

(1975) 08 MP CK 0027

In the Madhya Pradesh High Court

Case No : Second Appeal No. 410 of 1965

Chhoglal

APPELLANT

Vs

Idol of Bhagwan Shri Satyanarayan Through Pujari Kamaldas
Guru, Narayandas Bairagi

RESPONDENT

Date of Decision : 13-08-1975

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 13, 13(1), 13(2)

Citation : AIR 1976 MP 5 : (1976) ILR (MP) 997 : (1975) 20 MPLJ 657

Hon'ble Judges : P.K. Tare, C.J;S.S. Sharma, J;G.P. Singh, J

Bench : Full Bench

Advocate : M.P. Avadhoot, for the Appellant;

Judgement

Singh, J.

This appeal was first heard by Bachawat, J. sitting singly. He found difficulty in reconciling two Division Bench decisions of this Court on the construction of Section 13 of the Madhya Pradesh Accommodation Control Act, 1961. These Division Bench cases are : Firm Ganeshram Harvilas and Another Vs. Ramchandra Rao, and Jivrambhai and Another Vs. Amar Singh, . The learned Judge, therefore referred to a Division Bench the following question of law;

"Whether the operation of Section 13(1) of the Madhya Pradesh Accommodation Control Act, 1961 is arrested so far as the deposit of rent according to it, is concerned and it remains in suspense until the Court fixes a provisional rent since when the dispute is raised by the defendant-tenant in his written statement, or it would be so since when the defendant-tenant makes an application inviting the attention of the Court to the specific dispute and asks the Courts to fix the provisional rent?"

When the reference came up before a Division Bench (Oza and Sohani, JJ.), the learned Judges considered that as the question required reconsideration of two

Division Bench decisions, the reference should be heard by a Full Bench. On their recommendation this Full Bench was constituted to hear the reference.

The material facts pertaining to the question referred to us are that the defendant-appellant is a tenant of the plaintiff-respondent and is in occupation in that capacity of a part of house No. 716 situated at Neemuch. The suit giving rise to this appeal was instituted on 8th July 1963 by the respondent for eviction of the appellant and for arrears of rent. The appellant's ejectment was sought on various grounds one of them being u/s 12(1)(a) of the Act. The respondent's case was that the appellant was a tenant on a monthly rent of Rs. 5/-, and that there was failure on his part to pay the arrears of rent within two months from the service of the notice of demand. The suit was decreed ex parte on 13th December 1963. On the appellant's application that he was not served with the summons of the suit, the ex parte decree was set aside. The appellant, soon thereafter, filed his written statement on 2nd April 1964. In his written statement the appellant pleaded that the rent of the house to begin with was Rs. 2/- per month and it was first enhanced to Rs. 2/8/- per month and then to Rs. 3/- per month and that there was never any agreement to pay the rent of Rs. 5/- per month. It was also pleaded that the appellant on receiving notice sent all the arrears at the rate of Rs. 3/- Per month, and that some amount of rent was deposited in the Court of the Rent Controller. The appellant deposited a sum of Rs. 132/- as arrears, of rent, calculated at the rate of Rs. 3/- per month, on the very date he filed his written statement and in that context pleaded that as all the arrears were deposited within one month as required by Section 13(1) of the Act, the suit was liable to be dismissed. The trial Court did not fix any reasonable provisional rent as required by Section 18(2) of the Act, The appellant continued to deposit rent at the rate of Rs. 3/- per month during the pendency of the suit,

The trial Court in its final judgment came to the conclusion that the rent of the house was Rs. 5/- per month and not Rs. 3/- per month as alleged by the appellant and that the appellant was liable to eviction u/s 12(1)(a) of the Act. In appeal the appellate Court agreed with the finding that the rent was Rs. 5/- per month and that as the appellant tendered arrears of rent after notice of demand at the rate of Rs. 3/- per month and not at the rate of Rs. 5/- per month, the ground u/s 12(1)(a) was made out. The appellate Court, however, held that the appellant by depositing the arrears of rent at the rate of Rs. 3/- per month and by continuing to deposit rent at that rate during the pendency of the suit in the trial Court complied with Section 13 of the Act in so far as that Court was concerned. In this context it was observed that when an ex parte decree is set aside on the ground of non-service of summons, "the service of the writ of summons" within the meaning of Section 13(1) cannot be held to have taken place earlier to the date when the ex parte decree is set aside. But the appellate Court further held that the appellant by failing to deposit rent in that Court during the pendency of appeal was liable to eviction and was not entitled to protection u/s 12(3) or Section 13(5) of the Act. In this view of the matter, the decree of eviction passed by the trial Court was confirmed. It is against the

decree of the appellate Court that the appellant filed this second appeal.

