

Shyamcharan Sharma

Vs

Dharamdas

Civil Appeal No. 854 of 1977

(V.R. Krishna Iyer, R.S. Pathak, O. Chinnappa Reddy JJ)

04.12.1979

JUDGMENT

CHINNAPPA REDDY, J. –

1. The respondent-landlord sought eviction of the appellant-tenant from the suit premises on two grounds : (i) failure to pay arrears of rent Rs. 158.25 despite service of notice of demand and (ii) bona-fide requirement of premises for landlord's personal occupation. The second ground was rejected by all the subordinate courts and we no longer concerned with that ground. In regard to the first ground, the trial Court found that the tenant was in arrears of payment of rent but that the tenant was entitled to the protection of Section 12(3) of the Madhya Pradesh Accommodation Control Act, 1961, as the tenant had deposited the arrears of rent within the time allowed by the supreme court on his application. When the appeal preferred by the landlord was pending before the Additional District Judge, Satna, the tenant filed an application for condonation of delay in depositing the rent, month by month, which had become payable after the filing of the suit, as stipulated by the Section 13(1) of the Act. It appears that, on several occasions, when the suit and the appeal were pending before the trial Court and the appellate Court respectively, the tenant had deposited the monthly rent a day or two or three, beyond the prescribe date. The amount had been received by the court and drawn out by the landlord, apparently without any protest. Taking advantage of the filing of the tenant's application for condonation of delay, the landlord contended that the court had no power to extend the time for deposit of the monthly rent and that he was entitled to a decree for eviction consequent on the non-compliance with the provisions of Section 13(1) of the Madhya Pradesh Accommodation Control Act. The appellate Court negated the landlord's contention and dismissed the appeal. The landlord preferred a second appeal to the High Court of Madhya Pradesh. The High Court, holding that the court had no power to extend time, decreed the suit for eviction. The tenant, having obtained special leave, has appealed to this Court.

2. Shri Khanduja, learned counsel for the appellant, raised two contentions before us. The first contention was that the High Court was wrong in holding that the court had no power to condone the delay in depositing the monthly rent falling due after the filing of the suit for eviction. The second contention was that, in the circumstances of the case, the respondent must be considered to have waived or abandoned the right to insist on disentitling the tenant of the protection to which he was otherwise entitled. Shri Naik, learned counsel for the respondent, contended to the contrary on both the questions.

3. The Madhya Pradesh Accommodation Control Act, 1961, was enacted, as recited in the statement of objects and reasons, "for the purpose of controlling, letting of and rents of residential and non-residential accommodation and giving adequate protection to the tenants of such accommodation in

areas where there is dearth of accommodation". Section 12(1) of the Act provides that 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 grounds specified therein. Several grounds are specified, such as, failure to pay the arrears of rent after the service of notice of demand, unlawful sub-letting of the whole or part of the accommodation, creation of a nuisance, bona fide requirement of accommodation by the landlord for his own occupation, causing of substantial damage to the accommodation, etc., etc. The ground with which we are concerned is that mentioned in Section 12(1)(a) and it is : "that the tenant has neither paid nor tendered the whole of the arrears of 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". Thus, where a tenant is in arrears of rent, a landlord is obliged, before instituting a suit for eviction on that ground, to serve a notice of demand calling upon the tenant to pay or tender the whole of the arrears of rent within two months of the date of service of the notice. Section 12(3) provides that an order for the eviction of a tenant shall not be made on the ground specified in Section 12(1)(a), if the tenant makes payment or deposit as required by Section 13. Section 13, sub-sections (1), (5) and (6) which are relevant for the present purpose are as follows :

13. (1) On a suit or proceeding being instituted by the landlord on any other grounds referred in Section 12, the tenant shall, within one month of service of the writ of summons on him 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.

(5) 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 by the tenant, but the court may allow such cost as it may deem fit to the landlord.

(6) 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 hearing of the suit.

