

(2005) 10 MP CK 0003
In the Madhya Pradesh High Court
Case No : Second Appeal No. 71 of 2003

Ramgopal Kanhaiyalal

APPELLANT

Vs

Firm M/s Dinanath Gyasilal

RESPONDENT

Date of Decision : 14-10-2005

Acts Referred:

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

Citation : (2006) ILR (MP) 228 : (2006) 2 MPJR 162 : (2006) 1 MPLJ 445

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : N.K. Jain and K.N. Gupta, s with Arvind Dwivedi, for the Appellant;
R.D. Jain with M.B. Mangal, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Naik, J.

This appeal is by defendant/tenants against a decree for eviction granted u/s 12(1)(a) and (c) of the M.P. Accommodation Control Act, 1961.

Short facts leading to the appeal are that the plaintiff/respondents instituted a suit for eviction and recovery of arrears of rent from M/s Ramgopal Kanhaiyalal, a partnership firm with the averments that the suit shop is owned by Smt. Saraswati Bai (plaintiff No. 2) which is occupied by the defendant as a tenant @ Rs. 180 per month under an oral tenancy w.e.f. 1-2-1974. The plaintiff No. 2 is not well educated so she authorised plaintiff No. 1 for looking after her property and realization of rent. The defendant was inducted into the suit shop by the plaintiff No. 1 in the aforesaid capacity. It is stated in the plaint that accordingly, the plaintiff No. 1 is also a landlord of the defendant and has been impleaded as a plaintiff in order to avoid legal complications. The property devolved upon plaintiff No. 2 due to death of Vinod Kumar. The plaintiff No. 2 became an exclusive owner of the suit shop on account of being mother of Vinod Kumar who died during his Bachelorhood on 8-8-1973. It was further stated in the plaint that

the rent was due from 1-2-1974. However, keeping in view the limitation, the plaintiff claimed the rent for a period of preceding three years and two months amounting to Rs. 6660/- . The defendant paid Rs. 1800/- towards rent on 29-6-1974 and did not pay the balance amount in respect of demand notice dated 11-11-1978. The defendant has kept the suit premises locked and closed from time quite prior to March, 1978 and a decree on ground u/s 12(1)(d) was claimed. Since the same has been denied and no substantial question of law is framed on this point, I do not feel it apt to further discuss with respect to the aforesaid averments. It is further contended that the defendant denied the title of the plaintiffs and has caused substantial damage to the interest of the plaintiffs, so, eviction has also been sought on this ground.

The original defendant submitted its written statement and stated that the suit shop was obtained by it on rent from Vinod Kumar. It is denied that the defendant was inducted into the suit shop by the plaintiff No. 1. Thus, the landlordship of the plaintiff No. 1 has been refuted in the written statement. In the written statement it was initially stated that Vinod Kumar was not owner of the disputed shop. However, by way of amendment it was admitted that Vinod Kumar was owner of the disputed shop. It is further contended in the written statement that the defendant is not aware that whether the plaintiff No. 2 was the exclusive heir of Vinod Kumar and become the sole owner of the suit shop after the death of Vinod Kumar. The occurrence of death of Vinod Kumar on 8-8-1973 has been denied. It is further stated that while receiving the suit shop, the defendant deposited Rs. 40,000/- as advance with Vinod Kumar and has obtained a receipt thereof. The rent was fixed, at Rs. 90 per month. It is further stated that the brothers of Vinod Kumar were also his heirs and the plaintiffs have no right to institute the present suit. It is further stated by way of amendment that the defendant has obtained the suit shop from Vinod Kumar on rent. The defendant became aware of the mistake in the written statement and by way of amendment he acknowledged Vinod Kumar as owner. It has been specifically contended that the defendant does not dispute the title of Vinod Kumar. The defendant denied that he was in arrears of rent w.e.f. 1-2-1974. The notice of demand has been challenged on the ground that the notice was not issued on behalf of proper person. It was contended that the notice was issued by firm M/s Dinanath Gyasilal which was not competent to issue such a notice. By amendment it was further stated that the firm M/s Ramgopal Kanhaiyalal ceased to be a partnership firm and Puranlal has been in possession of the suit shop as a tenant. The name of the firm was also changed to M/s R.K. and Sons after the year 1980. The defendant, thus, prayed for dismissal of the suit.