Bachawat, J. in his order of reference, has rightly pointed out that the view taken by the appellate Court that the appellant was bound to deposit rent in appeal was erroneous being in direct conflict with the view of the Full Bench in *Firm, Ratanchand Darbarilal, Satna and Others Vs. Rajendra Kumar Khoobchand and Others*. Thus the particular non-compliance of Section 13 on which the decree of the trial Court was upheld by the first appellate Court could not be supported. It was, however, argued before Bachawat, J. by the respondent that as the appellant did not deposit arrears and monthly rent at the rate of Rs. 5/- per month in the trial Court and as he did not specifically and separately apply for fixation of provisional rent, he was not entitled to protection u/s 13 of the Act and on this ground the decree for eviction should be maintained. In reply it appears to have been contended that the operation of Section 13(1) was suspended immediately the appellant raised a dispute as to the rate and quantum of rent in his written statement; that it was obligatory for the Court to fix a provisional rent u/s 13(2); and that it was not incumbent upon the appellant to make a separate application or to pray specifically for fixation of provisional rent. It appears that it was in connection with this argument that Bachawat, J. found difficulty in reconciling the two Division Bench decisions and referred the question which we have earlier set out.

A suit for eviction against a tenant can be filed only on one or more of the grounds mentioned in Section 12(1). Clause (a) of the section permits a suit on the ground "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 the rent has been served on him by the landlord in the prescribed manner" Section 12(3), however, directs that no decree for eviction on this ground shall be made "if the tenant makes payment or deposit as required by Section 13." Section 13 reads as follows :

"13. When tenant can get benefit of protection against eviction.-- (1) On a suit or proceeding being, instituted by the landlord on any or the grounds referred to in Section 12, the tenant shall, within one month of the 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 upto the end of the month previous to that in which deposit or payment is made and shall thereafter continue to deposit or pay, month by month, by the 15th or each succeeding month a sum equivalent to the rent at that rate.

(2) If in any suit or proceeding referred to Sub-section (1), there is any dispute as to the amount of rent payable by the tenant, the Court shall fix a reasonable provisional rent in relation to the accommodation to be deposited or paid in accordance with the provisions of Sub-section (1) till the decision of the suit or appeal.

(3) If, in any proceeding referred to in Sub-section (1), there is any dispute as to the person or persons to whom the rent is payable, the Court may direct the tenant to deposit with the Court the amount payable by him under Sub-section (1) or Sub-section (2) and in a case, no person shall be entitled to withdraw the amount in deposit until the Court decides the dispute and makes an order for payment of the same.

(4) If the Court is satisfied that any dispute referred to in Sub-section (3) has been raised by a tenant for reasons which are false or frivolous the Court may order the defence against eviction to be struck out and proceed with the hearing of the suit.

(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 the hearing of the suit"

If there is no dispute between the parties as to the amount or rate of rent or as to the person to whom it is payable, the deposit or payment of arrears and monthly rent has to be made by the tenant in accordance with Sub-section (1) of Section 13. But when a dispute is raised as to the amount of rent payable by the tenant or as to the person to whom it is payable, Sub-section (1) gets controlled by sub-sections (2) and (3). If the dispute is as to the amount of rent, the Court under Sub-section (2) fixes a reasonable provisional rent and it is this rent which is to be deposited or paid under Sub-section (1). As the obligation on the tenant in case of dispute is to deposit or pay the reasonable provisional rent fixed by the Court, it is implicit that the obligation to deposit or pay the rent arises only when the Court fixes the reasonable provisional rent and till then the obligation to deposit rent in accordance with Sub-section (1) remains suspended. This is also the view expressed in *Jivrambhai and Another Vs. Amar Singh*, . Similarly, when a dispute is raised as to the person to whom the rent is payable, there is no obligation to deposit or pay the rent but "the Court may (under Sub-section (3)) direct the tenant to deposit with the Court the amount payable by him" and it is then that the tenant has to make the deposit. Further, although the Court must fix the reasonable provisional rent under Sub-section (2) expeditiously, it is conceivable that there may be delay in some cases making it impossible for the tenant to adhere to the time schedule under Sub-section (1) for depositing or paying rent for the period before the fixation of provisional rent. It is implicit, therefore, that the Court at the time of fixing the reasonable provisional rent will have the necessary power to fix the time for making deposit or payment under Sub-section (1) for any period prior to the fixation of provisional rent so that the time taken by the Court in passing its order may not prejudice any party. Again,

