

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 25th OF JULY, 2023

MISC. PETITION NO. 3880 of 2023

BETWEEN:-

**SUNIL KUMAR SONI S/O SHRI ISHWARDEEN
SONI, AGED ABOUT 52 YEARS, OCCUPATION:
BUSINESS DEEPSHREE JEWELLERS, IN
WESTERN SIDE OF NAVRANG PARK, BIRLA
ROAD, KOLGAWAN, TEHSUL RAGHURAJNAGAR
DISTRICT SATNA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SHEERSH AGRAWAL -ADVOCATE)

AND

**NIRMAL KUMAR JAIN S/O LATE SHRI
KEWALCHANDRA JAIN, AGED ABOUT 84 YEARS,
OCCUPATION: BUSINESS R/O HANUMAN
CHOWK, TEHSIL RAGHGURAJNAGAR, DISTRICT
SATNA (MADHYA PRADESH)**

.....RESPONDENT

(NONE)

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

ORDER

This misc. petition has been preferred by the
petitioner/defendant/tenant challenging the order dated 08.02.2023 passed
by Second Civil Judge Senior Division, Satna in RCSA No.189/2019,

whereby learned Court below has, while deciding petitioner/defendant/tenant's application under Section 13(1)&(2) of the M.P Accommodation Control Act, 1961 (in short 'the Act') directed the Rent Controlling Authority (in short 'the RCA') to decide the standard rent instead of fixing reasonable provisional rent.

2. Learned counsel for the defendant submits that monthly rate of rent is Rs.1133/- whereas the plaintiff has instituted the suit claiming rent of Rs.2006/- p.m., therefore, the petitioner/tenant moved an application under Section 13(1)&(2) of the Act for deciding reasonable provisional rent, which was replied by respondent/plaintiff/landlord with the contention that according to rent agreement dated 29.01.2000 the landlord is entitled to get increased rent, therefore, the plaintiff has rightly claimed the arrears of rent @ Rs.2006/- p.m. and there is no need to decide the reasonable provisional rent. As such prayed for dismissal of the application.

3. Learned counsel for the petitioner submits that the dispute raised by petitioner/defendant is covered under Section 13(2) of the Act, and learned Court below is duty bound to decide the reasonable provisional rent payable by the defendant/tenant during pendency of suit, but learned Court below has without fixing the reasonable provisional rent and even without deciding the application under Section 13(1)&(2) of the Act, erred in directing and referring the matter to the RCA to decide the standard rent. With the aforesaid submissions he prays for allowing the misc. petition.

4. Heard learned counsel for the petitioner and perused the impugned order as well as the record available.

5. In the present case during pendency of civil suit filed on the grounds available under Section 12(1) of the Act, the petitioner/defendant moved an application under Section 13(1)&(2) of the Act, alleging the monthly rate of rent of the shop to be Rs.1133/-, whereas in the plaint as well as by filing reply the plaintiff is claiming it to be Rs.2006/- p.m., therefore, in view of the decision of Supreme Court in the Case of Jamnalal and others Vs. Radheshyam (2000)4 SCC 380, there is clear dispute of rate of rent covered by Section 13(2) of the Act. In the case of Jamnalal (**supra**) the Supreme Court has held as under:-

“14. Sub-Section (2) of Section 13 of the Act takes care of the situation when there is dispute as to the amount of rent payable by the tenant and directs fixation of a reasonable provisional rent in relation to the accommodation, which will be a summary inquiry, by the Court. The dispute may arise in any of the following circumstances :

(I) rate of rent and the quantum of arrears of the rent are in dispute though not the period for which arrears of rent are due;

II) rate of rent and the quantum of arrears rent are in dispute and also the period for which it is due;

(III) rate of rent is admitted but the quantum of arrears of rents or/and the period for which it is due are disputed.

15. A careful reading of the Sub-section shows that the Court is enjoined to fix a reasonable provisional rent, in relation to the accommodation, to be deposited or paid in accordance with the provision of Sub-section (1) if there is a dispute as to the amount of rent payable by the tenant. the clause “the court shall” fix a reasonable provisional rent in relation to the accommodation clearly indicates that “any dispute as to the amount of rent” is confined to a dispute which depends on the rate of rent of the accommodation either because no rate of rent is fixed between the parties or because each of them pleads a different sum. Where the 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 in relation to the accommodation. It follows that where the rate of rent and the quantum of arrears of rent are disputed the whole of Section 13(1) becomes inoperative till provisional fixation of monthly rent by the Court under Sub-section (2) of Section 13, which will govern compliance of Section 13(1) of the Act. But where rate of rent is admitted and the quantum of the arrears of rent is disputed, (on the plea that the rent for the period in question or part thereof has been paid or otherwise adjusted), Sub-section (2) of Section 13 is not attracted as determination of such a dispute is not postulated thereunder. Therefore, the obligation to pay/deposit the rent for the second and the third period aforementioned, referred to in Section 13(1), namely, to deposit rent for the period subsequent to the notice of demand and for the period in which the suit/ proceedings will be pending that is (future rent) does not become inoperative for the simple reason that Section 13(2) does not contemplate provisional determination of amount of rent payable by the tenant. As resolution of that category of dispute does not fall under Section 13(2) the tenant has to take the consequence of non payment/deposit of rents for the said periods. If he fails in his plea that no arrears are due and the Court finds that the arrears of rent for the period in question were not paid, it has to pass an order of eviction against the tenant as no provision of Section 13 of the Act protects him.”