After recording the evidence, learned trial Judge decreed the suit on ground u/s 12(1)(c) of the M.P. Accommodation Control Act. A appeal was preferred by Puranlal who was substituted by the present Appellants on account of his death in the year 2002.

Learned lower Appellate Court dismissed the appeal and further granted a decree

for eviction also on ground u/s 12(1)(a) of the M.P. Accommodation Control Act. Aggrieved by the aforesaid, the present appeal has been preferred which has been admitted by this Court on 10-9-2003 on the following substantial questions of law:

(1) Whether the judgment and decree passed by the Courts below are sustainable in view of the fact that the application filed by Appellants along with documents under Order 41, Rule 27, CPC and Section 151, CPC were not decided either before or at the time of filing of the appeal? (2) Whether the suit can be decreed on the ground of Section 12(1)(a) of the M.P. Accommodation Control Act on the ground that proper notice was not issued by the landlord respondent No. 1?

(3) Whether the decree could be passed on the ground of disclaimer and is sustainable and whether the findings with regard to defendants having denied the title of Vinod Kumar is justified in the facts and circumstances of the case?

Substantial question of law No. 1 pertains to application under Order 41, Rule 27 of CPC which does not appear to have been either considered or decided.

I perused the order sheets of the lower Appellate Court. The application was submitted on 29-10-2002 and the Civil Appeal was fixed on 15-11-2002 for arguments on merits of the appeal as well as for reply and arguments of application under Order 41, Rule 27, Code of Civil Procedure. On 15-11-2002 reply to the said application was submitted and the case was adjourned for final arguments on 27-11-2002. As per order sheets, the parties submitted final arguments on 27-11-2002 and the case was reserved for judgment on 10-12-2002. On 9-12-2002, it is mentioned in the order sheet that the Appellant submitted his written arguments and rulings. On 10-12-2002, the judgment was pronounced. On perusal of the order sheets, it is clear that there is no mention that application under Order 41, Rule 27, CPC was ever pressed before the lower Appellate Court. Even in the memo of appeal before this Court there is no mention that the said application was pressed and the arguments were advanced with regard to it at the time of making final submissions. There is no affidavit on record of the concerning counsel who argued the case before the lower Appellate Court on behalf of the Appellant and who could have been the best person to depose on oath that the application for additional evidence was pressed by him before the lower Appellate Court. Learned Counsel for the Appellant brought attention of this Court to the written arguments and contended that there was a reference to the proposed additional document in the written submissions. According to him, the application under Order 41, Rule 27, CPC was duly pressed and reference to the proposed additional document in the written statement goes to show that arguments were in fact advanced on the said application.

I perused the written submissions which are on record of the lower Appellate Court. There is no specific mention in them about the application under Order 41, Rule 27, Code of Civil Procedure. The requisites of law under the said provision

were also not emphasized in the written submissions. Moreover, Shri R.D. Jain, learned Senior Counsel appearing for the landlord submitted that the application under Order 41, Rule 27, CPC was not pressed and in the absence of the same merely referring to the proposed additional documents in the written submissions is not sufficient in view of the Apex Court decision in the case of Gauri Shanker Vs. Hindustan Trust (Pvt.) Ltd. and Others, . In paragraph-9 of the said decision, the Apex Court held that "It may be pointed out that raising grounds in the Memorandum of Appeal is not sufficient to show whether a particular point was actually argued or pressed before the Court. Of-course, in the case of Gauri Shankar (supra) there was a specific mention by the Court below that no other point was argued. In the context of the same, the Apex Court further held that such a statement in the judgment has prima facie to be accepted as correct and it is open to the opposite party to file a proper affidavit of his counsel who had argued the case along with Momorandum of Appeal that such a point had been raised. The Apex Court in the absence of affidavit of the arguing counsel, held that the point cannot be said to have been raised at the time of arguments. However, in the present case the lower Appellate Court neither in the order sheets nor in the impugned judgment has observed that the application under Order 41, Rule 27, CPC was not pressed.

