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**(2005) 09 MP CK 0059**

**In the Madhya Pradesh High Court**

**Case No : Second Appeal No. 159 of 1999**

Dr. Gopaldas and Others

APPELLANT

Vs

Rajesh and Another

RESPONDENT

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**Date of Decision :** 13-09-2005

**Acts Referred:**

Madhya Bharat Accommodation Control Act, 1955 — Section 4

Madhya Pradesh Public Trust Act, 1951 — Section 32

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1), 13

**Citation :** (2006) ILR (MP) 374 : (2006) 1 MPHT 53 : (2006) 1 MPJR 273 :  
(2005) 4 MPLJ 352

**Hon'ble Judges :** S.M. Samvatsar, J

**Bench :** Single Bench

**Advocate :** N.K. Jain and U.K. Jain, for the Appellant; K.S. Tomar and J.S. Kaurav, for the Respondent

**Final Decision :** Allowed

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## Judgement

Subhash Samvatsar, J.

This appeal is filed by the tenant challenging judgment and decree dated 29-1-1999 passed by Third Additional District Judge, Vidisha in Civil Appeal No. 3-A/96, whereby the First Appellate Court has confirmed the judgment and decree dated 8-4-1996 passed by Second Civil Judge Class-II, Vidisha in Civil Suit No. 1-A/94.

The brief facts of the case are that the respondent-plaintiff filed the present suit for ejectment against the appellants-tenants alleging that "Dharmshala" is situated namely Kashiram Biharilal Saraf Dharmshala, which is a registered trust. There is a room in the "Dharmshala" in a round shape which the defendant is a tenant paying rent at the rate of Rs. 30/- per month. The tenancy starts from first of the month. The said premises were let to the defendant for non-residential purpose.

In the plaint, it is alleged that plaintiff requires the suit accommodation for the office of manager and no other suitable accommodation is available for that purpose. It is alleged that the manager will sit in the office and manage the record and documents of the trust. The said room is near on the front gate of the "Dharmshala" and therefore no suitable accommodation is available for the said purpose. It is alleged that the defendant was arrears of rent. According to the plaintiff, the rent was due from 1-11-1982. A notice demanding arrears of rent was sent on 21-2-1983 and was served on the defendant on 24-2-1983. It is alleged that even after service of notice, the defendant neither paid nor tendered the arrears of rent, hence the present suit was filed for ejectment on the ground of Section 12(1)(a), 12(1)(f) and 12(1)(b) of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as "the Act") and some other grounds.

The two Courts below after appreciating the evidence-passed a decree on the ground of Section 12(1)(a) and 12(1)(f) of the Act, hence this appeal.

This appeal is admitted by this Court on 24-7-2001 on the following substantial questions of law :

- (i) Whether suit by independent trustee of a Trust without presuming trustee of a party, is maintainable ?
- (2) Whether in the absence of registration of Public Trust, suit could be continued without following the provisions of Section 32 of the M.P. Public Trust Act ?

At the time of final hearing, this Court has come to the conclusion that two some substantial questions of law does arise for consideration, hence on 23-8-2005 after hearing the matter in part, two additional substantial questions of law were framed, which are as under :

- (i) Whether the Court below has erred in granting the decree in favour of respondent on the ground of Section 12(1)(a) of the M.P. Accommodation Control Act when as per the admission of the plaintiff the tenant has tendered the entire rent due within two months from the date of service of notice ?
- (ii) Whether a decree u/s 12(1)(f) of the M.P. Accommodation Control Act can be passed in favour of the plaintiff for bonafide need for starting business of the Manager of the Trust ?

Thereafter the matter was finally heard on 30-8-2005.

As regards questions framed on 24-7-2001 on the ground of maintainability of the suit, questions framed on 23-8-2005 relates to availability of the of ground u/s 12(1) of the Act. From perusal of the judgment of two Courts below, I find that the question about the maintainability of the suit were not at all raised by the defendant in the present firm. There are no pleadings, about the question whether the trust is public trust or not. In such circumstances, this Court deems it fit to first answer the question about the availability of the ground u/s 12(1) of the Act.

