

(1987) 01 MP CK 0001
In the Madhya Pradesh High Court
Case No : S. A. No. 220 of 1986

Lacchobai Rathor

APPELLANT

Vs

Registered Shri Murti God Madan Mohan ji.

RESPONDENT

Date of Decision : 16-01-1987

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12, 12(1), 12(1)(a), 12(3), 13
Transfer of Property Act, 1882 — Section 114

Citation : (1988) J LJ 213

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Advocate : D.K. Katare, for the Appellant; K.L. Mangal, for the Respondent

Final Decision : Allowed

Judgement

Dr. T.N. Singh, J.—Absence of boggling authorities was not considered a handicap in rendering the decision in Chandrashekhar v. Krishnadas [1] To-day I am inclined to consider it a blessing--the pains taking enterprise of respondents' counsel who has laboured hard with the aid of case-law, in persuading me to have a second look at Chandrashekhar.

2. First few skeletal facts, necessary to dispose of the contentions agitated. The defendant is the appellant against whom the suit was instituted on 20-10-1973 u/s 12(1)(a) of the Madhya Pradesh Accommodation Control Act, 1961, for short, the "Act" or M.P. Act. Two Courts below having passed decrees for his eviction from the suit house, she has appealed to this Court, indeed pinning hopes on Chandrashekhar (supra). The admitted position is that on 1-3-1974, in his written statement, the appellant "disputed" the "arrears of the rent" for non-payment of which the suit was instituted. On 10-10-1974, the trial Court resolved the "dispute" and determined the "arrears" due payable by the tenant/defendant. It has also been established that pursuant to the said determination, within a month of the order, the tenant/defendant deposited in Court the

"arrears" and she has further continued to deposit regularly in Court the rent due payable by him for the suit house. Indeed, this position appears clear from I A No. 789 of 1986 filed in this Court on 12-2-1986 and respondents reply there to filed on 6-12-1986. In the reply, the only contention agitated is that there is no explanation in the said application made in this Court after 12/13 years "to condone the belated payments", concerning the period between 11-11-1973 to 10-10-1974. That this contention has no factual basis is evident from facts earlier adverted that the belated payment was due to no fault of the tenant-defendant, but due to delay occurred in determination by the Court of the "arrears" in order to resolve the "dispute" which was raised in the written statement itself as early as on 1-3-1974.

3. Let Chandrashekhar (supra) be first revisited to appreciate the contentions agitated by respondent's counsel Shri Mangal. The decision in Chandrashekhar (supra) on the interpretation of Sections 12(1)(a) and subsections (1) and (5) of Section 13 of the Act has indubitably projected the following legal position :

i) The provisions aforesaid are to be read conjointly. Such an exercise manifests that ii would be always landlord's burden, from the institution of the suit till he gets "recovery of possession of the accommodation" sued for, to prove that tenant's default in payment of "the whole of the arrears of the rent legally recoverable from him" was deliberate and that it continued unabated till the Executing Court passed "order" for his eviction in the execution "proceeding" perused on the strength of decree of eviction passed against the tenant.

(ii) It would be within the jurisdiction of the appellate Court whether suo motu or on application of the tenant, to pass any order during the pendency of the appeal or, when the appeal is disposed of," making appropriate direction allowing the tenant to make payment of the whole of the arrears of rent" due payable on the date of such an order, by a date fixed by it and in the" manner directed by it.

(iii) The ultimate jurisdiction to pass an "order" in favour of the landlord "for recovery of possession of the accommodation" by him evidently vests in the Executing Court. It would be competent, therefore, for the appellate Court to make an order allowing the tenant to make deposit in the Executing Court "of the whole of the arrears of the rent" due payable by him on the date of the order and on such deposit being made, it shall be within the competence of the Executing Court to record satisfaction of the decree and to refuse to pass an order allowing execution of the decree passed for tenant's eviction. This is clearly underwritten in the language of Section 13(5) which interdicts an "order" also besides a "decree" being passed by any Court enabling the landlord to recover possession of the accommodation when payment of the arrears of rent is duly made within period prescribed in section 13(1) or pursuant to an order passed in a suit or an appeal.

It may only be noted further that the provision of section 12(3) was not brought to my notice in Chandrashekhar and that the import of the said provision which

remains to be considered would be examined herein at the appropriate stage.