Shri N.K. Jain, learned senior counsel relying on Sangamesh Printing Press Vs. Chief Executive Officer, Taluk Development Board, submitted that since the application under Order 41, Rule 27, CPC was not disposed of by the lower Appellate Court, the matter is liable to be remanded back. In case of Sangamesh Printing Press (supra) an application under Order 1, Rule 10(2) of CPC was pending for joinder of State Government as a defendant. Hon''ble Supreme Court of India has observed that the consideration of the factors would depend upon allowing or rejecting the applications. In view of this, it was held that non-disposal of the application under Order 1, Rule 10(2), CPC did cause serious prejudice. In the present case, the application concerned is application under Order 41, Rule 27, Code of Civil Procedure. This provision provides for allowing additional evidence at an appellate stage provided the pre-requisites of the provisions are available. Even according to the case of Sangamesh Printing Press (supra) a person aggrieved by the non-disposal of a pending appeal by the lower Appellate Court is obliged to show that such non-disposal did cause prejudice to him. Unless such prejudice is established, mere non-disposal of an application by the lower Appellate Court will not afford a ground for making remand, although, it is not clear from the record whether the application under Order 41, Rule 27 was infact pressed or not. The lower Appellate Court has also not chosen to make a mention that the said application was not pressed at all. So, I feel it proper to consider whether the act of lower Appellate Court of not disposing of the application under Order 41, Rule 27, CPC has caused prejudice to the Appellant and what is the degree of such prejudice. The Appellant vide the proposed document has submitted a certificate issued by the District Registrar of Births and Deaths, Gwalior that after the search of record of registration dated

8-8-1973, it is found that the death of Vinod Kumar Garg s/o Ramkishan Garg is not registered. The death of Vinod Kumar Garg is stated to have occurred according to the plaintiff is on 8-8-1973 whereas this date of death has been refuted by the defendant/appellant. As per the stand of the defendant/appellant, the death of Vinod Kumar has occurred in the year 1975. I considered the certificate with a caption of "non-availability certificate". This certificate, at the face of it shows merely that the entry of death of Vinod Kumar is not found to have been registered in the record of Office of District Registrar, Births and Deaths and District Statistical Officer, Gwalior. This document by itself will not help the Appellant to prove that the death of Vinod Kumar has occurred in the year 1975 because Sub-section (2) of the Section 17 of the said Act merely says that such a document shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates. Considering this provision, it cannot be said in the light of this document that death of Vinod Kumar did not occur in the year 1973 at all. Accordingly, the non-consideration of application under Order 41, Rule 27, CPC did not cause any prejudice to the Appellant and the substantial question of law No. 1 is decided against the Appellants.

Shri N.K. Jain, learned senior counsel for the Appellants submitted that the notice contemplated u/s 12(1)(a) has not been issued at all and in the absence of such a notice, the decree u/s 12(1)(a) is liable to be set aside. Shri R.D. Jain, learned senior counsel appearing for the plaintiffs/respondents submitted that the notice Ex. P-18 (equal to Ex. P-11) serves the purpose of demand notice and the decree on ground u/s 12(1)(a) deserves to be maintained. The averments of plaintiff are liable to be taken into consideration for this purpose. The case of the plaintiff in regard to it is that the suit shop is owned by plaintiff No. 2, who orally authorised the plaintiff No. 1 to look after her property and realize the rent. The defendant/appellant has expressly and specifically disputed the alleged authorisation. It be seen that the plaintiff No. 2 did not appear in the witness box to prove the alleged oral authorisation. Obviously, the plaintiff No. 2 could have been the best person to prove authorisation to the plaintiff No. 1 by her. She did not choose to appear in the witness box to establish the alleged authorisation. Her non-examination is fatal. On this point an adverse inference is liable to be drawn against the authorisation in view of the decision of the Apex Court in Vidhyadhar Vs. Manikrao and Another, . Moreover, perusal of the demand notice, Ex. P-18 shows that the same was issued by firm M/s Dinanath Gyasilal (plaintiff No. 1) on its own behalf and not on behalf of the plaintiff No. 2 who is stated in paragraphs 1 and 3 of the plaint as the sole owner of the suit shop. Thus, this demand notice cannot be availed by the plaintiff No. 2 for seeking a decree u/s 12(1)(a) of the M.P. Accommodation Control Act.

Shri R.D. Jain, learned senior counsel made an additional submission that plaintiff No. 1 is also landlord and the decree for ejectment on ground u/s 12(1)(a) has been rightly passed on the basis of Ex. P-18. To buttress this, he referred to the definition of "landlord" as contained in Section 2(b) of the said Act which runs as under:

"landlord" means a person, who, for the time being, is receiving or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the accommodation were let to a tenant and includes every person not being a tenant who from time to time derives title under a landlord.