there may be cases where although a dispute is raised as to the amount of rent within the meaning of Sub-section (2), yet the Court omits to fix reasonable provisional rent during the entire trial of the suit. Indeed, this is actually what happened in the instant case, In such a situation, the tenant cannot be allowed to suffer for the failure of the Court to do its duty. The maxim *Actus Curias Neminem Gravabit*, which is founded upon justice and good sense, would apply to such a case. As a result of the dispute raised by the tenant, the obligation to deposit or pay rent, as already seen, gets suspended until the fixation of provisional rent by the Court. So if the Court omits to fix the provisional rent during the entire trial, it cannot be said that there has been any failure on the part of the tenant to deposit or pay rent in accordance with Section 13, In such a case as there is nothing to be paid or deposited, it would be said that "the tenant has made payment or deposit as required by Section 13" within the meaning of Section 12(3) and Section 13(5), This question was formulated as question No. 4 in *Firm Ganeshram Harvilas and Another Vs. Ramchandra Rao*, , but in our opinion, was wrongly answered against the tenant in the conclusion No. 6 formulated in paragraph 22 at p. 908 of the report (at p. 108 of AIR).

The question referred to us thus rightly assumes that the operation of subsection (1) of Section 13 is arrested and this provision remains in suspense when a dispute is raised by the tenant under Sub-section (2), and that the obligation to deposit rent remains so suspended until the Court fixes the provisional rent and the tenant is not in default if no provisional rent is fixed by the Court. The point that we are required to decide is whether it is sufficient for the tenant to raise the dispute in his written statement or whether he must make an application inviting the attention of the Court to the specific dispute and ask the Court to fix the provisional rent.

Sub-section (2) of Section 13, in so far as material, provides that "if there is any dispute as to the amount of rent payable by the tenant, the Court shall fix a reasonable provisional rent in relation to the accommodation." The sub-section is silent regarding the manner in which the dispute should be raised. The only requirement of this provision is that there should be a dispute as to the amount of rent payable by the tenant. The moment this requirement is fulfilled, it becomes the duty of the Court to fix a reasonable provisional rent. Having regard to the language of the provision, if the tenant has raised the dispute as to the amount of rent payable by him in the written statement, that would be sufficient for purposes of the subsection. A dispute so raised will make it obligatory on the Court to fix the reasonable provisional rent, No further action on the part of the tenant, such as making of an application or inviting the attention of the Court to the specific dispute or specifically asking the Court to fix the provisional rent, is needed to cast an obligation on the Court to fix the reasonable provisional rent, for the simple reason that the sub-section does not, say that the tenant should file a separate application or specifically pray for fixation of provisional rent. In *Jivrambhai and Another Vs. Amar Singh*, it has been rightly observed that "if the dispute has been raised in the written statement the Court cannot refuse to

determine provisional rent on the ground that a separate application has not been made". There are certain observations in Firm Ganeshram Harvilas and Another Vs. Ramchandra Rao, that it is not enough for the tenant to raise the dispute and in addition he must invite the attention of the Court to the dispute and the Court must be asked to fix a reasonable provisional rent. In our opinion, these observations do not lay down the law correctly as they add certain requirements in Sub-section (2) which are not there. If the tenant disputes the rate and amount of rent in his written statement, as was done in the instant case, there arises a dispute within the meaning of Sub-section (2) casting a duty on the Court to fix a reasonable provisional rent. The Court is expected to go through the pleadings of the parties for eliciting the matters in dispute and it is not necessary for the tenant to specially draw the attention of the court that he has disputed the amount or rate of rent. Similarly, it is not necessary for him to specifically ask for fixation of provisional rent. Raising of a dispute in the written statement by itself amounts to an implied request, if any request is at all needed, for fixation of provisional rent.

For the reasons stated above, we answer the question referred to us as follows ;

"The operation of Sub-section (1) of Section 13 of the Madhya Pradesh Accommodation Control Act, 1961, is arrested when a dispute as is referred to in Sub-section (2) raised by the defendant tenant in his written statement and it is not necessary that he should make an application inviting the attention of the Court to the specific dispute and asking the Court to fix provisional rent".

The second appeal shall now be placed before a Single Judge for final disposal. There shall be no order as to costs of this reference.