

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL
ON THE 11th OF SEPTEMBER, 2024
MISC. PETITION No. 4825 of 2024**

RAJKUMAR
Versus
HIRALAL SHARMA

Appearance:

Shri Sankalp Kochar with Shri Parth Kopariha - Advocates for the petitioner.

ORDER

This misc. petition has been preferred by the petitioner/defendant challenging the order dated 13.08.2024 passed by 6th Civil Judge, Junior Division, Burhanpur in RCSA No.149/2023, whereby trial Court has allowed respondent/plaintiff's application under Section 13(6) of the M.P. Accommodation Control Act, 1961 (in short 'the Act') and struck out defence of petitioner/defendant against eviction in respect of the grounds available under Section 12(1) of the Act.

2. Learned counsel for the petitioner submits that although original entry of the petitioner in the shop was that of tenant, but during tenancy, the respondent/plaintiff had on 06.10.2017, entered into an agreement of sale in respect of the shop in question and upon failure to execute the sale deed by respondent, the petitioner filed a civil suit for specific performance of

agreement of sale, in which counter claim for eviction was also filed by respondent/plaintiff.

3. Said civil suit of the petitioner/defendant filed for specific performance of agreement as well as the counter claim (bearing RCS-A141/2018) filed by the respondent/plaintiff both were dismissed by the Court vide judgment and decree dated 25.05.2024, but the agreement of sale (*Sauda Chitthi*) was found to be a proven document as well as payment of advance amount of Rs.2,00,000/- towards sale consideration, although no decree of refund of consideration amount was passed. The judgment and decree dated 25.05.2024 is under scrutiny of this Court in First Appeal No.49/2024 filed by the petitioner/defendant.

4. Learned counsel submits that although after service of summons in the suit for eviction, the petitioner/defendant has not paid/deposited any rent, but he is ready to deposit all the arrears of rent as claimed by the plaintiff with a view to raise defence against eviction on the grounds under Section 12(1) of the Act and in any case, at the time of passing of order of striking out of defence against eviction as per Section 13(6) of the Act, trial Court ought to have granted reasonable time to deposit the arrears of rent and only thereafter it should have passed order of striking out of defence, because the provision under Section 13(6) of the Act is not mandatory.

5. In support of his submissions learned counsel for the petitioner placed reliance on the decisions of Hon'ble Supreme Court in the case of Shyamcharan

Sharma vs. Dharamdas **(1980) 2 SCC 151** and of this Court in the case of Shyamlal Agrawal and others vs. Sardar Gurubachan Singh **1999(2) MPLJ 288**.

With these submissions, learned Counsel prays for admitting/allowing the misc. petition.

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

7. Perusal of impugned order shows that it is an unreasoned and non-speaking order, which just says that as the defendant has not paid rent within one month as per section 13(1) of the Act, therefore his defence is struck out. Apparently, the objections to the application raised on behalf of the petitioner/defendant, by way of filing reply to the application under Section 13(6) of the Act, have not been taken into consideration. Further, there is no counter available on record to the averments made in the reply in respect of the proven agreement of sale (Sauda Chitthi) and payment of advance consideration of Rs.2,00,000/-, which were required to be considered before passing penal order of striking out of defence against eviction.

8. In the case of Kranti Associates Private Limited v. Masood Ahmed Khan **(2010) 9 SCC 496**, Hon'ble Supreme Court has held that the reasons are heart beats of a judicial order. Insistence on recording reasons is meant to serve the wide principle of justice that justice must not only be done it must also appear to be done as well.

9. In the case of *Bachchoobhai vs. Premanand Bhigadhe* **1975 JJJ 682 = AIR 1976 MP 8**, a coordinate Bench of this Court has taken into consideration the scope of Section 13 of the Act and summarized the legal position as under :

“9. The legal position may be recapitulated and summed up as follows :-

(1) There are two parts in Section 13 (1) each of which is mandatory and each of which is to be complied with by the tenant on the dates specified in it.

(2) The following will be compliance with the first part of Section 13 (1) :-

(a) The tenant deposits all arrears of rent within one month of the service of the writ of summons on him; or

(b) The tenant deposits all arrears of rent within such time as the Court may extend. This can be done only on an application by the tenant, but not suo motu. Such an application can be made at any time but to allow or not to allow it will be in the discretion of the Court to which it is made. However, it cannot be rejected merely on the ground that it was not made within one month of the service of the writ of summons on the defendant; or

(c) The tenant raises a dispute within the meaning of Section 13 (2) of the Act within one month of the service of the writ of summons on him and then deposits the provisional rent, as fixed by the Court, without any delay.

(3) It will be compliance with the second part of Sec.13 (1) in the following cases.-

The Court has no power to extend time for compliance with this part of Section 13 the obvious reason being that unlike the first part of Section 13 (1), the tenant, under the second part, has not to deposit any accumulated arrears of rent. That is the reason for the distinction.

(a) The tenant goes on depositing month by month by the 15th day of every calendar month, until the disposal of the suit, rent for the preceding month, or

(b) The tenant raises a dispute within the meaning of Section 13 (2) of the Act, after the expiry of one month of the service of the writ of summons on him, but complies with both the parts of Section 13 (1) upto the date of raising such dispute and pays rent thereafter according to the provisional rent fixed by the Court under Section 13 (2).

(4) The effect of compliance with both the parts of Section 13 (1), as above, will be that the defendant will earn a special protection afforded to him under Section 12 (3) and Section 13 (5) of the Act.