Learned senior counsel for the respondent submitted in the light of the aforesaid definition that the plaintiff No. 1 having recovered the rent from the defendant/appellant is a landlord within the meaning of provisions of the said Act and the notice, Ex. P-11/P-18 was rightly issued by the plaintiff No. 1 and the decree granted by the lower Appellate Court on this ground is not liable to be disturbed. This submission is not acceptable in the light of the submissions contained in paragraph-3 of the plaint. It is specifically stated in this paragraph that the plaintiff No. 2 was not much educated in the year 1974 and had therefore, orally authorised the plaintiff No. 1 to look after her property and realize the rent. It is nowhere stated in this paragraph that the plaintiff No. 1 was also authorised to issue a notice of demand. Another reason for not accepting this contention is that Ramkishan Garg, the partner of the firm M/s Dinanath Gyasilal appearing as P.W. -1 has stated in paragraph-5 that a family partition was effected vide Ex. P-1 and the suit shop was allotted to Vinod Kumar. Ex. P-1 is dated 2-4-1962. On account of this, Ramkishan Garg was not competent to act as Karta for Vinod Kumar. Looking to the definition of landlord from the aforesaid angle, it is clear that Ramkishan Garg was not receiving the rent on his own account since the suit shop had fallen into the share of Vinod Kumar as admitted by Ramkishan himself in his statement on oath.

As regards the question of receiving the rent on behalf of any other person, the alleged fact has been disputed by the defendant and the plaintiff No. 2 having failed to appear in the witness box, authorisation on her behalf is also not proved. Accordingly, Ramkishan cannot be said to have received the rent on behalf of plaintiff No. 2. The term "landlord" has been defined as a person who for the time being is receiving or is entitled to receive rent. Ramkishan according to his own version was not receiving the rent on his own account and is not proved to have received the rent on behalf of plaintiff No. 2 in the absence of the proof about authorisation. As regards the entitlement of Ramkishan, for receiving the rent, it may be seen that after the partition, Ex. P-1, none else than Vinod Kumar can be said to be entitled to receive the rent. It is apt to mention here that the legislature has not referred to the realization of rent and has not made a person landlord who has realized the rent. The realization of rent and entitlement to rent have different connotations. According to Section 12(1)(b) landlord means a person who for the time being is receiving or is entitled to receive rent. The suit was instituted on 9-8-1984 whereas according to the plaint itself, the rent was lastly paid on 29-6-1974. Thus, the plaintiff No. 1 cannot be said to be a person who was receiving rent in the year 1984.

Shri R.D. Jain, Senior Counsel relied on the decision of Apex Court in Vasudha Srivastava and others Vs. Smt. Kamla Chauhan and another, and contended that plaintiff No. 1 will be deemed to be a landlord within the meaning of M.P. Accommodation Control Act as it used to realize the rent. Hon"ble Supreme Court of India has held that the expression "landlord" is not limited to denote the owner of the house but it has to be, for the purposes of the Act understood in the wide sense to include a person to whom the rent is payable as also his agent. In the case of Vasudha (supra) Shashi Srivastava was held to be entrusted with the management of the house as her sister was staying with her husband outside Allahabad and it was Shashi Srivastava who had inducted the tenant-respondent in the premises as a tenant. In the case in hands even as per the plaint averments, Vinod Kumar was the sole owner after whose death the property devolved upon plaintiff No. 2. The authorisation as pleaded in the plaint is not held to have been established. Moreover, in the aforesaid paragraph, it has been held in the context of the words employed in Section 2(b) of the M.P. Accommodation Control Act that for a suit instituted in the year 1984 a person who received the rent 10 years back cannot be said to be a person who is receiving rent and consequently cannot be said to be landlord within the definition contained in the Act, moreso, when he is not held entitled to receive rent for want of authorisation.

An important feature which was not argued by the counsel for the Appellant is that the demand notice contained in Ex. P-11 is dated 11-11-1978. This notice could have been availed for ground u/s 12(1)(a) for a period of three years in addition to the period of notice of two months. The suit has been instituted in the year 1984. Thus, on the basis of this demand notice, a decree for eviction u/s 12(1)(a) could not have been sought. Section 12(1)(a) reads as under:

That the tenant has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months from the date on which notice of demand of arrears of rent has been served on him by the landlord in prescribed manner.