4. It is true that in order to entitle a tenant to claim the protection of Section 12(3), the tenant has to make a payment or deposit as required by Section 13, that is to say, the arrears of rent should be paid or deposited within one month of the service of the writ so summons on the tenant or within such further time as may be allowed by the court, and should further deposit or pay every month by the 15th, a sum equivalent to the rent. It does not, however, follow that failure to pay or deposit a sum equivalent to the rent by the 15th of every month, subsequent to the filing of the suit for eviction, will entitle the landlord, straightway, to a decree for eviction. The consequences of the deposit or payment and non-payment or non-deposit are prescribed by sub-sections (5) and (6) of Section 13. Since there is statutory provision expressly prescribing the consequence of non-deposit non-payment of the rent, we must look to and be guided by that provision only to determine what shall follow. Section 13(6) does not clothe the landlord with an automatic right to a decree for eviction; nor does it visit the tenant with the penalty of a decree for eviction being straightway passed against him. Section 13(6) vests, in the court, the discretion order the striking out of the

defence against eviction. In other words, the court, having regard to all the circumstances of the case, may or may not strike out the defence. If Section 13 were to be constructed as mandatory and not as vesting a discretion in the court, it might result in the situation that a tenant who has deposited the arrears of rent within the time stipulated by Section 13(1) but who fails to deposit thereafter the monthly rent on a single occasion for a cause beyond his control may have his defence struck out and be liable to summary eviction. We think that Section 13 quite clearly confers a discretion, on the court, to strike or not to strike out the defence, if default is made in deposit or payment of rent as required by Section 13(1). If the court has the discretion not to strike out the defence of a tenant committing default in payment or deposit as required by Section 13(1), the court surely has the further discretion to condone the default and extend the time for payment or deposit. Such a discretion is necessary implication of the discretion not to strike out the defence. Another construction may lead, in some cases, to perversion of the object of the Act, namely, 'the adequate protection of the tenant'. Section 12(3) entitles a tenant to claim protection against eviction on the ground specified in Section 12(1)(a) if the tenant makes payment or deposit as required by Section 13. On our construction of Section 13 that the court has the power to extend the time for payment or deposit, it must follow that payment or deposit within the extended time will entitle the tenant to claim the protection of Section 12(3). One of the arguments advanced before us was that there was no express provision for extension of time for deposit or payment of monthly rent subsequent to the filing of the suit whereas there was such express provision for payment or deposit of arrears of rent that had accrued before the filing of the suit. Obviously, express provision for extension of time for deposit or payment of rent falling due after the filing of the suit was not made in Section 13(1) as the consequence of non-payment was proposed to be dealt with by a separate sub-section, namely Section 13(6). Express provision had to be made for extension of time for deposit or payment of rent that had accrued prior to the filing of the suit, since would ordinarily be at a very early stage of the suit when a written statement might not be filed and there would, therefore, be no question of striking out the defence and, so, there would be no question of Section 13(6) covering the situation.

5. In *Jagdish Kapoor v. New Education Society* ((1967) Jab LJ 859), a Full Bench of the Madhya Pradesh High Court held that Section 13(6) of the Madhya Pradesh Accommodation Control Act did not make it obligatory for the court to strike out the defence but vested in the court a discretion to strike out or not to strike out the defence. Having so held, the Full Bench stopped short of giving full effect to their conclusion by holding that the court could condone the default and to refuse to strike out the defence but it could not give the benefit of Sections 12(3) or 13(5) to the tenant. We do not see any justification for adopting this narrow construction of Section 12 and 13. In our view the discretion given to the court under Section 13(6) must be held to imply a discretion to condone the delay and extend the time in making deposit or payment under Section 13(1). In *B. C. Kame v. Nemi Chand Jain* ((1970) 3 SCC 281 : AIR 1970 SC 981), a tenant had committed default both in payment of arrears as well as in payment of the monthly rent which became payable after the filing of the suit. This Court took the view that on an application made by the tenant time for deposit or payment could be extended. Though the observations made by the Court read as if they were made with reference to the default in payment of arrears, a reference to the facts of the case as set out in the very judgment shows that there was default both in payment of the arrears of rent that had accrued before the filing of the suit and payment of the monthly rent that fell due after the filing of the suit.

6. We are accordingly of the opinion that the court has the jurisdiction to extend time for deposit or payment of monthly rent falling due after the filing suit. In that view it is not necessary to express our opinion on the question of waiver or abandonment. The appeal is allowed with costs and suit for eviction is dismissed.

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