As regards ground u/s 12(1)(a) of the Act is concerned, learned Counsel for the appellants urged that the ground u/s 12(1)(a) and 12(1)(f) of the Act do not exist or made out by the plaintiff and if as per plaintiff allegation and evidence on record, it is held that these grounds are not available to the plaintiff, then merely because defendant has failed to deposit regular rent u/s 13 of the Act. The plaintiff will not be entitled to a decree, because failure to comply the provisions of Section 13 of the Act will result in striking put of the defence, but even if the defence is struck down, the plaintiff is not entitled to a decree unless one of the grounds u/s 12(1) of the Act is made out. This argument has force only because the defendant has not deposited the rent during pendency of the suit as required by Section 13 of the Act, which resulted striking down of the defence. As per Apex Court, the result of striking down of the defendant is that defence of the defendant will not be considered, but still defendant is free to demonstrate from the pleadings and evidence of the plaintiff that ground u/s 12(1) of the Act is not available to the plaintiff. In such circumstances, this Court will have to examine whether from the pleadings and the evidence led by the plaintiff ground u/s 12(1) exists.

As regards Section 12(1)(a) of the Act is concerned, for getting a decree under the said section, plaintiff has to plead and prove that he has served a demand notice to the defendant demanding arrears of rent and the defendant has failed to pay or tender the rent legally recovered from him. In the present case, as per plaintiff, rent is due from 1-11-1982. A notice of demand Ex. P-10 was sent on 21-2-1983 and it was served on the defendant on 24-2-1983. Thus, after service of notice, it was incumbent on the defendant to pay the entire arrears of rent legally due within two months. The plaintiff P.W. 1 in Para 27 of his statement has stated that the defendant had sent a money order for the month of November, December and January, 1983, but he refused to accept the said money order. After service of notice, defendant had again sent money order of Rs. 120/-, i.e., for four months, i.e., November, December, January and February, but the plaintiff has refused to accept the said money order. As regards first money order of Rs. 90/- is concerned, from perusal of the record particularly, Ex. D-8 and D-9, it appears that said money order was sent on 8-2-1983, i.e., prior to service of notice so this money order does not help the case of the defendant to prove the tender within two months after service of notice. As regards another money order of Rs. 120/- is concerned, from perusal of Ex. D-10 it appears that it was sent on 24-2-1983, i.e., after service of demand notice.

Shri N.K. Jain, Sr. Counsel for the appellants submits that since the appellant-tenant had tendered the entire rent due upto Feb., 1983 by money order dated 24-2-1983, which was legally recoverable from him and the ground u/s 12(1)(a) of the Act, 1961 is not available to the plaintiff.

In reply to this argument, Shri K.S. Tomar, Sr. Counsel for the respondents urged that the tender by the plaintiff is not in accordance with law. According to him, the first money order, which was sent by the defendant vide receipt of money

order dated 9-2-1983 Ex. D-7 was prior to issuance of the notice. According to him, Section 12(1)(a) of the Act, 1961 requires that the tender must be within two months after service of notice. Hence, according to him, the first money order dated 9-2-1983 can not be said to be a tender in terms of Section 12(1)(a) of the Act, 1961. As regards second money order dated 24-2-1983 is concerned, though it is after issuance of notice. By this money order, defendant has tendered four months rent of Rs. 120/- when in the notice Ex. P-10 plaintiff had demanded only three months rent, i.e., for the month of November, December and January. If the tenant sent any excess amount, than demanded in the notice, plaintiff has right to refuse to accept the excess amount and therefore that tender is not valid in accordance with Section 12(1)(a) of the Act. In support of this argument, Shri Tomar, learned Counsel for the respondents has relied on judgment of this Court in the case of Shivcharan v. Ambalal, 1960 JLN-SN 39. In that case, a notice dated 5-1-1951 was served on the tenant and after receipt of the notice, tenant sent money order on 10-1-1951, in which he has included the rent for the month of January. The plaintiff refused to accept the money order and this Court has held that since the rent for the month of January was not demanded by the plaintiff in the demand notice and the tenant sent a money order including the rent for the month of January, the tender is not in accordance with Section 4(a) of the M.B. Accommodation Control Act. The similar view is taken by this Court in the case of Hoodmal v. Ramniwas, 1962 JLN-SN 203. In that case also, a notice was issued demanding two months rent while the tenant after receipt of the notice has tendered three months rent and considering this fact this Court has held that tender is not in accordance with law and therefore sent valid tender.

After going through the aforesaid judgments, I find that these judgments are based on the interpretation of Section 4(a) of M.B. Accommodation Control Act, 1955, Section 4(a) of the Act, 1955 provided that "the tenant has failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a written notice of demand from the landlord. As per said section, the tenant was required to make payment of arrears of rent within one month from service to him of a written notice of demand. Considering this fact, this Court has held that the tender should be as per demand in the written notice, while the language of Section 12(1)(a) of the Act, 1961 is quite different. Section 12(1)(a) of the Act, 1961 reads as under :

that the tenant has neither paid nor tendered the whole of the arrears of the 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.

