

M.P.No.288/2017

[Suresh Mathur(since deceased) through his LRs vs. Yogesh Chawla]

Jabalpur dated -13.11.2017

Shri Praveen Chaturvedi, learned counsel for the petitioners/tenants.

Shri Priyank Khandelwal, learned counsel for the respondent/landlord.

The petitioners have filed this petition being aggrieved by order dated 16.08.2017 passed by Thirteenth Civil Judge, Class-I, Bhopal by which application under Section 13(6) of the M.P. Accommodation Control Act, 1961 (for short "Act of 1961") filed by the respondent has been allowed.

2. The respondent being a landlord filed a suit for eviction and arrears of rent valued to Rs.72,000/- against present petitioners.

3. At present the present petitioners are the tenants of the plaintiff in respect of shop situated in the market at T.T.Nagar, Bhopal. The tenancy is by way of oral agreement and commence from the first day of every month and ends with the last day of the same month. Purpose of tenancy is purely commercial in which petitioners are running hair cutting saloon.

4. The shop in question is a part of the property which was owned by one Hazara Bi who sold it by way of sale deed dated 27.03.2014 to the plaintiff. Present petitioners

were inducted as tenants by the son of Hazara Bi. The plaintiff served notices to the defendants for recovery of arrears of rent for the last 31 months from January, 2012 till July 2014 amounting to Rs.46,500/- and also current rent from August, 2014. Thereafter, the plaintiff filed a suit for eviction and recovery of arrears of rent.

5. After notice in the suit, the present petitioners being defendants filed written statement denying the tenancy with the plaintiff. They further submitted that there is no arrears of rent and they were regularly paying the same to Hazara Bi. The present petitioners have also challenged that in the suit property the provisions of M.P. Accommodation Control Act, 1961 would not apply and the provisions of Madhya Pradesh Prakoshtha Swamitva Adhiniyam, 2000 would apply. They have also filed counter suit under Order 8 Rule 6A CPC that the sale deed dated 27.03.2014 is void and not binding on them and the plaintiff be restrained from interfering with their peaceful possession.

6. The plaintiff filed the reply to the counter claim. On the basis of the pleadings, the trial Court framed 14 issues for adjudication. The issue No.2 was framed in respect of default in payment of rent and the issue No.9 was framed whether the sale deed dated 27.03.2014 is void or not.

7. The plaintiff has filed application under Order 6 Rule 17 CPC seeking amendment in the plaint that he is entitled

for decree under Section 12(1)(c) of the Act of 1961, due to denial of title by the defendants.

8. The plaintiff also filed an application under Section 13(6) of the Act of 1961 alleging that despite the order, the defendants have not deposited the rent in the Court, therefore, their right to defend be struck out.

9. The defendants filed the reply to the said application by giving details that they have deposited the entire rent.

10. The learned trial Court vide order dated 16.08.2017 has allowed the application under Section 13(6) of the Act of 1961 and closed the right of the defendants, hence, the present petition before this Court.

11. Shri Praveen Chaturvedi, learned counsel appearing on behalf of the petitioners submitted that it is not a simple case of eviction and arrears of rent. There is a counter claim filed by the defendants that the sale deed by which the suit property was purchased by the plaintiffs is void and not binding on them. Defendants have specifically pleaded that they have paid the rent to Hazara Bi who was owner of the suit property and they are not liable to pay rent to the plaintiff for the period prior to the date of sale deed. Despite that the defendants have deposited the entire rent, therefore, the right to defend has wrongly been struck out.

12. Per contra, Shri Priyank Khandelwal appearing on behalf of respondent submits that the learned trial Court has

not committed any error of law or facts while passing the impugned order. The plaintiff filed the suit on 06.07.2015 and the Court has passed order on 24.06.2016 for depositing rent in the Court which the defendants have deposited on 05.07.2016. There is a delay in depositing the rent within one month from the service of summons of suit and there is further delay in deposit of the monthly rent. In respect of his contention, he has placed reliance over the judgment in the case of **Sayed Akhtar vs Abdul Ahad** reported in **(2003) 7 SCC 52** in which the Apex Court has held that the Court has the jurisdiction to extend the time for depositing the rent both for the period during which the tenant had defaulted as well as the period subsequent thereto. He has further placed reliance over the judgment in the case of **Jamnalal vs Radheshyam** reported in **(2000) 2 MPLJ 385 (SC)** in which the Supreme Court has held that if the Court finds that the arrears of rent in question were not paid it is to pass an order for eviction and the tenant is not entitled for protection under Section 13(5) read with Section 12(3) of the Act of 1961. A reliance has also been made to the decision in **Santosh Kumar Sharma vs Sooraj Prasad Shrivastava** reported in **2014 (4) MPHT 94** in which this Court has held that after committing the default in depositing the entire sum of the arrears and of recurring rent in compliance of Section 13(1) of the Act of 1961, the tenant is bound to suffer the

consequences. Although under the General Laws, the tenant has some limited right on which he may defend the suit.

13. That it is not in dispute that the property in question was originally owned by Hazara Bi and the defendants were inducted as tenants by the son of Hazara Bi. The plaintiff has purchased the suit property vide registered sale deed dated 27.03.2014 and by way of eviction suit, he is claiming arrears of rent from July 2012 to July 2014 i.e. prior to date of sale deed.