4. Three contentions are strongly urged by Shri K.L. Mangal to persuade me to take the view that the decision in Chandrashekhar (supra) does not lay down good law and, in any event, the ratio of that decision is not applicable to facts and circumstances of the instant case. Firstly, it is contended that the instant suit was filed in 1973 and the amended provisions of sub-sections (1) and (2) of section 13 of the Act (which came on the Statute Book in 1983) would have no application to the instant case. It is next contended, and rather strongly, that the basic promises of Chandrashekhar (supra), contemplating in sub-section (5) of section 13 a jurisdictional prohibition on the footing that the word "proceeding" used therein includes also Execution proceeding, is open to challenge because the word "proceeding" used therein includes also Execution proceeding, is open to challenge because the word "proceeding" has a special meaning which has to be limited to only two cases of (i) revision proceedings taken in the High Court u/s 23 of the Act and (ii) restoration proceedings of the suit dismissed for default contemplated under Order 9, rule 9, C.P.C. It is contended that if the Legislature meant the prohibition to extend to an execution proceeding, that would have been spelt out in section 13(5). Indeed, it is also his contention that clause underlined in the extract, which follows herein, of section 13(1), negatives the proposition that the word "proceeding" would include an execution proceeding.

5. Because Shri Mangal has forcefully pressed the contention that section 12(1) (a) has been tendered otiose by the holding in Chandrashekhar (supra), it is necessary to lay out the conspectus of the statutory provision of the zigsaw puzzle.-

12. Restriction on eviction of tenants.--(1) Notwithstanding anything to the contrary contained in any other law or contract, 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 following grounds only namely :

(a) 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.

(3) No order for the eviction of a tenant shall be made on the ground specified in clause (a); of sub-section (1), if the tenant makes payment or deposit as required by section 13 :

Provided that no tenant shall be entitled to the benefit under this sub-section if, having obtained such benefit once in respect of any accommodation he again makes a default in the payment of rent of that accommodation for three consecutive months.

13. When tenant can get benefit of protection against eviction.--(1) On a suit or any other proceeding being instituted by a landlord on any of the grounds

referred to in section 12 or in appeal or any other proceeding by a tenant against any decree or order for his eviction, the tenant shall, within one month of the service of writ of summons or notice of appeal or of any other proceeding, or within one month of institution of appeal or any other proceeding by the tenant, as the case may be, 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..... 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 till the decision of the suit, appeal or proceedings, as the case may be.....

(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, appeal or proceeding, as the case may be.

6. Before I proceed to examine counsel's contention and the case law cited by him, I consider it more appropriate to speak first a few words about the scheme of Chapter III generally as also of sections 12(1)(a), 12(3) and 13 of the Act. In this connection, it is pertinent to note first the long title itself of the Act. The enactment concerns "eviction of tenants" while providing also for "regulation and control of letting and rent of accommodation". Chapter 111 is captioned, "Control of Eviction of Tenants" and the marginal note of section 12 reads--"Restriction on eviction of tenants". I have already taken the view in Chandrashekhar that though the expression "benefit" occurs in the marginal Note of section 13, it has to be read not in isolation, but in its context and setting. If anything more has to be added today, I say that not section 13 only, but the Act as a whole itself is beneficent social legislation. Indeed, the class for whose "benefit" it is enacted and to what extent the "benefit" helps the persons belonging to that class are spelt out in the various provisions of Chapter III whose caption compendiously vocalises the several benefits.

7. I have no doubt that the twin provisions --Section 12 and 13--are complimentary. The object of the amendment in 1983 is to make this position legislatively more clear and unambiguous though it always was so and this is manifested in the inter-linking of sections 12(3) and 13. The statutory tenant's protection against eviction is extended by vesting in the appellate Court as well power and jurisdiction to allow tenant "such further time" as such Court may consider appropriate, to make even belated payment of "arrears of the rent" due payable by him. Before amendment, it could be contended that the provision of section 13 was meant only to frustrate endeavours by unscrupulous tenants to derive from their unlawful acts pecuniary benefit by designedly and deliberately

stalling and staggering suits and proceedings instituted for their eviction. The provision was originally meant to ensure that during the pendency of the suit or proceedings, the landlord did not suffer pecuniary hardship on account of nonpayment of rent to him by the tenant, who would not be allowed to prosper at the former's cost. Because it is now contemplated under amended section 13 that the appellate Court can also make, at any stage of appeal, an order allowing the tenant to deposit arrears of the rent due payable by him, it can be reasonably concluded that the default in payment of such rent within the time frame of the provision, can be condoned by the appellate Court in any manner it deemed fit. Indeed, the power which could be exercised by the trial Court under the unamended section 13 can be exercised now by the appellate Court also inasmuch as section 13(5) has remained unaffected and it has always provided that no order could be passed for tenant's eviction if he made deposit or payment of rent "as required by" section 13(1). Although the powers of the trial Court remained undisturbed, the right of the tenant has been definitely enlarged by vesting the same power also in the appellate Court.