6. For due consideration of the relevant provisions, Section 10 and 13(2) of the Act is quoted as under:-

"10. Rent Controlling Authority to fix standard rent, etc. –

(1) The Rent Controlling Authority shall, on an application made to it in this behalf, either by the landlord or by the tenant, in the prescribed manner, fix in respect of any accommodation-

- (i) the standard rent in accordance with the provisions of Section 7; or
- (ii) the increase, if any, referred to in Section 8.

(2) In fixing the standard rent of any accommodation or the lawful increase thereof, the Rent Controlling Authority shall fix an amount which appears to it to be reasonable having regard to the provisions of Section 7 or Section 8 and the circumstances of the case.

(3) In fixing the standard rent of any accommodation part of which has been lawfully sub-let, the Rent Controlling Authority may also fix the standard rent of the part sub-let.

(4) Where for any reason it is not possible to determine the standard rent of any accommodation on the principles set forth under Section 7, the Rent Controlling Authority may fix such rent as would be reasonable having regard to the situation, locality and condition of the accommodation and the amenities provided therein and where there are similar or nearly similar accommodations in the locality, having regard also to the standard rent payable in respect of such accommodations.

(5) The standard rent shall be fixed for a tenancy of twelve months :

Provided that where the tenancy is from month to month or for any period less

than a month, the standard rent for such tenancy shall bear the same proportion to the annual standard rent as the period of tenancy bears to twelve months.

(6) In fixing the standard rent of any accommodation under this section, the Rent Controlling Authority shall fix the standard rent thereof in an unfurnished state and may also determine an additional charge to be payable on account of any furniture supplied by the landlord and it shall be lawful for the landlord to recover such additional charge from the tenant.

(7) In fixing the standard rent of any accommodation under this section, the Rent Controlling Authority shall specify a date from which the standard rent so fixed shall be deemed to have effect :

Provided that in no case the date so specified shall be earlier than thirty days prior to the date of the filing of the application for the fixation of the standard rent."

"13(2) If in any suit or proceeding referred to in sub-section (1), there is any dispute as to the amount of rent payable by the tenant, the Court shall, on a plea made either by landlord or tenant in that behalf which shall be taken at the earliest opportunity during such suit or proceeding, fix a reasonable provisional rent, in relation to the accommodation, to be deposited or paid in accordance with the provisions of sub-section (1) and no Court shall, save for reasons to be recorded in writing, entertain any plea on this account at any subsequent stage."

7. From reading of the aforesaid provision it is clear that whenever an application under Section 13(2) of the Act is filed by any of the parties to the suit raising dispute of monthly rate of rent, the Court is bound to fix the reasonable provisional rent for due compliance of Section 13(1) of the Act. As has been held in the case of Jammalal (supra), unless the Court decides the reasonable provisional rent, operation of Section 13(1) of the Act gets arrested.

8. Further from perusal of Section 10 of the Act, it is clear that the RCA gets jurisdiction to decide the standard rent only upon filing of application either by the landlord or by tenant and in the present case neither the plaintiff/landlord nor the defendant/tenant has prayed for fixation of standard rent, therefore, in such circumstances there is no question of deciding/fixing standard rent, as has been directed by learned trial Court.

9. Impugned order shows that learned Court below has not decided the dispute although covered by Section 13(2) of the Act and has not fixed the reasonable provisional rent and beyond its jurisdiction referred the matter to the RCA for fixation of standard rent, therefore, by setting aside the impugned order matter is remanded back to learned trial Court for deciding the defendant's application under Section 13(1)&(2) of the Act afresh in accordance with the law without being influenced by the impugned order or by the order passed by this Court today.
10. It is made clear that this Court has not expressed any opinion on merits and demerits of the case.
11. Accordingly, this misc. petition is **allowed and disposed off**.
12. Interim application(s), if any, shall stand disposed off.

(DWARKA DHISH BANSAL)
JUDGE

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