From reading of this Section, it is clear that after coming into force the Act of 1961, the tenant is required to pay or tender the whole of the arrears of rent legally recoverable from him within two months. Thus, there is difference between the languages used in Section 12(1)(a) of the present Act, 1961 and Section 4(a) of the Act of 1955. Under the old Act, a tenant was required to pay

the amount as per written demand of the landlord, while present Act of 1961 requires that tenant is required to pay or tender arrears of rent legally recoverable from him within two months. Under the old Act, the tenant was bound to comply with the demand of rent, but after coming into force of new Act, 1961 the position is quite changed and now the tenant is required to pay the entire arrears of rent, which are legally recoverable, that means even if any amount, which is not demanded by the landlord in the notice, if legally recoverable from the tenant, then he is bound to tender that amount. In the present case, defendant had sent money order on 24-2-1983. The said money order was tendered by the postman on 1-3-1983, as is clear from the evidence of the postman on Ex. P-8. The said money order was refused by the plaintiff on 1-3-1983. On that date, the rent for the month of February was legally recoverable and in such circumstances it is valid tender in accordance with Section 12(1)(a) of the Act, 1961 and once the defendant has tendered the entire arrears of rent legally recoverable from him within two months from the date of service of the notice, the plaintiff has no cause of action to file a suit on the ground of Section 12(1)(a) of the Act, 1961. In such circumstances, two Courts below have erred in granting a decree against the plaintiff on the ground of Section 12(1)(a) of the Act, 1961.

As regards ground u/s 12(1)(f) of the Act, 1961 is concerned, the said section reads as under :

that the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is owner thereof or of any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.

From perusal of said Section 12(1)(f) of the Act, 1961, it is clear that if the accommodation is let for non-residential purposes and is required bonafidely by the landlord for continuing or starting his business or that of his major son or unmarried daughters or for the benefit or that of any person for whose benefit the accommodation is held. Thus, u/s 12(1)(f) of the Act, 1961 the landlord is entitled to get a decree for ejection, if he requires the suit accommodation for starting his business or that of any of his major sons or unmarried daughters or of any person for whose benefit the accommodation is hold. In the present case, the plaintiff has pleaded that the accommodation is owned by the registered trust and is required bonafidely for the manager for his office. Now this Court will have to find out whether the requirement for the office of the "Dharmshala" amounts to carrying on business. The word "business" is interpreted by the Division Bench of this Court in the case of Baba Adam Das Guru Baba Ram Das (Deceased by LR) Vs. Mool Chand Nandwani, , and this Court after considering various judgments of this Court and Apex Court has answered that "business" means any activity carried out for earning livelihood or profit. In the present

case, plaintiff has nowhere pleaded in the plaint that the "Dharmshala" is carrying on any business or any activity to gain money. Normally, "Dharmshala" are run for charitable purpose.

Learned Counsel for the respondents has tried to urge that the manager for whose need the accommodation requires will collect the money from the visitors or occupants of the "Dharmshala", but there are no pleading to that effect in the plaint. Moreover, there are no allegations that "Dharmshala" is carrying on any activity for monetary benefit. P.W. 1 Ramnarayan in Para 4 of his statement has merely stated that the said room is most convenient for the office of manager, as said room is adjacent to the main road and the manager will be in direct touch with the visitors in "Dharmshala", but he has nowhere stated that plaintiff is started any charges from the visitors staying in the "Dharmshala" and the said charges will be collected by the manager. In absence of this evidence, it can not be said that plaintiff requires suit accommodation for any business activity. Similarly view is in the statement of P.W. 2 Chhotelal. In view of the matter, I find that the plaintiff has not at all made out any ground for eviction u/s 12(1)(f) of the Act, 1961. Thus, plaintiff is not entitled to get a decree for ejection on any ground on which decree was passed by two Courts below. As per Section 12 of the Act, the Court can pass a decree for ejection only if any of the grounds u/s 12(1) of the Act exists.

As regards question of law framed by this Court about the maintainability of suit on 24-7-2001, in light of reply to the questions framed on 23-8-2005 this Court need not answer the same.

In the result, this appeal succeeds and is allowed. Judgment and decree passed by two Courts below are hereby set aside and plaintiff's suit is dismissed.

In the facts and circumstances of the case, there shall be no order as to costs.