The Full Bench of this Court in the case of Mankunwar Bai (referred to hereinafter) has held that the tenant is under no obligation to deposit time barred rent in pursuance of Section 13(1) or 13(2) of the M.P. Accommodation Control Act. Thus, in order to avail demand notice for seeking decree u/s 12(1) (a) of the said Act, a suit must be instituted within the period of effectivity of the notice. A landlord having not chosen to institute a suit within the aforesaid period on the basis of demand notice cannot legally seek eviction on the basis of a notice issued as in the instant case about more than five years back.

Next contention of Shri N.K. Jain, learned senior counsel is that the defendant having complied with Section 13(1) of the M.P. Accommodation Control Act cannot be saddled with a decree for ejection on ground u/s 12(1)(a) of the said Act in view of provisions contained in Section 12(3) and 13(5) of the Act.

Shri R.D. Jain, learned senior counsel countered this by submitting that a tenant is bound to deposit even the time barred rent for making a total compliance of Section 13(1) of the Act. Shri Jain, for this contention relied upon the decisions of the cases in Sri Bhimsen Gupta Vs. Sri Bishwanath Prasad Gupta, , Punjabrao v. State of Maharashtra reported as 2002(1) MPWN 146 and Shyam Bhagwan Dubey v. Sheikh Nizam and Ors. reported as 7994 MPLJ 260 : 1994 JLJ 143. It be seen that in case of Bhimsen Gupta (supra) the matter related to eviction under the provisions of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982. The provisions of the said Act are not in pari materia of the rent legislation of Madhya Pradesh. Remaining two cases cited by learned senior counsel are under the provisions of M.P. Accommodation Control Act and in both the decisions the learned Hon"ble Single Judges have held that even time barred rent is required to be deposited for making compliance of Section 13(1) of the Act. It may be further seen that in case of Shyam Bhagwan Dubey (supra), the learned Hon"ble the then Chief Justice has relied upon the Full Bench decision of Ram Nandan Sharma and Another Vs. Mt. Maya Devi and Others, . It seems the Full Bench decision of this Court on the point which was obviously binding was not brought into the notice of Hon"ble the then Chief Justice acting as a single judge. Full Bench of this Court in the case of Smt. Mankunwar Bai and Others Vs. Sunderlal Jain, has held that the tenant is not obliged to deposit time-barred rent u/s 13(1) or Section 13(2) of the M.P. Accommodation Control Act, 1961. In view of the aforesaid binding Full Bench decision of this Court, I am of the considered view that a time-barred rent is not required to be deposited in compliance of Section 13(1) of the M.P. Accommodation Control Act and the plaintiff/respondent is not entitled to any benefit of the contrary view expressed in the Single Bench decision of this Court and also of the Apex Court decision based on the piece of Bihar Rent Legislation.

After excluding the period of time-barred rent, the tenant/appellant is not shown in the present case to have committed any default within the meaning of Section 13(1) of the Act. In this view of the matter also the decree u/s 12(1)(a) of the said Act is not sustainable in law and the substantial question of law No. 2 is hereby decided in favour of the Appellant.

As regards the substantial question of law No. 3, the contention of Shri N.K. Jain, learned senior counsel for the Appellants is that they have not denounced the status of tenant and have not setup title in third person. According to him, the stand of the tenant does not amount to disclaimer within the meaning of Section 12(1)(c) of M.P. Accommodation Control Act and no decree on this ground is sustainable in law. On the other hand Shri R.D. Jain, learned senior counsel submitted that the material on record establishes a ground of disclaimer and the learned Courts below have rightly passed a decree of eviction in a concurrent manner.

For appreciating the rival contentions, it has become necessary to go through the material available on record including the pleadings. It is found that the suit for

