

(1967) 11 MP CK 0017
In the Madhya Pradesh High Court
Case No : S.A. No. 913 of 1965

Parasram Begamal and others	Vs	APPELLANT
Damapilal Ramdayal and others		RESPONDENT

Date of Decision : 06-11-1967

Acts Referred:

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

Citation : (1970) JLJ 1016 : (1970) MPLJ 956

Hon'ble Judges : R.J. Bhawe, J

Bench : Single Bench

Advocate : R. S. Dabir, for the Appellant; G. P. Singh, for the Respondent

Final Decision : Allowed

Judgement

R.J. Bhawe, J.

This second appeal is by the defendants against whom a decree for ejectment has been passed by the lower appellate Court. The decree is based on two grounds, namely, that the house was required bona fide by the plaintiffs for carrying on their own business and that the defendants were in arrears of rent. Both these grounds are challenged before me.

The house in question is situate in Bazar Chowk, Satna, while the plaintiffs reside at village Nadan, Tahsil Maihar, where they carry on their business. The plaintiff's case is that the house was given to the defendants on a monthly rent of Rs. 275 for the purposes of business; that between the time the house was rented out and the date of the suit the family of the plaintiffs has grown in volume; that the income from the business carried on at Nadan is not sufficient for the upkeep of the family and there is no possibility of expanding the business at Nadan; that the adult members of the family, namely Jawaharlal and Radhyeshyam, under the guidance of Tirath Prasad, desire to start the wholesale business in cloth and Kirana at Satna, where they have no other accommodation of their own, for this purpose; that the necessity of starting the business is

genuine for the upkeep of the growing family; and that the family has sufficient experience of the business. It was also pleaded that the defendants were in arrears of rent from 1-10-1961 till 31-5-1962 which was also not paid even after notice till the filing of the suit.

In defence it was stated that the rent of the house was fixed at Rs. 175 with effect from 1-8-1961 by the Rent Controlling Authority and that the defendants had sent the rent for the period 1-10-1961 to 31-5-1962 by a cheque on the Punjab National Bank under a registered cover which was returned by the plaintiffs. It was also pleaded that the house was mainly for residential purposes and that there was no necessity of starting the business at Satna. The income from the business at Nadan was sufficient and that this fact could be inferred from the fact that the plaintiffs could acquire house property worth Rs. 50,000 at Satna. It was also pleaded that the plaintiffs wanted to increase the rent from Rs. 275 to Rs. 500 and as the defendants got the rent fixed at Rs. 175 per month before the Rent Controller, the present suit for ejectment was filed. It was, therefore, stated that the need of the plaintiffs was not bona fide,

The trial Court dismissed the suit on the ground that the plaintiffs had failed to make out a case for genuine need and that the defendants were not in arrears of rent.

On the question of arrears of rent, the lower appellate Court, on the basis of two decisions of the Allahabad High Court in Mohanlal Vs. Kanwar Sen, and Salik Ram Upadhia Vs. B. Jai Gopal Singh, , held that sending of the cheque was not tender of the rent according to law and that the plaintiffs were within their rights in refusing to accept the same and that the default thus continued till the filing of the suit. The lower appellate Court further held that the defendants failed to apply under sub-section (2) of section 13 of the M. P. Accommodation-Control Act to get the rent provisionally fixed by the Court; nor did they deposit the amount at the rate provisionally fixed by the Court. Not only that but the amount deposited by the defendants at the rate of Rs. 175 was subsequently withdrawn by them. Even at the appellate stage the monthly rent was not deposited. The defendants, therefore, were not entitled to any protection u/s 12 (3) of the M. P. Accommodation Control Act and that the plaintiffs were entitled to a decree for ejectment.

