.P. Accommodation Control Act, 1961 (in short "the Act"), which in civil appeal filed by the

respondent 1/defendant/tenant, was dismissed by first appellate court by allowing the civil appeal.

2. In short the facts are that the plaintiff had instituted a suit for eviction on the grounds under Section 12(1)(a),(c)&(f) of the Act with the allegations that the defendants 1-2 (Mohd. Ashraf and Mohd. Ayub) are tenants in the suit shop on rent of Rs.242/-per month, which has not been paid despite service of notice of demand and are due for rent w.e.f. 01.01.2000. It is also alleged that the shop in question is required for starting business of vegetables and fruits by plaintiff's elder son Mohd. Riyaz, who is unemployed and there is no other alternative accommodation available in the township of Bhopal. With the further plea of creating nuisance by defendants, the plaintiff prayed for decree of eviction.

3. The defendant 2 despite service of summons did not appear and was proceeded ex parte. However, the defendant 1 appeared and by filing written statement denied the plaint averments and admitting the relationship of landlord and tenant, contended that after service of notice of demand, the defendant 1 has already paid entire amount @ Rs.200/-per month, which was not accepted by the plaintiff himself. It is also contended that the plaintiff is not in need of the rented shop for starting business by his elder son and it is the plaintiff who himself tried to dispossess the defendants from the shop and the defendants never created any nuisance. On inter alia contentions, the suit was prayed to be dismissed.

4. On the basis of pleadings of the parties, trial Court framed issues and recorded evidence of the parties and after due consideration of the material available on record, decreed the suit for eviction on the ground under Section 12(1)(a)&(f) of the Act vide judgment and decree dtd. 09.04.2009.

5. Against the judgment and decree passed by trial Court, the defendant 1 only preferred regular civil appeal, which by the impugned judgment and decree dtd. 29.02.2012 was allowed and by reversing the judgment and decree of trial Court, the suit was dismissed in its entirety.

6. Against the aforesaid judgment and decree passed by first appellate Court, legal heirs of original plaintiff i.e. the appellants preferred second appeal, which came in hearing and was admitted for final hearing on 03.07.2014 on the following substantial question of law:-

***“Whether learned Appellate Court is justified in passing the impugned judgment and decree by setting aside the reasoned judgment and decree passed by learned trial court (for) on the ground of bonafide need and non payment of rent?”***

7. Learned counsel for the appellants/plaintiffs submits that trial Court upon due consideration of the material available on record found the rate of rent to be Rs.242/- per month and accordingly found that despite issuance and service of notice of demand, the defendants did not pay the rent as per Section 13(1) of the Act and rightly decreed the suit on the ground of defaults in making payment of arrears of rent because admittedly the defendants did not pay monthly rent @ Rs.242/-. He further submits that first appellate Court has also not considered the reasoned findings recorded

by trial Court regarding existing bonafide need of the plaintiff for business of his elder son Riyaz and by misreading the oral evidence of the plaintiff and his witness, as has been mentioned in para 25 & 26 of the impugned judgment, first appellate Court has reversed the judgment and decree irrespective of the fact that the plaintiff's elder son Riyaz is unemployed and there is no other suitable alternative vacant accommodation available with the plaintiff to start the business by son, although it has not said that the plaintiff's son Riyaz is not in need of the shop or there is other alternative accommodation available with the plaintiff in the township of Bhopal. With these submissions, he prays for allowing the second appeal.

8. Learned counsel appearing for the respondent/defendant 1 supports the impugned judgment and decree passed by first appellate Court with the submissions that although there is no alternative accommodation available with the plaintiff, but as per statement made by plaintiff himself, the shop of vegetables, which was opened earlier by the plaintiff himself in an adjacent shop, was closed after some time, because it could not run, therefore, it cannot be said that plaintiff's son is in need of the same business i.e. of vegetables and fruits. He also submits that the defendants did not commit any default in making payment of rent. With these submissions he prays for dismissal of second appeal.

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

**10.** In the present case, it is clear that trial Court has upon due consideration of the material available on record held that the defendant is tenant on rent of Rs.242/- per month and from perusal of impugned judgment of first appellate Court, it is clear that it has not reversed the finding about monthly rate of rent. As the defendant has never paid rent @ Rs.242/- per month that too in accordance with Section 13(1) of the Act, therefore, there was no illegality in the judgment and decree passed by trial Court on the ground under Section 12(1)(a) of the Act.

**11.** It is also clear from the record that there are two shops in the ownership of plaintiff, out of which one shop was vacated by defendant himself in which the plaintiff himself started business of vegetables and fruits. Second shop, which is rented shop, is also in possession of the defendant, regarding which instant suit was filed for the need of plaintiff's elder son Riyaz. It is also clear that against the said two shops, on the date of filing of suit, there were three members in the family, fit for doing the business i.e. the plaintiff himself, his younger son-Irshad and elder son-Riyaz, who is unemployed and there is no alternative accommodation available in the township of Bhopal. Further, if the plaintiff's vegetable shop could not run in the adjacent shop, cannot be a ground to reject the claim of bonafide need of his son. In such circumstances, it cannot be said that the son Riyaz is not in bonafide need for the shop.

12. In view of the aforesaid discussion, it is clear that first appellate Court has committed illegality in reversing the well reasoned judgment and decree passed by trial Court on the ground of bonafide need as well as on the ground of defaults in making payment of rent.

13. Resultantly, the second appeal filed by the appellants/plaintiffs deserves to be and is hereby **allowed**.

14. At this stage, learned counsel for the respondent/defendant/tenant prays for time upto 30<sup>th</sup> September, 2026 to vacate the shop in question. In turn, learned counsel for the appellants/plaintiffs/landlord submits that the time up to **30.04.2026** may be granted to the respondent/defendant to vacate the suit shop.

15. As such, this Court deems fit to grant time to the respondent/defendant/tenant for vacating the rented/suit shop up to 30.04.2026 on the following conditions : -

*(i) The respondent/defendant/tenant shall vacate the rented shop on or before 30.04.2026.*

*(ii) The respondent/defendant/tenant shall regularly pay monthly rent to the appellants/plaintiffs/landlord and shall also clear all the dues, if any, including the costs of the litigation, if any, imposed by Court below, within a period of 30 days.*

*(iii) The respondent/defendant/tenant shall not part with the suit accommodation to anybody and shall not change nature of the same.*

*(iv) The respondent/defendant/tenant shall furnish an undertaking with regard to the aforesaid conditions within a period of three weeks before the learned Court below/Executing Court.*

*(v) If the respondent/defendant/tenant fails to comply with any of the aforesaid conditions, the appellants/plaintiffs/landlord shall be free to execute the decree forthwith.*

*(vi) If after filing of the undertaking, the respondent/defendant/tenant does not vacate the suit/rented shop on or before **30.04.2026** and creates any obstruction, he shall be liable to pay mesne profits of Rs.500/- per day, so also contempt of order/judgment of this Court.*

*(vii) It is made clear that the respondent/defendant/tenant shall not be entitled for further extension of time after **30.04.2026**.*

**16.** Miscellaneous application(s), pending if any, shall stand closed.

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