14. Thus, it is required to be decided, whether the plaintiff is entitled to receive the rent for the period prior to the sale deed by which he became the owner and landlord. The said dispute can be decided in the issue No.2, then only the plaintiff would be entitled for decree under Section 12(1)(a) of the Act of 1961.

15. The defendants took a specific plea in their written statement that the sale deed is not binding on them and they have also filed a counter claim, therefore, it is not a simple case of eviction and arrears of rent. One of the issue i.e. issue No.9 is also to be decided whether the sale deed dated 27.03.2014 is valid or void then only the plaintiff would be entitled for decree of eviction. Application filed under Section 13(6) of the Act of 1961 is very vague in nature.

16. The contents of the application are reproduced below :

“1. यह कि वादी ने प्रतिवादी के विरुद्ध निष्कासन और

बकाया किराये का वाद पेश किया है।

2. यह कि माननीय न्यायालय ने प्रतिवादीगण को कियाया जमा करने का आदेश दिया था परन्तु प्रतिवादीगण ने माननीय न्यायालय के स्पष्ट आदेश के बाद भी किराया न्यायालय में जमा नहीं किया है और ना ही धारा 13 म0प्र0आवास नियंत्रण अधिनियम के प्रावधानों का पालन किया है।

3. यह कि प्रतिवादीगण ने जानबूझकर किराया जमा नहीं किया है इसलिये उनका बचाव का अधिकार समाप्त किया जाना आवश्यक है।”

17. The plaintiff has alleged that the defendants have not deposited the rent, hence, their right to defend be closed. He has not mentioned the period for which the defendants have not deposited the rent or there is no allegation that they are committing default in depositing the monthly rent.

18. The defendants have filed the reply stating that they have deposited the rent from July 2012 till May, 2017. The relevant part of the reply is reproduced below :

दिनांक	अवधि	राशि	रसीद क्र०
05.07.2016	जुलाई-12 से अगस्त-16	75000/-	19269/41
09.09.2016	सितम्बर-16 से नवम्बर-16	4500/-	19442/87
01.12.2016	दिसम्बर-16 से फरवरी-17	4500/-	38
07.03.2017	मार्च-17 से मई-17	4500/-	19708/24

19. Without considering the aforesaid peculiar facts of the case, learned trial Court has simply allowed the application as there was delay in depositing the rent.

20. A Full Bench of this Court in **Chhoglal vs Idol Of Bhagwan Shri Satyanarayan** reported in **AIR 1976 MP 5**

has held that when a dispute is raised as to the amount of rent payable by the tenant or as to the person to whom it is payable, sub-section (1) gets controlled by sub-sections (2) and (3) and tenant is under obligation to deposit and pay rent only when the Court fixes a reasonable provisional rent.

21. In the case of **Jagadish Kapoor vs New Education Society** reported in **1967 MPLJ 837** a Full Bench of this Court has held that the provisions of Section 13(6) of the Act of 1961 are not mandatory and even when a tenant has failed to deposit or pay any amount as required by Section 13, the Court has discretion to decide whether his defence against eviction should be struck out.

22. The trial Court has not considered the entire facts and circumstances of the case and has simply allowed the application under Section 13(6) of the Act of 1961 on the ground of delay of one month in depositing the entire rent even for the period prior to the date when the plaintiff became owner.

23. The Apex Court in the case of **Jamnalal (supra)** has held that where there is a 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. The Apex Court further observed that where the rate of rent and the quantum of arrears of rent are disputed the whole of Section 13(1) becomes inoperative. The Apex Court has also held that the tenant is relieved of consequence of default in payment of rent on his paying or depositing the rent and if tenant takes a false plea in regard to the amount of rent payable by him, he runs the risk of suffering an order of eviction.

24. Sub-section (5) of Section 13 of the Act provides for that if a tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no decree or order shall be made by the Court for the recovery of possession of the accommodation on the ground of default in the payment of rent of the tenant, but the Court may allow such cost as it may deem fit to the landlord. Likewise, sub-section (6) also provides for that if a tenant fails to deposit or pay any amount as required by this section, the Court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit, appeal or proceeding, as the case may be.

25. In **Jabbarkhan vs. Badriprasad** reported in **1973 JLJ**

SN 123, it has been held that where full amount of arrears are deposited, the Court should take sympathetic view and should not strike out defence because of irregularity and delay in deposit but this is not the same thing as to say that the Court cannot strike out the defence. The Court certainly has jurisdiction to strike out the defence inspite of the fact that all amount of rent has been deposited before an order under sub-section (6) is passed. Furthermore, in **Premchand Sood vs. A.R.Siddique** reported in **1979 (II) MPWN 18** and **Dayakrishan vs. Narayani Devi** reported in **1977 (II) MPWN 85**, this Court has held that where the tenant has deposited the entire amount of rent, although late, normally his defence should not be struck out. Striking out the defence is an extreme step which is to be resorted to only case of malafides or contumacy.

26. In view of the above analysis, the defendants who are running a small shop have deposited the entire arrears of rent and challenged the sale deed executed in favour of the plaintiff. As such, in the peculiar facts and circumstances of the present case, order striking out the defence of the tenant is not warranted, hence, the impugned order is set-aside.

27. The petition is **allowed** to the extent above.

(Vivek Rusia)
Judge