Shri Dabir, learned counsel for the appellants, urged that the lower appellate Court was in error in holding that the defendants did not tender the whole of the arrears of rent within two months of the date on which the notice of demand for arrears of rent as contemplated u/s 12 (1) (a) of the M. P. Accommodation Control Act, 1961, was served by the landlord on the tenants. He urged that the decisions of the Allahabad High Court did not lay down the correct law. I have perused the two Allahabad decisions, referred to above. They do not contain any discussion on the point. In Chalmers on Bills of Exchange, 13th Edition, at page 338, the general rule as to payment is quoted as under:

The general rule of English law is that when a debt becomes due, it is the duty of the debtor, in the absence of any different agreement, to seek out his creditor, and tender him the exact amount of his debt in cash or other legal tender

On the one hand the debtor is under no obligation to honour a bill drawn on him by a creditor, unless he has agreed to do so; on the other hand a creditor is under no obligation to receive a bill, note or cheque in discharge of his debt.....

Where a bill or note is given by way of payment, the payment may be absolute or conditional, the strong presumption being in favour of conditional payment.

Section 50 of the Contract Act provides that the performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions. It would thus appear that the obligation to discharge the debt is discharged only when the amount is paid either in cash or by presentation of any other legal tender unless by agreement of parties any other mode, such as, acceptance of a cheque or a bill of exchange is prescribed by the parties. The view that sending of a cheque by post on the request of the creditor operates as a conditional payment and, in certain circumstances, as full discharge of the obligation has been confirmed in *The Commissioner of Income Tax, Bombay South, Bombay Vs. Ogale Glass Works Ltd., Ogale Wadi*, . But the question still remains whether in the absence of any contract the presentation of a cheque is enough to discharge the obligation of tendering the amount within the specified period. It may be noted that u/s 12 (1) (a) of the M. P. Accommodation Control Act what is required is that the arrears of rent should be either paid or tendered. The question is as to whether, instead of presenting the cash, if a cheque is sent to the landlord, that is sufficient tender of the arrears of rent or not. In the above cited case of the Supreme Court, in paragraph 10 of the judgment their Lordships have observed:

That a sum of money may be received in more ways than one cannot be doubted. It may be received by the transfer of coins or currency notes or a negotiable instrument which represents and produces cash and is treated as such by businessmen.

In the highly developed society, payment by cheque has become more convenient mode of discharging one's obligation. If a cheque is an instrument which represents and produces cash and is treated as such by businessmen, there is no reason why the archaic principle of the common Law should be followed in deciding the question as to whether the handing over of the cheque is not a sufficient tender of the arrears of rent if the cheque is drawn for that amount. It is no doubt true that the issuance of the cheque does not operate as a discharge of the obligation unless it is encashed, and it is treated as a conditional payment. Yet, in my view, this is a sufficient tender of the arrears if the cheque is not dishonoured. In the present day society, I am of the view, an implied agreement should be inferred that if the payment is made by a cheque, that mode of payment could be accepted. A cheque supplies good evidence of

the fact that the tender was made, and there is nothing wrong in the tenant in resorting to this method in order to avoid the plea of the landlord that no such tender was made. It was conceded before me that if the amount had been sent by money-order, that would have been a good tender. But it was urged that it is so because the cash is produced by the post-office. It was urged that if the creditor is made to accept a cheque, even as a conditional discharge, he would be put to unnecessary botheration of presenting it to the appropriate Bank for collecting the sum; that is not the requirement of law, and there is no reason why the creditor should be required to undertake the additional burden. There is some amount of force in this submission. But in the present structure of society, I think that obligation should be imposed on the creditor. In this view of the matter, I am of the opinion that the landlord was not entitled to refuse the cheque which was sent to him under a registered cover and that there was good tender of the arrears of rent. It thus follows that the landlord is not entitled to base his claim for ejectment on ground No. (1).

It may be noted at this stage that sub-section (3) of section 12 of the M. P. Accommodation Control Act provides that even where the tenant has committed a default as contemplated under clause (a) of section 12 (1) no decree for ejectment can be passed on that ground if the tenant makes payment or deposit as required by section 13. Sub-section (1) of section 13 provides that 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 (6) then provides that 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. It would thus appear that if a default is committed under clause (a) of section 12 (1), the tenant can be protected from ejectment only if he carries out the requirements of sub-section (1) of section 13. With respect to the other grounds of ejectment, the only penalty prescribed is that the Court may order the defence against eviction to be struck out. As I have held that no default was committed by the tenant as contemplated under clause (a) of section 12, the question of the application of section 13 (1) does not arise because the ground under clause (a) of section 12 for eviction is no longer available to the landlord.

