

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 20th OF MARCH, 2023

MISC. PETITION No. 1613 of 2023

BETWEEN:-

**ASHUTOSH GUPTA S/O BHANU PRAKASH
GUPTA, AGED ABOUT 57 YEARS, R/O 773 NEAR
KAMANIA GATE LORDGANJ JABALPUR
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI VIPIN YADAV - ADVOCATE)

AND

**MAHENDRA JAIN S/O LATE KANCHHEDI LAL
JAIN, AGED ABOUT 68 YEARS, R/O HOUSE NO 235
IN FRONT OF HOUSE OF ADV SHARAD JAIN
LAKHERA KI KULIA SARAFI WARD JABALPUR
SHOP ADDRESS 774 SOCIETY VASTRA BHANDAR
NEAR KAMANIA GATE LORDGANJ JABALPUR
(MADHYA PRADESH)**

.....RESPONDENTS

(NONE)

This petition coming on for admission this day, the court passed the following:

ORDER

This petition under Article 227 of the Constitution of India has been filed against the order dated 30.01.2023 passed by 22nd Additional Civil Judge, Junior Division in R.C.S.A No. 1682/2021 by which the trial court has directed that under section 13(1) of M.P Accommodation

Control Act, 1961, the tenant is required to pay arrears of rent of 3 years and not beyond the same.

2. Challenging the order passed by the court below, it is submitted by the counsel for the petitioner that the petitioner had approached the RCA under section 10 of the M.P Accommodation Control Act for fixation of standard rent. Ultimately, the said proceeding attained the finality by judgment dated 29.01.2020 passed by the 8th Additional District Judge, Jabalpur in R.CA No. 47A/2019 and it was directed that the standard rent of the premises for 01.01.199 to 31.12.2009 would be Rs.1000/- per month, 01.01.2010 to 31.12.2019 would be Rs.2000/- per month and from 01.01.2020 onwards standard rent would be Rs.3500/- per month. The petitioner has filed a suit for eviction under section 12(1)(f) of M.P Accommodation Control Act. The respondent filed an application under section 13(1) of M.P Accommodation Control Act, whereas the petitioner filed an application under section 13(1)(6) of the M.P Accommodation Control Act for striking off the defence. By the impugned order the trial court has rejected the application filed by the petitioner under section 13(6) of the M.P Accommodation Control Act and has allowed the application filed by the respondent under section 13(1) of the Act of 1961 and has directed that the respondent shall deposit the entire arrears of rent of proceeding 3 years by the end of January, 2023 and shall deposit the future rent by 15th of succeeding month.

3. Challenging the order passed by the court below, it is submitted by the counsel for the petitioner that from plain reading of section 13 of M.P Accommodation Control Act, it is clear that the said

provision does not restrict the arrears of rent for a period of 3 years and therefore, the trial court committed a mistake by directing the respondent to deposit the arrears of rent for 3 years only and not entire rent as adjudicated by the Additional District Judge Jabalpur in R.CA No. 47A/2019.

4. Heard learned counsel for the petitioner.

5. Section 13(1) of M.P Accommodation Control Act reads as under:-

"13 : When tenant can get benefit of protection against eviction : (1) On a suit or any other proceeding being instituted by a landlord on any of the grounds referred to in section 12 or in any appeal or any other proceeding by a tenant against any decree or order for his eviction, the tenant shall, within one month of the service of writ of summons or notice or appeal or of any other proceeding, or within one month of institution of appeal or any other proceeding by the tenant, as the case may be, or within such further time as the Court may on an application made to it allow in this behalf, deposit in the Court or pay to the landlord, an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made; and shall thereafter continue to deposit or pay, month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding, as the case may be."

6. It is contended by the counsel for the petitioner that in order to seek protection against the eviction, the tenant has to deposit the entire rent, which he may have made default including the period thereto upto the end month previous to that in which the deposit is to be made and shall thereafter continue to deposit or pay. Therefore, according to the counsel for the petitioner the golden words are “the default in payment which the tenant may have made and not default of rent, which was made in the last 3 years.

7. Section 13 provides benefit of protection against eviction. It is not an independent section, but is subject to the application of section 12 of the M.P Accommodation Control Act. Section 12(1)(a) of the M.P Accommodation Control Act reads as under:-

“12. Restriction on eviction of tenants. - (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner;”

8. Thus a tenant cannot be evicted under section 12(1)(a), if he has neither paid or tendered the whole of the rent legally recoverable from him within two months from the date on which a notice of demand for the arrears of rent was served on him. Thus, the golden words under section 12 of the M.P Accommodation Control Act are “legally recoverable rent”. Article 52 of the Limitation Act, 1963 provides for limitation of 3 years, where the arrears becomes due. Therefore, arrear of rent beyond the period of 3 years cannot be said to be legally

recoverable rent. Since section 13 of the M.P Accommodation Control Act is not an independent provision and it merely provides protection from eviction, therefore, the word rent mentioned in section 13 has to be interpreted as “legally recoverable rent”. Under these circumstances, this Court of the considered view that the trial court did not commit any mistake by directing the respondent to pay the arrears of rent, which had accrued during the last 3 years.

9. So far as execution of the order dated 29.01.2020 passed by the 8th Additional District Judge, Jabalpur in R.CA No. 47A/2019 is concerned, the petitioner is free to execute the same in appropriate proceeding.

10. With aforesaid observation, the petition is finally disposed off.

(G.S. AHLUWALIA)
JUDGE

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