

(1968) 01 MP CK 0015

In the Madhya Pradesh High Court

Case No : Civil Revision No. 667 of 1966

N.K. Kame, Marhatal, Jabalpur

APPELLANT

Vs

Biharilal, Marhatal, Jabalpur

RESPONDENT

Date of Decision : 10-01-1968

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 13(6)

Citation : (1968) JLJ 337 : (1968) MPLJ 276

Hon'ble Judges : P.V. Dixit, C.J.; S.P. Bhargava, J

Bench : Division Bench

Advocate : P.R. Naolekar, for the Appellant; D.L. Jain, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.

This revision petition against an order of the Civil Judge, Second Class, Jabalpur, rejecting the Plaintiff-applicant's prayer for striking out, u/s 13(6) of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter called the Act), the defence of the non-applicant, has come up before us on a reference by our learned brother Jihave J., before whom it was first placed for hearing.

The material facts are that by a sale deed dated the 7th February 1966 the Petitioner purchased a house situated in Jabalpur from one Virendra Saxena and two ladies for a consideration of Rs. 20,000. At the time of the purchase, the non-applicant was living in the house as a tenant of the vendors. By the sale deed, the arrears of rent due to the vendors upto the date of the sale were also assigned to the Petitioner. After purchasing the property, the applicant filed a suit for ejectment of the non-applicant from the house and for recovery of arrears of rent from him. The "arrears of rent", which the Plaintiff claims to recover, are not only those which he says became due to him after the purchase of the property, but also those which became due to the vendors before the sale of the property and which had been assigned to him by the sale deed dated the 7th February

1966. The non-applicant-tenant deposited only the arrears of rent due from him from the date of the sale deed. Thereupon the Petitioner moved the trial Court u/s 13(6) of the Act for striking out the defence. This prayer was rejected by the learned Civil Judge accepting the contention of the tenant that he was not bound to deposit u/s 13 of the Act that amount which he owed to the vendors as rent.

The learned single Judge making the reference was inclined to think that the tenant should have deposited the rent amount assigned to the Petitioner by the sale deed dated the 7th February 1966. According to him, Section 13(1) of the Act inter alia spoke of the deposit in the Court for payment to the landlord the amount of rent "for the period for which the tenant may have made default" and did not use the expression "arrears of rent"; that the rent amount, if not paid on the due date, no doubt becomes a "debt" owed to the landlord and it can be assigned by him; that when there is an assignment of this debt, what is transferred to the assignee is the right to recover the debt, but the character of the debt is not changed; it remains after the assignment, as before the assignment, an amount representing arrears of rent vis-a-vis the tenant; and that, therefore, when there is an assignment by the vendor of the arrears of rent, the tenant is bound to deposit, u/s 13 of the Act, the assigned amount. The learned single Judge thought that the matter should be decided by a larger Bench rather than by him sitting singly, as on the question of the character of rent amount after its assignment by an owner of the property to the purchaser while selling the property the Calcutta and Allahabad High Courts have expressed different views in *Daya Debi Vs. Chapala Debi*, and *Ram Prakash v. Karam Chand* AIR 1963 All. 47, and the view he was inclined to take did not accord with some observations made by Shiv Dayal J. in *Babu Bhai v. Bhagwandas* 1966 MPLJ . 30 : 1966 JLJ 75.

In our judgment, on the language of Section 13(1) of the Act, there can be no doubt that a person sued as a tenant is not required to deposit the amount representing arrears of rent due to the vendor that might have been assigned by him to the purchaser suing the tenant for eviction. Section 13 comes into operation when a suit or proceeding is instituted by the landlord on any of the grounds mentioned in Section 12. In such a suit, the person suing claims that he is the landlord and alleges that the Defendant is his tenant. The suit is thus founded on the allegation of a subsisting relationship of landlord and tenant. Where a person purchases a property and if at the time of the purchase the property is in occupation of a tenant, then the relationship of landlord and tenant between the purchaser and the person in occupation of the property commences after the purchase and not before it. It is after the sale of the property that the person in occupation of the property as a tenant becomes liable to pay rent to the purchaser. If these principles are borne in mind, then the expression "the tenant shall deposit in the Court to 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", occurring in Section 13(1) of the Act, clearly refers to the deposit of that amount of rent prior to the institution of the suit but after the