eviction was instituted by firm Dinanath Gyasilal and Smt. Saraswati Bai as plaintiff Nos. 1 and 2 respectively on 9-9-1984 against the firm Ramgopal Kanhaiyalal. It was stated in the plaint that Vinod Kumar was the sole owner of the suit shop and after his death it devolved upon his mother, Smt. Saraswati Bai being the sole heir. The defendant was stated to have been inducted in the suit premises in the year 1974. In the written statement initially filed, it was denied that Vinod Kumar was owner of the suit premises. It was also denied that Saraswati Bai inherited the suit premises from Vinod Kumar. In the special pleas contained in the written statement, the ownership of the plaintiffs was denied. It was further denied that the disputed shop was obtained on rent on 1-2-1974. In paragraph-12 of the written statement it was denied that the defendant was a tenant in the suit premises. On 31-10-1996 the plaintiff amended the plaint by adding paragraph-4(a) and 4(b) to claim eviction on the ground of disclaimer. Consequent to the aforesaid amendment, in August, 1997, the written statement was amended with specific version that at the time of obtaining the suit shop from Vinod Kumar, the defendant deposited Rs. 40,000/- with Vinod Kumar as advance and a receipt was issued by Vinod Kumar under his own signature. In addition to this, the defendant withdrew denial on his part about the ownership of Vinod Kumar as contained in paragraph-3 of the written statement. Similarly, the denial of title of plaintiff No. 2 was also withdrawn in paragraph-9 of the written statement. On 4-5-1998 the defendant in its written statement vide paragraph-4(a) and 4(b) stated that the defendant has obtained the suit shop from Vinod Kumar and mistakenly the ownership of Vinod Kumar was denied. The mistake was traced out by the defendant and accordingly, the ownership of Vinod Kumar was subsequently admitted in the pleadings. It was further pleaded that the defendant did not mean to deny the title of Vinod Kumar and the mistake occurred in a bona fide manner. However, the defendant further by way of this amendment contended in the alternative that the plaintiff having instituted a suit on the basis of derivative title cannot claim eviction on this ground.

On a serious perusal of the drift of events appearing from the material on record, it is clear that:

(1) The defendant denied ownership of Vinod Kumar in the written statement dated 14-1-1988 and this denial continued in the pleadings upto 13-8-1997 i.e. for a period of about 9 years. (2) The defendant denounced the status of tenant in the initial written statement dated 14-1-1988 and after more than 9 years, he tried to explain it with the averments that firm Ramgopal Kanhaiyalal was never a partnership firm and Puranlal the alleged partner (as per the cause title described in the plaint) is in possession of the suit shop as a tenant.

(3) The defendant did not withdraw the denials at his own, but tried to withdraw the same only when the plaintiff made averments in the plaint in October, 1996 and sought eviction on the ground of disclaimer.

(4) The defendant in spite of addition of ground of disclaimer did not immediately

move an application for withdrawal of the aforesaid denials, but made consequential amendments after about 9 months. Had there been any bona fide mistake on the part of the defendant, the application for withdrawal of denials would have been immediately made on the next day of hearing when the facts pertaining to ground based on disclaimer of title on the basis of pleadings contained in the written statement were brought on record.

Scope of ground u/s 12(1)(c) has been precisely made clear by the Apex Court in the case of *Sheela and Others Vs. Firm Prahlad Rai Prem Prakash*, . The Apex Court has held:

In our opinion, denial of landlord's title or disclaimer of tenancy by tenant is an act which is likely to affect adversely and substantially the interest of the landlord and hence is a ground for eviction of tenant within the meaning of Clause (c) of Sub-section (1) of Section 12 of the M.P. Accommodation Control Act, 1961. To amount to such denial or disclaimer, as would entail forfeiture of tenancy rights and incur the liability to be evicted, the tenant should have renounced his character as tenant and in clear and unequivocal terms set up title of the landlord in himself or in a third party. A tenant bona fide calling upon the landlord to prove his ownership or putting the landlord to proof of his title so as to protect himself (i.e. the tenant) or to earn a protection made available to him by the rent control law but without disowning his character of possession over the tenancy premises as tenant cannot be said to have denied the title of landlord or disclaimed the tenancy. Such an act of the tenant does not attract applicability of Section 12(1)(c) abovesaid. It is the intention of the tenant, as culled out from the nature of the plea raised by him, which is determinative of its vulnerability.

The question involved in the case would be whether requisites for the purpose of Section 12(1)(c) of the Act as laid down by the Apex Court were available or not. Viewing from the initial written statement, it is clear that the defendant denied the ownership of Vinod Kumar (see original paragraph-3 of written statement) and also denounced his character as a tenant vide paragraph-12 of the original written statement. In the order sheet dated 13-9-1996, it was observed by the learned trial Judge that the defendant refused to acknowledge the plaintiff as his landlord. The citation *C. Chandramohan Vs. Sengottaiyan (Dead) By Lrs. and Others*, relied upon by Shri N.K. Jain, learned senior counsel is not based on M.P. Accommodation Control Act, So, I may prefer to examine the present case in the light of *Sheela's* case (supra). The Apex Court has made emphasis on the bona fide of the tenant while taking such pleas. In the present case the defendant right at the first instance not only denied the ownership of his landlord but denounced his character also as a tenant. Such pleadings were permitted to be on record for quite a long and an application for amendment was made only consequent to the amendment made in the plaint. Moreover, a document Ex. D-18 was placed on record by the defendant to prove that Rs. 40,000/- were paid to Vinod Kumar as advance rent. Photocopy of it was submitted by