8. It needs to be stressed that section 12(1)(a) never created an indefeasible cause of action. Legislature never left in doubt its intention. It has always told the tenant pay and stay. As default in payment of rent gives rise to cause of action for tenant's Eviction, jurisdiction of the Court to order his eviction is debarred when default ceases, albeit through judicial intervention. How can there be any doubt that sub-section (3) regulates the amplitude of the right envisaged under clause (a) of sub-section (1) of section 12 ? Indeed, the scheme of section 12 is clear that while the different clauses of sub-section (1), namely, clauses (a) to (p), refer to landlord's entitlement to recover possession of the tenanted premises under different circumstances, sub-section (2) etc. sub-sections circumscribe the scope and ambit of the entitlement and make it clear that the right envisaged under different clauses of sub-section (1) was not absolute but was expressly limited in the manner described in the sub-sections following it. Indeed, curtailment of landlord's entitlement is made in sub-sections (2) to (10) in terms of curtailment of court's jurisdiction by envisaging situations in which the relief prayed cannot be granted or can be modulated.

9. It is noteworthy that section 12(3) has not only always expressly referred to section 13, it has also always used the same expression "as required by" which is to be found also in section 13(5). I have no doubt that section 12(3) and section 13(5) are enacted to achieve the same object though the Proviso to section 12(3) need not be considered a part of section 13(5) which does not contain a similar provision. Evidently, the Proviso derogates from the curtailment envisaged u/s 12(3) of landlord's entitlement contemplated u/s 12(1)(a) and the Proviso must, therefore, add to the corpus of his entitlement. Thus, when the tenant pleads a bar to Court's jurisdiction u/s 13(5), it shall be open to the landlord to plead and prove that the tenant, by his own act, by invoking "once" the bar, has disabled himself from doing so in the particular facts and circumstances of the case. There is, therefore, no force in Shri Mangal's

contention that Chandrashekhar (supra) has not laid down good law even if it has not noticed section 12(3). Indeed, in that case, no argument was based either on section 12(3) or its Proviso.

10. It is necessary only to add that while sub-section (1) of section 13 referred always to a suit or proceeding instituted on "any of the grounds referred to in section 12", in sub-section (5) of section 13, there has always been a clear, positive and exclusive reference only to the ground contemplated under clause (a) of section 12(1). The ambit of section 13(5) is clearly indicated by the force of the language used in it indicative of a substantive right created in tenant's favour by interdicting Courts from passing a "decree" or "order" in landlord's favour "for recovery of possession of accommodation" let out to the tenant on the ground of default in payment of rent. Indeed, nothing new or novel is projected in the right contemplated in section 13(6) which, in my opinion, substantially reflects what is contemplated also in section 114 of the Transfer of Property Act (hereinafter, T.P. Act) which, however, contemplates judicial discretion to grant relief for forfeiture of tenancy for non-payment of rent. Section 114, T.P. Act has not interdicted Court's jurisdiction in the manner section 13(5) of M.P. Act has done. It may be further noted that not for default in payment of current rent, but "whole of the arrears of rent" which is "legally recoverable", cause of action arises u/s 12(1)(a) for tenant's eviction and that too only when a notice of demand for payment is duly served on the tenant. It is well-settled that while a landlord has a right, under the T.P. Act, to terminate tenancy by serving a notice on the tenant before institution of the suit, the concept of a "statutory tenant" under the Rent Control Act has nullified that right. His right to evict a tenant he can enforce in a Rent Court only in accordance with the provisions of the special law which also circumscribes jurisdiction of the Court to grant relief only to the extent statutorily permitted. Needless it is to repeat that the object of all Rent Control Acts is to protect the "existing possession" of law-abiding tenants (becoming "statutory tenants" under such Acts) by interdicting their eviction by unscrupulous landlords. The Acts ensure a fair return to landlords for their property but prevent rent-racking, so it was held by me speaking for the Court in Santosh Chandra Paul [1], relying on Supreme Judicial dicta galore.