I have mentioned this fact for the reason that there is a controversy as to whether the defendants committed a default under sub-section (1) of section 13 or not. Though the decision on this question does not arise on the view I have taken, with a view to complete the judgment I would deal with that controversy

also. The original rent fixed was Rs. 275 per month, but it was reduced to Rs. 175 per month by the Rent Controller. As such, the tenant was liable to pay only at the rate of Rs. 175 per month, and at that rate the tenant had calculated while sending the cheque, referred to above. When the suit was filed, the tenant, to start with, deposited all the arrears at the rate of Rs. 175 per month and continued to deposit at that rate; but subsequently on his application he was allowed by the trial Court to withdraw the whole of the amount deposited by him. The deposit and the withdrawal thereof is obviously not sufficient to satisfy the requirements of section 13 (1) of the Act. Shri Dabir, learned counsel for the appellants, however, urged that the landlords were claiming rent at the rate of Rs. 275 per month, while the rent fixed by the Rent Controller was at Rs. 175. There was thus a dispute as to the amount of rent payable by the tenants. He urged that under sub-section (2) of section 13, if in any suit or proceeding there is any dispute as to the amount of rent payable by the tenant, the Court is required to 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. Such a dispute was raised by the defendants-tenants when they urged in their written statement that they were liable to pay the rent at Rs. 175 per month only. According to Shri Dabir, it was the duty of the Court to fix a reasonable provisional rent in relation to the accommodation. Inasmuch as the Court failed to decide that question, no obligation was cast on the defendants-tenants to deposit the arrears of rent or to continue to deposit the rent for the subsequent months as contemplated under sub-section (1) of section 13, Shri Singh, learned counsel for the plaintiffs, on the other hand, urged that under sub-section (2) of section 13 it is the duty of the tenant to secure a decision of the Court within the time specified in section 13 (1) by making an appropriate application for that purpose. The mere denial in the written statement about the amount of rent payable is not sufficient. In the alternative, he urged that if the tenant accepts that he was liable to pay the rent at the rate of Rs. 175 per month, to that extent at least there is no dispute and that the tenant was under an obligation to deposit the arrears and the current rent at that rate. Under sub-section (1) of section 13, an obligation is cast on the tenant to deposit the arrears of rent within the specified time or within (he extended time granted by the Court on an application made to that effect. Sub-section (2), which follows thereafter, must be read in the context of subsection (1). If both the sub-sections are read together, it would appear that it is for the tenant to get a decision of the Court within the time specified in subsection (1) on the question of reasonable provisional rent. I am, therefore, not inclined to accept the submission of Shri Dabir that a duty is cast on the Court to decide this question suo motu if the dispute is raised in the written statement but no decision is sought by the tenant for the purposes of discharging his obligation under sub-section (1) of section 13. It is thus clear that the tenant failed to discharge the obligation under sub-section (1) of section 13 when he deposited the amount, to start with, but subsequently withdrew it. I do not, however, accept the alternate submission of Shri Singh, as sub-section (2) of section 13

speaks about the amount of rent payable by the tenant, that is to say, whether it was Rs. 275 or Rs. 175 per month. It cannot be said that that dispute is about Rs. 106 only. In certain cases, no rent might have been fixed at all or the tenant may not accept that the rent was fixed at any particular figure. Apart from that, what the Court is required to determine is "provisional rent" and not the correctness of the claim of either party. In this view of the matter, it must be held that the defendants would not have been saved from ejectment if I had come to the conclusion that they had committed a default u/s 12 (1) (a). The finding of the lower appellate Court that the appellants were liable to be ejected on the ground furnished by clause (a) of section 12 (1) is, therefore, set aside.