(5) The consequences of non-compliance with either the first part or the second part of Section 13 (1) are two:-

(a) The defendant automatically forfeits the protection under section 12 (3) and section 13 (5), even when there is a single default. The Court has no power to condone any delay or default for the purposes of Section 12 (3) or Section 13 (5).

(b) His defence is liable to be struck out under Section 13 (6). But it is not automatic. The provisions are not mandatory. The Court has been given a wide discretion to strike out the defence or not to strike it out, in case where there is one default or more than one default, or any amount of delay in depositing the amounts due under the first part and the second part of Sec.13 (1). **If at the time that the Court is disposing of the application under Section 13 (6), rent has been deposited, or the tenant seeks a reasonable time to deposit all amount of rent due under both the parts of Section 13 (1), the Court shall not strike out the defence, except when there is:-**

(i) contumacy, or

(ii) positive mala fide:

(6) The Court must always bear in mind the above distinction between the consequences of delay or default in complying with the provisions of Section 13 (1) for the purposes of Section 12 (3), or Section 13 (5), on the one hand, and Section 13 (6) on the other hand. The reason for the stringency and rigidity of the consequences of non-compliance with Section 13 (1) for the purposes of Section 12 (3) and the reason for the leniency and latitude for bestowing wide discretion on the Court in case of delay or default in compliance with the provisions of Section 13 (1) for the purposes of Section 13 (6), are very clear.

(i) Section 12 (3) and Section 13 (5) afford a special protection to the tenant against eviction even when the landlord has earned the right of eviction under section 12 (1) (a). The landlord is deprived of that valuable right, if the tenant strictly complies with both the parts of Section 13 (1) throughout the trial and punctually; otherwise, the tenant loses that protection.

(ii) The other object of Section 13 (1) is that the amount of rent is deposited for the benefit of the landlord and the tenant is prevented from litigating without depositing rent. This significant purpose of Section 13 (1) is served when the tenant deposits all arrears of rent whether on the date specified in Section 13 (1) or later on. This provision is in terrorem. It is not as if any special or additional right is conferred on the landlord by the default committed by the tenant. It is a penalty incurred by the tenant. **To strike out the defence is an extreme penalty with which the defendant can be visited, so that it has been held by the Court that that extreme step must not be taken by the Court. However, that, extreme step may be taken in the case of contumacy or positive mala fide.**

(7) As soon as a dispute is raised under Section 13 (2) the operation of Section 13 (1) gets arrested; however, the lost right is not revived. As soon as the provisional rent is determined under Sec.13 (2), the operation of Section 13 (1) is resumed. The provisions of Section 13 (2) are mandatory and the Court has to deal with the dispute whenever it is raised. If it is raised after one month of the service of the writ of summons on the defendant and without complying with the provisions of both the parts of Section 13 (1) upto the date of raising the dispute then also the Court has to determine a provisional rent although the protection under Section 12 (3) and Section 13 (5) may have been lost by the tenant.

(8) The same is the effect and consequence where a dispute is raised under Section 13 (3) mutatis mutandis.

(9) The above propositions are deducible from Chitrakumar Tiwari v. Gangaram 1966 J LJ 1028; Jagdish Kapoor v. New Education Society, 1967 Jab LJ 859 = (AIR 1968 Madh Pra 1) (FB); 1970 MPLJ 902 = (AIR 1971 MP 104) and 1972 MPLJ 785 = (AIR 1973 Madh Pra 165).”

10. Taking the same view, another coordinate Bench of this Court in the case of Shyamlal Agrawal and others vs. Sardar Gurubachan Singh **1999 (2) MPLJ 288**, while allowing the application under section 13(6) of the Act, granted 2 month's time to deposit the arrears of rent. Relevant para 7 of which, is as under :-

“7. Looking to the facts and circumstances to the case, the impugned order dated 1.5.1993 is hereby set aside and the non-applicant is granted two months' time from today to deposit all the arrears of rent and comply with the provisions of Section 13(1) of 'the Act' thereafter. In case, he does not do so, his defence under Section 12 of 'the Act' will be struck off. Consequently, the revision is partly allowed. The office is directed to send back the record of the case immediately. The parties are directed to appear before the trial Court on 7.12.1998.”

11. As has been held in the case of Bachchoobhai (**supra**), the Court has discretion to strike out the defence or not to strike it out and if before passing order on the application under Section 13(6) of the Act, the defendant/tenant has already deposited entire arrears of rent, his defence shall not be struck out and similarly before disposing of the application, if the defendant seeks time to deposit the arrears of rent within a reasonable period, then defence should not be struck out.

12. Meaning thereby, at the time of passing order on the application under Section 13(6) of the Act, the Court should ask the defendant to deposit the arrears of rent, if any, and if the defendant does not want to deposit the rent, then his defence should be struck out. If the aforesaid exercise is not done or is not possible then while passing the order of striking out defence, at least 15 days' time to deposit the arrears of rent, should be given with a view to avoid further and unnecessary litigation before superior court.

13. As the explanation given in the reply to the application under section 13(6) of the Act, has not been taken into consideration by trial Court, and since the respondent/plaintiff is not present before this Court, therefore, the impugned order deserves to be and is hereby set aside and the matter is remanded to trial Court to decide the application under Section 13(6) of the Act afresh. However, before that if the petitioner/defendant wishes, he is free to deposit entire arrears of rent, if he wants defence against eviction.

14. Misc. application(s), pending if any, shall stand **closed**.

(DWARKA DHISH BANSAL)
JUDGE

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