11. If I have to restate my views on Chandrashekhar's holding, it needs to be emphasised only that the unstated premises of that decision has been vocalised herein. A tenant can invoke section 13(5) subject to the fulfilment of the requirement that the trial Court or the appellate Court has condoned his default and has allowed belated payment or deposit of rent. Further, the proviso to section 12(3) can be invoked by the landlord, on the other hand, to frustrate his endeavour if section 13(5) was once invoked. It has been amply demonstrated that Chandrashekhar has not, therefore, rendered nugatory section 12(1)(a) and Shri Mangal's contention to that effect has no merit. I may only add that by providing landlord to be compensated in terms of costs as per section 13(5) itself. Legislature has expressed its wisdom of striking a reasonable balance

between competing rights and considerations.

12. To two other contentions of Shri Mangal, I have to still address myself. Indeed, one of them can be summarily disposed of as the language of sub-section (1) and (5) of section 13 do not at all yield to the construction of the word "proceeding" suggested by learned counsel. There is no warrant for me in law to read in any of the said provisions such meaning as to restrict the purport of word only to two cases suggested by him and not to include in its purview execution proceedings also. The surviving contention of Shri Mangal has also no merit. The clause underlined in the afore extracted section 13(1) uses the word "Court" generally and it is not possible to restrict its meaning to trial Court and appellate Court only so as to exclude from its purview the executing Court. Indeed, the power to allow the tenant to make payment/deposit of rent "within such further time" would rather suggest that the tenant may be allowed to either pay rent to the landlord even when execution of the decree is levied or to deposit rent in the executing Court itself in the course of the execution proceedings. The common use of the expression "as required by" in section 12(3) & 13(5) is also indicative of the common purpose of the provision inasmuch as the focus is on deposit or payment and not on modalities. Otherwise the expression used would have been "in accordance with."

13. Now, the case-law cited by Shri Mangal to do justice to the labour undertaken by the learned counsel. First, Babulal [1] of which the holding that 1983 amendment of section 13(1) was not retrospective so as to cast a duty on the tenant to deposit rent during the pendency of the appeal, in my opinion, has little relevance to the interpretation of sub-section (5) of section 13. Indeed, I am of the view that sub-section (6) only contemplates expressly the specified consequence of tenant's default in payment/deposit required to be made u/s 13(1) and nothing more can be read into it. Its object evidently cannot be, and is not, same as of sub-section (5) whose language expressly refers to tenant's entitlement and Court's jurisdiction incompetence in relation thereto. What I propose to notice in Babulal (supra), however, is that it takes virtually the same view as I have taken as regards the appellate Court's jurisdiction as it says also that "the rent deposit can be condoned even at the appellate stage and it is not necessary that application for condonation must be made within any specified time".

14. The next case is of Nathuram Gupta [2] decision wherein was rendered before the 1983-amendment. It merely says that extension of time for late deposit of rent made u/s 13(1) cannot be granted for the mere asking and satisfactory explanation for the delay has to be given. In this case also, I do not read anything on the interpretation of section 13(5). So long as the default in payment of rent continues as a result of extension not being prayed or granted, the protection of section 12(3) cannot be claimed by the tenant. That is its holding.

15. Although the Full Bench decision in Bharatchand [3] is also pressed in

service, I may simply say that because of the holding in that decision that the word "suit" does not include an "appeal", the legislative intervention in 1983 took place. In my opinion, the word "appeal" was interpolated with the object also of fulfilling effectively the legislative intent of section 12(3) and 13(5) which were not simultaneously amended, though sub-section (6) of section 13 was, none-the-less, suitably amended to admit interpolation of the word "appeal". True, it is not possible to dispute that the legislative history of 1983 amendment ostensibly suggests that the legislative exercise meant to buttress primarily the rigour of section 13(6), as appears clear from a comparison of the decision in *Bharatchand* (supra) with that of *Harishchandra* [4] which was approved holding that *Ratanchand* [5] was rightly over-turned. Still, I have little doubt that the amendment was not made to affect in any manner the "protection" envisaged in section 12(3) or 13(5) which evidently has a different complexion. What I would like to impress further is that in neither of the several Full Bench decisions, whether *Ratanchand*'s (supra) or *Bharatchand* (supra) or even in *Harishchandra* (supra), this Court was required to evaluate the relative scope and ambit of section 13(6) vis-a-vis section 12(3) and 13(5). It may still be highlighted that *Bharatchand* and *Harishchandra* both express deep concern against possibility of forfeiture of "protection" earned by tenant by the requirement of the deposit/payment of rent by tenant at the appellate stage.