The second ground on the basis of which the ejectment has been directed is that the plaintiffs require the house bona fide for carrying on their business. This finding is also strenuously attacked before me. It was urged that such a finding is not open to challenge in second appeal, being a finding of fact. But it was urged that the finding is based on no evidence and is perverse and is, therefore, liable to be interfered with. It was pointed out that the plaintiffs' case was that the income derived from the family business carried on at Nadan was not sufficient for the maintenance of the growing family and as there was no scope for expansion of the business at Nadan, three adult members of the family genuinely desired to start wholesale business in cloth (sic) Kirana at Satna and that for that purpose the house in question was genuinely required by the family. It was, however, submitted that no particulars were given in the plaint to indicate that the family had sufficient funds to start wholesale business in cloth and Kirana. In this connection, my attention was drawn to the evidence of Damdilal (P. W. 2), who is the eldest member of the family. He stated in cross-examination that the capital investment in the business of cloth and Kirana at Nadan was to the extent of Rs. 10,000 only and that the income from that business is just sufficient to satisfy the expenses of the family and no saving can be effected out of it. It was also pointed out that this witness did not state that sufficient funds required for the wholesale business not only in cloth but also in Kirana were available to the family. The other member of the family, namely, Tirath Prasad as P.W. 6 stated in cross-examination that the family had sufficient funds to carry on the business (). But the details were given. He, however, admitted that the family was paying income tax for the last 3-4 years orally and that no sales tax was paid ; before this period, as there was not sufficient income, no income tax was paid. He further admitted in paragraph 13 that the present income from the business at Nadan was not sufficient for the upkeep of the family. Apart from this evidence, there is no evidence on record to show that the plaintiffs have sufficient funds to carry on the wholesale business in cloth and Kirana, In Neta Ram Vs. Jiwan Lal, their Lordships of the Supreme Court observed:

Before a landlord can obtain an order for ejectment of his tenant on ground of his requirement for reconstruction of a house, he must satisfy the Rent Controller about genuineness of his claim and this can only be established by looking at all the surrounding circumstances, such as the condition of the building, its

situation, the possibility of its being put to a more profitable use after construction, the means of the landlord and so on. It is not enough that the landlord comes forward, and says that he entertains a particular intention, however strongly, said to be entertained by him.

Shri Dabir urged that the same principle would apply in the case of genuine requirement for starting a business. It is not enough that the landlord comes forward with a plea that he entertains that particular intention. He must prove that he has the means to accomplish that purpose. Shri Dabir urged that the ability of the landlord to invest the necessary funds in the proposed business must be established by him before the genuine need of the landlord can be said to have been proved. There was no such evidence on record, and for this reason, it must be held that the finding of the lower appellate Court that the plaintiffs have established a genuine need must be held to be based- on no evidence and must be set aside. Shri Singh, on the other hand, urged that the witnesses, when they were cross-examined, only stated what was the income from their present business as compared to the requirements of the family. No inference from that could be drawn that the family had no savings which could be utilized by the family for the purposes of its business. That may be so; but, as has been held by this Court in *Damodar v. Nandram* 1960 M P L J 925 (F. B) , the Court is required to be satisfied objectively that the requirement is genuine. For such satisfaction no material was placed by the plaintiffs on record. At this stage, it may also be mentioned that the plaintiffs have started new businesses at two places, one in partnership with others at Satna, and another at Ramnagar. To start with, there was some attempt to suppress this information. The lower appellate Court has not considered the effect of this aspect also in considering the genuine requirement for the purposes of starting the business in the house rented out to the defendants. It is not stated as to what is the investment in the two businesses and whether the family is still in a position to start the wholesale business for which the accommodation is claimed. It is also on record that immediately after the rent was substantially reduced by the Rent Controller the present suit was filed. This fact also indicates that the claim is not bona fide, but that it is an attempt to eject the tenants in order to avoid the reduction in the income from the house property. This was also not considered by the lower appellate Court. The defendants have stated on oath that the plaintiffs wanted to increase the rent from Rs. 275 to Rs. 500 per month; but, when the defendants got the rent reduced to Rs. 175 per month, the present suit was filed mala fide.

For the aforesaid reasons, I am of the view that the finding of the lower appellate Court that the plaintiffs have succeeded in proving genuine need is not one which can be sustained in second appeal and is hereby set aside. The appeal thus succeeds. The decree of the lower appellate Court is set aside and that of the trial Court is restored. The appellants shall get the costs of this appeal and that of the lower appellate Court from the respondents. The cost of the trial Court shall be borne as directed by that Court. A decree be drawn up accordingly.