commencement of the alleged relationship of landlord and tenant which the tenant may have defaulted in payment. The use of the words "landlord" and "tenant" and the expression "at the rate of rent" in Section 13(1) clearly points to the fact that the first part of Section 13(1) requires that the person used as a tenant has committed a default in the payment of rent prior to the institution of the suit to the person suing and claiming to be his landlord. Section 13 presupposes that when a suit or proceeding is instituted on any of the grounds referred to in Section 12 of the Act, the relationship of landlord and tenant as between the Plaintiff and Defendant is subsisting. Therefore, the default spoken of by Section 13 can only refer to the default in the payment of rent after the commencement of the relationship of landlord and tenant between the parties. Section 13 clearly does not deal with the deposit of that amount which the Defendant sued as a tenant owed to others and failed to pay. Section 109 of the Transfer of Property Act, 1882, makes it very clear that the transferee is not entitled to arrears of rent due before the transfer; such a rent amount is no part of the reversion. It can be assigned by the vendor-landlord. But it is a mere debt, and a mere "cause in action". Even after assignment, it does not become part of the reversion" so as to make the lessee liable to pay the assigned amount as rent to the transferee. The transferee becomes entitled to recover the assigned amount not by virtue of the transfer of the property, but by virtue of the contract of assignment. The origin of "such a debt" no doubt lies in the non-payment of rent by the tenant to the landlord who was then entitled to get it; the character of this origin is not altered by assignment so far as the tenant liable to pay the debt is concerned. But that does not mean that when the amount is paid by the tenant to the assignee, he paid it because that amount was due as rent to the assignee. In our view, Section 13(1) does not require the tenant to deposit the arrears of rent due before the transfer if they are assigned by the vendor-landlord to the purchaser of the property. It makes no difference to this position whether the assignment of the arrears of rent is contemporaneous with the sale of the property or subsequent to it.

The view taken by Shiv Dayal J. in *Babu Bhai v. Bhagwandas* 1966 MPLJ 30 : 1966 J LJ 75 that arrears of rent due to the vendor when assigned by him to the purchaser assume the character of "debt" and cannot be recovered as arrears of rent by the assignee is correct. In that case, the arrears of rent were assigned to the purchaser of the property not at the time of the sale, but subsequently. But, as we have pointed out earlier, it makes no difference whatsoever whether the assignment of the arrears of rent is made at the time of the sale of the property or afterwards. A Division Bench of the Calcutta High Court in *Daya Debi Vs. Chapala Debi*, has also expressed the view that in a proceeding u/s 17 of the West Bengal Premises Tenancy Act, 1956, by the assignee from the landlord of the premises along with arrears of rent, the tenant is riot required to deposit u/s 17 (1) of that Act the arrears of rent which were transferred by the landlord in favour of the transferee-plaintiff. Section 17 (1) of the Bengal Act is substantially analogous to Section 13(1) of the Madhya Pradesh Accommodation Control Act,

1961.

The decision of the Allahabad High Court in Ram Prakash Ghai Vs. Karam Chand and Another, is no doubt contrary to the view taken by us. In that case, a Division Bench of the Allahabad High Court, overruling a decision of a single Judge of that Court reported in Bachhar Lai v. Ram Asrey 1960 All.L.J. 147, has held that in view of the definition of the word "landlord" contained in the Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947, the transferee of the house, who has purchased the arrears of rent also, can make a demand and the amount of liability will not lose its character as arrears of rent, and that Section 109 of the Transfer of Property Act, 1882, does not prohibit the transfer of claim for arrears of rent in favour of the transferee of the property. In reaching that conclusion, the learned Judges of the Allahabad High Court laid all emphasis on the definition of the word "landlord", as given in the Uttar Pradesh Act, as "including as assignee of the landlord". The decision of the Allahabad High Court is not helpful here for the simple reason that the definition of "landlord" given in Section 2(b) of the Madhya Pradesh Accommodation Control Act, 1961, does not include an assignee of the landlord. Again, even if the word "landlord" had been defined as including an assignee of the landlord, that would not have made the assignee the landlord in relation to the person occupying the accommodation as a tenant for the period before the assignment. The assignee cannot, in view of Section 109 of the Transfer of Property Act, or on any principle, be regarded as landlord before the assignment so as to entitle him to claim or recover the arrears of rent due to the vendor and assigned by him. It is no doubt true that Section 109 of the Transfer of Property Act does not prohibit the transfer of claim for arrears of rent in favour of the transferee of the property. But from this it does not follow that after assignment it becomes part of the reversion so as to make the lessee liable to pay the assigned amount as rent to the transferee.

For all these reasons, our conclusion is that non-applicant-tenant was not required to deposit u/s 13(1) of the Madhya Pradesh Accommodation Control Act, 1961, the amount of arrears of rent due to the vendor that was assigned to the applicant when he purchased the property in question. The learned Civil Judge was, therefore, right in rejecting the applicant's prayer for striking out the non-applicant's defence. This petition is, therefore, dismissed. In the circumstances of the case, we leave the parties to bear their own costs.

Petition dismissed.