
(1972) 08 MP CK 0003
In the Madhya Pradesh High Court
Case No : S.A. No. 510 of 1967

Abdul Gafoor

APPELLANT

Vs

Abdeali

RESPONDENT

Date of Decision : 23-08-1972

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)(a),
12(3), 13, 13(1), 13(2)
Transfer of Property Act, 1882 — Section 113

Citation : (1973) J LJ 1091

Hon'ble Judges : S.B. Sen, J

Bench : Single Bench

Advocate : S.L. Garg, for the Appellant; S.D. Sanghi, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sen, J.—By my order dated 3-8-1971, I had placed the papers before my Lord the Chief Justice to refer the following points to a larger Bench:

1 (a) When a suit is filed on grounds mentioned in section 12 (1) (a) of the M.P. Accommodation Control Act, whether the tenant can save himself from a decree of ejectment if he pays u/s 13 (1) the arrears of rent which are within time or has he to pay all the arrears including those beyond limitation and which the landlord cannot recover by any process of the Court ?

(b) Whether under the circumstances of this case, that is when the landlord plaintiff has specifically given up the claim of arrears of rent because of the bar of limitation he can make non-payment of those barred arrears a ground for refusal of the benefit conferred u/s 12 (3) of the M.P. Accommodation Control Act ?

(2) Whether in the circumstances of this the appellant is not entitled to a decree for eviction of the respondent on the ground that by giving a fresh notice to quit to the respondent after the dismissal of the suit for eviction by the trial Court he

waived the previously given notice to quit on which the suit for eviction was founded ?

Accordingly the points were placed before a Division Bench of this Court which has answered the questions in the following manner:

1 (a) To save himself from a decree for ejectment the tenant has to pay or tender all the arrears including those beyond limitation and which the landlord for his part cannot recover by process in Court.

(b) We do not agree that the "landlord has given up any claim of arrears What he has done in the plaint is to mention separately the total arrears and those arrears which are barred by limitation and claimed the balance. This is not a voluntary giving up but only a statement of the factual position involving limitation.

(2) Whether afresh quit notice by the landlord on the tenant does amount to a waiver as mentioned in section 113 Transfer of Property Act is a question of fact depending upon the circumstances of each case. In the instant case there is no intention to treat the lease as subsisting on the date of the fresh notice and accordingly the issue of the fresh notice does not disentitle the landlord to a decree for ejectment.

After the decision of the Division Bench [1], this second appeal has again been placed before me for further steps.

2. In my order dated 3-8-1971, had given the facts of the case and I need not repeat them except in brief manner necessary for the final order. Abdeali landlord sought ejectment on the ground of arrears of rent, genuine need and the existence of alternate accommodation against Abdul Gafoor. The tenant-respondent deposited in Court within the time allowed the full amount claimed in the suit for arrears of rent. The trial Court held against the plaintiff, the grounds of genuine need and the tenant's having in possession an alternative accommodation. The landlord filed an appeal. The appellate Court agreed with the findings of the trial Court so far as the genuine need and alternate accommodation were concerned, but held that the tenant by not paying the rent for the period barred by time though not claimed in the suit has committed default as contemplated u/s 13 (1) of the accommodation Control Act, and, therefore, granted a decree for ejectment. The tenant thereupon filed this second appeal which is numbered as 510 of 67. There was also a notice given by the landlord after the filing of the appeal before the First Court demanding the rent and ejectment of the tenant. This latter point I need not discuss at all as the Division Bench has agreed with the view I have expressed in my referring order. The other points on which the Division Bench has not agreed with me are points Nos. 1 (a) and 1 (b). In view of the decision of the Division Bench the landlord could be entitled to a decree for ejectment for not tendering all the arrears including those beyond limitation and which the landlord for his part cannot recover by process in Court.

3. This decision of the Division Bench was given on 6-1-1972. After the opinion was delivered an application was made on 24-1-1972 by the appellant u/s 13 (1) and (2) of the M.P. Accommodation Control Act, 1961 praying that the Court be pleased to grant time to the appellant to deposit time barred rent and condone the delay which has been made in depositing the same u/s 13 (1) or/and 13 (2) of the Accommodation Control Act. This application has been opposed by the respondent on the ground that no question of extending the time for depositing the rent can arise as such a request could be considered on an application made to the trial Court at the proper time during the pendency of the suit. He has also submitted that the application for extension of time was made on 24-1-1972 whereas the Division Bench answered the reference on 24-12-1971. I may mention here that the respondent is not correct when he says that the Division Bench answered the reference on 24-12-1971. A perusal of the record shows that it was delivered on 6-1-1972. Whatever that may be I have to consider whether the delay may be condoned under the circumstances of the case.

4. The tenant appellant has paid all the rents which he thought was due from him. By due I mean legally recoverable. The only question on which difficulty arose which the tenant-appellant was that he was not prepared to pay the time barred rent that is the rent which the landlord could not recover through process of law. In fact, there has been difference of opinion between the view of Calcutta High Court *Nashiban Bibi and others v. Parul Bala Dutta and others* AIR 1962 Cal. 778, and the Punjab High Court *Rullia Ram Hakim Rai Vs. S. Fateh Singh S. Sham Sher Singh*, on this question. The Single Bench agreeing with the view of the Calcutta High Court was of the opinion that if the landlord can recover time barred rent by filing a suit for ejectment then it will be giving premium on the back of the landlord. The landlord may recover rent of past months up to infinity. The Punjab High Court, however, held a different view holding that a "debt does not cease to be a debt because its recovery is barred by the statute of limitation". Whatever may be the conflicting views, the Division Bench has given its opinion in favour of the view held by the Punjab High Court on the points referred to. I am bound by the decision of the Division Bench.

5. However the present question is whether under the circumstances of the case the delay in making the payment should be condoned. Looking to the complicated nature of the problem and the conflicting views held by different High Courts, and amongst the judges of the same Court, we can not straight way blame the tenant for not paying the arrears which the landlord did not want by a process of the Court otherwise available to him. Though we may not credit the tenant with the knowledge that the landlord should not get a decree for the arrears without paying Court fee and without claiming it, but certainly the point is dubious. If the Judges of the different High Courts may differ on such a question, it will not be improper or unreasonable for the tenant to hold one view or the other. As regards the question of not applying to the trial Court, the view of this Court has been that such an application can be made, at any time. In the instant case the reasons already given, will apply in not applying earlier. I,

therefore, feel that this is a fit case for condonation and the arrears of rent paid by him be accepted. As he, has paid the amount of rent to the landlord is not entitled to get a decree for ejectment.

6. In the result the appeal is allowed and the decree for ejectment is set aside. In the circumstances of the case there will be no order as to costs. The; parties shall bear their own costs.