
(1966) 12 MP CK 0014
In the Madhya Pradesh High Court
Case No : Civil Revision No. 568 of 1966

Inderlal Balkiram

APPELLANT

Vs

Mahngi Bai Imratlal and Others

RESPONDENT

Date of Decision : 12-12-1966

Acts Referred:

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

Citation : AIR 1967 MP 163 : (1969) ILR (MP) 863 : (1967) JLJ 31

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhawe, J

Bench : Division Bench

Advocate : J.B. Assardas, for the Appellant; A.S. Usmani, for the Respondent

Final Decision : Allowed

Judgement

Dixit, C.J.—This is a petition to revise an order of the First Civil Judge, Second Class, Jabalpur, postponing consideration of the plaintiff-applicant's prayer u/s 13 (6) of the Madhya Pradesh Accommodation Control Act, 1951, for striking out the non-applicants' defence against eviction till after the determination of the question whether the non-applicants are tenants of the petitioner

2. The revision petition has been placed before us for hearing and disposal as there are conflicting Single Bench decisions of this Court on the question whether before invoking Section 13 of the Act against the defendant in a suit for eviction there must be first a finding that the defendant is a tenant of the plaintiff. A reference to these decisions will be made later. On the language of Section 13 of the Act, and regard being had to the object and purpose of the provision, we have no hesitation in holding that the provisions of Section 13 come into play the moment a person, claiming himself to be the landlord of any accommodation, files a suit for eviction, on any of the grounds referred to in Section 12, against a person who, according to the plaintiff's plea, is the person in occupation of the accommodation as his tenant. Section 13 (1) is as follows:

"13(1) On a suit or proceeding being instituted by the landlord on any of 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 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."

Sub-section (2) of Section 13 gives to the Court the power to fix a reasonable provisional rent in relation to the accommodation when there is any dispute as to the amount of rent payable by the "tenant". The next sub-section empowers the Court to direct the "tenant" to deposit in Court the amount payable by him under Sub-section (1) or Sub-section (2) when "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. We are not concerned with the fourth Sub-section under which the Court can order the defence against eviction to be struck out if it finds that any dispute referred to in Sub-section (3) has been raised by a "tenant" for reasons which are false or frivolous. If a "tenant" makes a deposit or payment as required by Sub-section (1) or Sub-section (2), then, as provided by Sub-section (5), no decree for his eviction can be passed on the ground of his having made a default in the payment of rent. The last sub-section, namely, Subsection (6) says that if a "tenant" fails to deposit or pay any amount as required by Section 13, the Court may order his defence against eviction to be struck out.

3. The opening words of Section 13 (1), namely, "On a suit or proceeding being instituted by the landlord on any of the grounds referred to in Section 12, the tenant shall.... deposit in the Court or pay to the landlord" are very significant and furnish the answer to the question raised for determination in this revision petition. The words "on a suit or proceeding "being instituted"" (underlined herein " " by us) clearly do not involve the requirement of any finding being given either on the question whether the plaintiff suing is the landlord or on the question whether the defendant sued is the tenant. This follows from the normal meaning of the important words "being instituted". Once a suit for ejectment, on any of the grounds referred to in Section 12, is instituted, the provisions of Sub-section (1) of Section 18 operate against the defendant, and the Court acquires jurisdiction to deal with any claim or question arising under any of the provisions of Section 13, no matter whether the relationship of landlord and tenant is admitted or denied by the defendant. Section 13 (1) does not say, or intend to say, that the plea of the defendant will determine whether he is or is not liable to make any deposit under that provision, it proceeds on the basis that a suit by a person claiming to be a landlord has been filed against the person alleged to be his tenant on any of the grounds mentioned in Section 12. It is plain from Section 12 that in a suit for eviction, founded on any of the grounds mentioned therein, the

plaintiff must allege that he is the landlord and that the defendant is his tenant. Therefore, the word "tenant" used in Section 13 (1) of the Act is merely connolative of the description which the plaintiff has given of the defendant and means nothing more than "defendant". It does not imply a defendant who has been found to be a tenant by the Court.