16 It bears emphasis that section 13(6) merely contemplates defence against eviction to be struck out"; it does not circumscribe in any manner tenant's protection as Court's jurisdiction enabling a tenant to make deposit or payment of rent at the time, with the leave of the Court, to stall his eviction is not circumscribed. Indeed neither of the two provisions sections 12(3) or 13(5) contemplates any "defence" statutorily available to the tenant. Indeed, Section 13(6) is general and is applicable to all cases and is applicable to all cases and not only to the ground envisaged under clause (a) of section 12(1) to which specific provisions of section 12(3) and 13 (5) are expressly applicable. Not only the power u/s 13(6) cannot be used to reject the prayer of the tenant allowing him to make payment/deposit of rent at any time, the power is even otherwise discretionary making the provision discretionary as apposed to section 12(3) & 13(5) which are expressly mandatory. A conjoint reading of sub-sections (1), (5) and (6) of section 13 and section 12(3), according to me, is clearly manifestive of legislative intent that if a tenant sued u/s 12(1)(a) made deposit or payment of rent, due payable by him, at any time, with the leave of the trial or appellate Court, his eviction cannot be ordered by such a Court as also by an executing Court. That indeed is the inexecutable mandate of section 13(5) which in the crowning glory of the benevolent provision of section 12(3) which expressly limits also tenant's statutory protection in terms of the proviso to strike a reasonable balance between an individual's right to his property and an important social cause.

17. Although reliance is also placed by *Shri Mangal* on a D.B. decision of this Court, *Jivrambhai* [1]. I have not been able to understand how this decision at all

helps him. It was held in that case that a tenant's "defence" cannot be struck out u/s 13(6) for non-payment of rent after he raised a dispute u/s 13(2) if he had duly made deposit of rent regularly and punctually, u/s 13(1), upto the date of judgment. The decision clearly perceives the difference in the scope of the provisions of section 12(3) and 13(6). Shri Mangal has also placed reliance on another Full Bench decision, Chhogalal [2], But it is also misconceived, according to me. I am, however, satisfied that his rival's, Shri Katare's reliance on the decision is more appropriate. In Chhogalal (supra), appellant's counsel has rightly submitted, as in Jivrambhai (supra) & Bharatchand (supra) the duty of the tenant/appellant to make deposit u/s 13 was held to be suspended the moment the appellant raised "dispute" as to rent payable by him. In the instant case, on 1-3-1974 the "dispute" was raised, and after it was resolved on 10-10-1974, the tenant started making deposit of the rent determined by the Court as payable by him.

18. However, the decision of the Apex Court in B.C. Kama [1], relied on by Shri Katare is of signal relevance to the present controversy. The decision is a clear authority for the proposition that the two question-striking out of defence and extension of time u/s 13(1) for payment of rent should not be mixed up. Its holding is also that protection against eviction can be invoked by the tenant u/s 13(5) if he paid or deposited rent after the Court made an order extending the time for such payment/deposit. This indeed is the view taken by me in this case.

19. For all the foregoing reasons, I have no hesitation to hold that Chandrashekhar (supra) remains unintended by the authorities cited. I reiterate only that sections 13(5) and 12(3) are complimentary and the ambit of the tenant's protection against eviction is limited by the proviso to section 12(3). Therefore, there is no substance in the contention that Chandrashekhar (supra) has rendered nugatory the provisions of section 12(1)(a). I also reiterate that whether in suit or appeal, it is open to the Court hearing the matter to allow the tenant to make deposit in the concerned Court or even in the Executing Court of the arrears of rent due payable by the tenant within the period fixed by it and on such deposit being made, no Court shall have the jurisdiction to "order" eviction of the tenant from accommodation in question on the ground of default in payment of rent by him. The only order for which the landlord may press in such a case would be an order for costs. In a case in which a "decree" is passed for tenant's eviction, it will be well within the jurisdiction of the trial Court or appellate Court to direct the Executing Court to record satisfaction of such a decree on necessary deposit being made in terms of section 13(5).

20. The appeal accordingly succeeds and is allowed but without costs. Because it has not been established that the tenant is in default as regards rent due payable by him for the suit for the premise for any period the decree of eviction passed against him by the Court below cannot stand against provision of section 13(5) as also 12 (3) of the Act. Indeed, it is not claimed in this case that the tenant had earlier also similarly defaulted in payment of rent resulting in an action being

initiated earlier u/s 12(1)(a) of the Act and, therefore, in terms of the Proviso, the provision of section 12(3) cannot be extended to her.