defendant on 12-5-1997 with an index of documents. The document bears Revenue Stamp of 20 paisa. The date is not legible on the original document contained in Ex. D-18 whereas it is quite legible as 1-2-1974 on the photocopy. The Revenue Stamp of 20 paisa was introduced vide Government Notification w.e.f. 1-6-1976 and the same was not in existence on 1-2-1974. The learned Trial Judge after discussing the same, vide paragraph-19 to 22 of the judgment has held the same to be forged. Shri N.K. Jain, learned senior counsel has been unable to give any justification about the Revenue Stamp of 20 paisa and did not make any submission on this point at all. Such a tenant cannot be said to be a person acting with bona fides. The question before me is about the effect of the averments contained in the written statement initially but withdrawn subsequently. Shri N.K. Jain, learned senior counsel relying upon AIR 1976 Allahabad 399 submitted that once an amendment is allowed no reference ought to be made to the original pleadings while deciding an issue and the amended pleadings alone should be considered. However, this legal position is not found to be proper in view of various decisions of this Court. In the case of Kubra Bai v. Islam Bai reported as 1983 MPWN 46, this Court has observed that it is always open to the defendants to cross-examine the plaintiffs in the light of original pleadings and the party could well be cross-examined as to what he meant by such initial pleadings. In the case of Mangilal v. Sakaribai reported as 1979 (1) MPWN 93, this Court has categorically observed that it cannot be said that merely because the defendant chooses to delete certain portion from the written statement, it does not mean that such portions will be scored out from the record. The original statement will remain on record and if the plaintiff wants he can use as and when it is necessary. It has been further held that it cannot be said that some valuable admissions will be lost if the application for amendment is allowed.

Lastly, I may refer to the decision of this Court rendered by Hon''ble Justice Shri R.C. Lahoti (presently Hon''ble the Chief Justice of India) in the case of Bhagwati Prasad Vs. Rameshchand and Others, . In an identical situation it has been held:

Moreover the sin which the tenant/appellant has committed, would not be wiped out in spite of the proposed amendment. Once the tenant has incurred the liability for ejectment under Clause (c) of Section 12(1) of the Act merely because he choses to withdraw the denial belatedly, the cause of action accrued to the landlord/plaintiffs would not be wiped out in the absence of there being a specific provision to that effect in the Act.

Shri N.K. Jain, learned senior counsel submitted that the contention of the defendant/tenant is that the plaintiff Saraswati Bai is not alone the owner of the suit shop and therefore in view of 7997 J LJ 343 the pleadings of the defendant do not amount to denial of title. It may be seen that this Court has categorically found that the ownership of Vinod Kumar was expressly denied in paragraph-3 of the original written statement and the character as tenant was denounced expressly in paragraph-12 of the written statement. this Court having further

found in the light of the aforesaid legal position that the denials existing before the amendment can very well be taken into consideration for grant of eviction u/s 12(1)(c) of the M.P. Accommodation Control Act, the learned lower Appellate Court is not found to have committed any mistake. Accordingly, the substantial question of law No. 3 is answered hereby in favour of the respondent.

In the result, the appeal is allowed in part and the judgment and decree u/s 12(1)(a) of the M.P. Accommodation Control Act, 1961 is set aside. The suit for eviction on the said ground is hereby dismissed. As regards the judgment and decree passed by the Courts below on ground u/s 12(1)(c), the same is hereby confirmed. No order as to costs.

Shri N.K. Jain, learned senior counsel prayed for reasonable time to vacate the suit premises. The Prayer is accepted and time period upto 30th June, 2006 is granted for vacation subject to compliance of the following conditions:

(1) Appellant shall comply with the money part of the decree and shall make strict compliance of Section 13(1) of the M.P. Accommodation Control Act by depositing the rent in a timely manner. (2) Appellant shall submit an undertaking on affidavit within three weeks that he will deliver the vacant possession of the suit shop to the respondent No. 2 latest by 30th June, 2006 and will not create third party interest.

It is made clear that in case of failure on the part of the Appellant to make compliance of any of the aforesaid conditions, the decree for eviction shall become executable forthwith.