4. The view that Section 13 (1) applies not only when the relationship of landlord and tenant is admitted by the defendant, but also where the relationship is denied by him, finds support in the decisions of the Supreme Court in *Importers and Manufacturers Ltd. Vs. Pheroze Framroze Taraporewala and Others*, and *Babulal Bhuramal and Another Vs. Nandram Shivram and Others*, . In those cases. Section 28 of the Bombay Rents. Hotel and Lodging House Rates Control Act, 1947, which dealt with the jurisdiction of the Courts to entertain and try any suit or proceeding between a landlord and a tenant was construed. After specifying the Courts which will have jurisdiction, Section 28 of the Bombay Act said that they "shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this part apply and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions. . . ". The Supreme Court held that the suit contemplated by Section 28 was not only a suit between a landlord and a tenant in which that relationship was admitted, but also a suit in which the relationship of landlord and tenant was denied. The reasoning given by the Supreme Court in those cases a fortiori applies here when Section 13 (1) expressly says: "On a suit or proceeding being instituted by the landlord on any of the grounds referred to in Section 12, the tenant.....".

5. Shri Usmani, learned counsel for the 11011 -applicants, referred us to the decision of the Supreme Court in *Raizada Topandas and Another Vs. Gorakhram Gokalchand*, , and said that all that has been said in that case in regard to the decision of the Supreme Court in AIR 1968 SC 677 showed that the meaning given to the word "tenant" in *Babulal Bhuramal and Another Vs. Nandram Shivram and Others*, was no guide here. We are unable to accept this contention. In *Raizada Topandas and Another Vs. Gorakhram Gokalchand*, , the Supreme Court said that the decision in *Babulal Bhuramal and Another Vs. Nandram Shivram and Others*, did not assist Topandas and the other appellant before it. In that case, the Supreme Court affirmed the proposition that jurisdiction at the inception of a suit depends on the averments in the plaint and is not ousted by the defendant saying something in his defence; and that in order to decide whether a suit comes within the purview of Section 28 of the Bombay Act, what must be considered is what the suit as framed in substance is and what the relief claimed therein is, and a suit, which is essentially one between a landlord and a tenant, does not cease to be such a suit merely because the defendant denies the claim of the plaintiff.

6. In our judgment, the applicability of Section 13 (1) of the Act is not dependent

in any way on the determination of the Court that the defendant sued is a tenant of the plaintiff-landlord. The liability of the defendant to make deposit under that provision arises the moment a suit for eviction is filed against him by the plaintiff-landlord alleging that he is his (plaintiff's) tenant. It makes no difference to the applicability of Section 13 (1) whether the defendant admits the relationship of landlord and tenant or denies it. It is easy to see that the defendant, who denies the relationship of landlord and tenant between him and the plaintiff, is really not prejudiced by this construction of Section 13 (1). If the defendant's sole plea is that he is not a tenant, then it is not necessary for him to invoke the benefit of the provisions of the M. P. Accommodation Control Act, 1961, including Section 13 thereof, and in that case he is not obliged to make any deposit u/s 13 (1) of the Act

7. The object and purpose of Section 13 also point to the conclusion that a finding by the Court that the defendant is a tenant is not necessary for the operation of Section 13 (1) or for the exercise of the powers conferred on the Court by the various sub-sections of Section 13. The object of Section 13 (1) is clearly to prevent a tenant from stopping payment of rent the moment a suit for ejectment is filed against him. It is also to relieve the landlord of the necessity of filing separate suits for rent for the period covered by the pendency of his suit for eviction. Section 13 also gives relief to the defendant who makes the deposit or payment as required by Sub-section (1) or Subsection (2). No decree for eviction can be passed against a defendant who makes the payment or deposit as required by Section 13. These objects would be altogether defeated if it is held that Section 13 becomes operative in a suit for eviction only after it is adjudicated that the defendant sued is a tenant. It is now very common for the defendants in ejectment suits to deny the plaintiff-landlord's title, and such a denial is generally the main issue in the suit. Therefore, to say that Section 13 can come into play only after it is determined by the Court that the defendant is a tenant is to hold virtually that Section 13 becomes operative in a suit for eviction when the suit itself is about to be decided and to subject the plaintiff-landlord to harassment and pecuniary loss which Section 13 intends to safeguard.

8. That in any suit for eviction on any of the grounds mentioned in Section 12. Section 13 becomes applicable even before the determination of the question whether the defendant is a tenant, is clinched by Sub-sections (4) and (6) of Section 13 which provide for the defence against eviction being struck out. The defence against eviction open to a defendant under the M. P. Accommodation Control Act, 1961, very often includes the denial of the landlord's title. If the defence against ejectment can be gone into for determining the question whether the defendant is a tenant for the purpose of the applicability of Section 13 (1), then there would be no meaning left in the provision contained in Sub-section (1) of Section 13 that on failure to deposit or pay any amount required by the section, the defence against eviction may be struck off. Sub-section (6) unmistakably shows that for the applicability of Section 13 it is not necessary first to determine that there is a relationship of landlord and tenant between the

plaintiff and the defendant

9. A view similar to the one taken by us was expressed by one of us in *Haji Latif Abdulla v. Raniden*, C. R. No. 417 of 1961, dated 11-9-1961 (MP) while considering the question of the applicability of Section 5 of the Madhya Pradesh Accommodation Control Act, 1955. In *Abdulla Bhai v. Panchamsingh*, C. R. No. 27 of 1960 (MP). Krishnan J. said that the terms of Section 5 of the 1955-Act in regard to deposit of rent were categorical and for the purpose of making a direction under that provision the test was whether the person was being sued as a tenant. He further observed that it may be that "sometimes someone may sue his tenant only to cause inconvenience and harassment but that ordinarily such an eventuality is considered only theoretically".

10. In *Chhotelal v. Dadu*, 1965 Jab LJ 706, Sen J. has no doubt taken a contrary view and held that before Section 13 can be made applicable there should be a decision that the defendant is a tenant; and that if the defendant challenges, the Court must give a finding to that effect, and unless such a Finding is given the liability u/s 13 cannot be incurred. In reaching this conclusion, Sen. J. attached all importance to the use of the word "tenant" in Section 13 (1) and relied on the decision of the Calcutta High Court in *D.R. Gellatly Vs. J.R.W. Cannon*, . We have already endeavoured to point out earlier that the word "tenant" as used in Section 13 (1) merely means the defendant alleged to be a tenant by the plaintiff, and does not imply a defendant who has been found to be a tenant by the Court.

In *D.R. Gellatly Vs. J.R.W. Cannon*, , a Division Bench of the Calcutta High Court considered Section 14 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 and held that if the person sued as a tenant pleads that he is not a tenant, then till that question is decided against him he could not be called upon to deposit rent u/s 14 (4) of the West Bengal Act. The reasoning given by the Calcutta High Court was merely this: that as the Rent Act applied only to tenants, so Section 14 (4) of that Act could not be applied without first determining whether the defendant was a tenant. The provisions of Section 14 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, differ altogether from the provisions of Section 13 of the M. P. Accommodation Control Act, 1961. The decision of the Calcutta High Court in the case of *D.R. Gellatly Vs. J.R.W. Cannon*, on the meaning of the word "tenant", as used in Section 14 (4) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, can therefore, be of no assistance in the construction of Section 13 of the M. P. Accommodation Control Act, 1901. It may be noted that a contrary view was expressed by a learned Single Judge of the Calcutta High Court in *Jamini Khan Vs. Dharendra Nath Kundu*, .

11. Shri Usmani, learned counsel for the opponents, drew our attention to the decisions of Sharma, J. in *Labhchand v. Ramsarup* 1961 MPLJ 96; *Ramnarain v. Gaurishanker* 1964 MPLJ 172 and *Vishan Sahai v. Jagannath Prasad* 1964 MPLJ 231. In all these cases, Sharma, J. held that if the defendant raises a dispute as

to the person or persons to whom the rent is payable or as to the rate at which the rent is to be paid, the provisions of Section 13 (1) of the Act do not apply: and that in all such cases the Court must pass an appropriate order under Subsection (2) or Sub-section (3) as the case may be. It does not appear from the notes of the decisions published in the Jabalpur Law Journal whether Sharma, J. was required to consider the question which is now before us. But if there be anything in the decisions of Sharma, J. in the aforesaid cases suggesting that where the defendant in a suit for eviction denies the relationship of landlord and tenant, then the Court must first determine that he is a tenant before applying to him Section 13 of the Act, then we must say that such a view is not correct.

12. For the foregoing reasons, our conclusion is that the learned First Civil Judge, Second Class, Jabalpur, erred in deferring consideration of the plaintiff-applicant's prayer u/s 13 (6) of the M. P. Accommodation Control Act, 1961, for striking out the non-applicants' defence against eviction till after the determination of the question whether the non-applicants are tenants of the petitioner. The result is that this revision petition is allowed, the order dated the 26th August 1960 of the learned Civil Judge is set aside, and he is directed to dispose of, in accordance with law, the plaintiff-applicant's application for striking out the defendant-opponents' defence against eviction. In the circumstances of the case, we leave the parties to bear their own costs of this petition