
(2011) 12 MP CK 0090
In the Madhya Pradesh High Court
Case No : S.A. No. 1669 of 2007

Shri Pratap Raghav Ji Bhagwan

APPELLANT

Vs

Smt. Krishna and Others

RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 5(3)
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12, 12(1),
12(1), 12(3), 13

Citation : (2012) ILR (MP) 507 : (2012) 2 MPHT 462

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Ravish Agrawal with K.S. Jha, for the Appellant; Vikalp Soni, for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J.

1 : By this second appeal, the appellant/plaintiff has challenged the part of judgment and decree dated 31.7.2007, passed in Civil Appeal No. 37-A/2006, by the District Judge Tikamgarh, by which the judgment and decree dated 31.7.2006 passed in Civil Suit No. 29-A/2006, by the Additional Judge to the Court of Civil Judge, Class-I, Tikamgarh, has been set aside to the effect that the decree of eviction granted by the trial Court under the provisions of Section 12(I) (a) of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as the Act for brevity), has been set aside. While admitting this appeal, this Court has framed the following substantial question of law:-

"Whether the appellate Court in the available set of evidence has erred in setting aside the decree of the trial Court passed on the grounds enumerated u/s 12(1) (a) of the M.P. Accommodation Control Act, 1961 ?"

2 : Brief facts for consideration in the appeal are that the appellant/plaintiff filed

a suit in the year 1988, being Civil Suit No. 90-A/1988, against the original respondent/defendant, the tenant, for his eviction on the ground of arrears of rent. The said suit was decreed by the trial Court and a decree of recovery of rent only was granted in favour of the appellant/plaintiff. The trial Court categorically held that the appellant/plaintiff was not entitled to get the decree of eviction of the tenant on the ground of Section 12(1)(a) of the Act. The appeal was preferred against the said judgment and decree, but the same was dismissed. The judgment and decree have been placed on record as Ex.P/6 and Ex.P/7. The judgment of the appellate Court in the said case, is placed on record as Ex.P/8.

3 : The tenant-Original respondent/defendant, did not pay the rent of demise premises for the period after the date of above said judgment and decree, therefore, the appellant/plaintiff was required to issue a notice of demand by registered A.D. post on 17.11.1998 Ex.P/1. In the notice in paragraph 6, it was categorically said by the appellant/plaintiff that the arrears of rent after the judgment and decree passed by the trial Court in the first suit i.e. 1.8.1988 was not paid as there was arrears of rent with effect from August 1988 to June 1996, though the said amount was said to be deposited in the C.C.D., which was not received by the appellant/plaintiff. In paragraph 7 of the notice, it was categorically said that rent with effect from July 1996 to October 1998 was not paid and, therefore, the original respondent/defendant was liable to pay the said amount or else a suit would be filed against the original respondent/defendant. It is the case of the appellant/plaintiff that after the notice, amount was paid by a money order which was received on 21.1.1999, in which it was said that the rent for the month of August 1996 to January 1999 is being paid. An amount of Rs. 1200/- was sent by the said money order. However, on the date of suit which was filed on 20.9.1999, there was still arrears of rent against the respondents/defendants and, therefore, a decree of eviction on the ground of Section 12(1)(a) of the Act was also claimed. Another ground for eviction of the tenant-respondent/defendant was raised in the plaint that the appellant/plaintiff was in need of the demise premises for the purposes of reconstruction of the building for which the sanction was obtained from the Municipal Council, plan and estimate was prepared, but unless the tenant is evicted, it will not be possible for appellant to reconstruct the building.

4 : The original respondent died during pendency of the suit. His legal representatives, the present respondents herein, were substituted in the suit. A written statement was filed by the original respondent/defendant denying the allegations and contending that decree of eviction as claimed was not to be granted by the trial Court. The trial Court framed the issues, recorded the evidence of parties and after categorically holding that the appellants have made out a case for grant of decree on both the counts, decreed the suit by judgment and decree dated 31.7.2006. The respondents/defendants preferred an appeal against the said judgment and decree before the learned lower appellate Court and the lower appellate Court while affirming the judgment and decree granted

by the trial Court, under the provisions of Section 12(1)(h) of the Act, set aside the decree of the trial Court granted u/s 12(1)(a) of the Act. Hence, this appeal is preferred by the appellant/plaintiff.

5 : Learned senior counsel ably assisted by his colleague, has pointed out that the trial Court has very categorically given its finding in paragraph 12 onwards wherein all the circumstances were considered. It is pointed out that the earlier suit of the appellant/plaintiff for eviction of the tenant was only on the ground of Section 12(1)(a) of the Act and while granting the benefit of protection available under the provisions of Section 12(3) of the Act, the Court on first occasion has refused to grant the decree of eviction. However, as provided in the proviso to sub-section (3) of Section 12 of the Act, the tenant shall be entitled to such a benefit only once in respect of any accommodation and, if, he again makes a default in the payment of rent of that accommodation for three consecutive months, he will not be entitled to the benefit of protection of sub-section (3) of Section 12 of the Act. Taking this Court to the specific circumstances, it has been pointed out by the learned senior counsel for the appellant/plaintiff that even after the demand, the payment of rent was not made by the respondents/tenant and on their own, they moved the application for condoning the delay in making the payment of rent, which was rejected by the trial Court by its order dated 16.2.2006, as a result, it was to be held by learned lower appellate Court that there was a default of making payment of rent for the three consecutive months and, therefore, there was no occasion for setting aside the well reasoned findings recorded by the trial Court and refusing to affirm the decree granted u/s 12(1)(a) of the Act. Taking this Court to such an interlocutory application made by the respondents/defendants on 29.11.2004, it is contended by the learned senior counsel for the appellant/plaintiff that on their own, the respondents/defendants have admitted the fact that they have not paid the amount of rent regularly as per the provisions of Section 13(1) of the Act. Once such a default is found, there was no scope left for interfering in the findings of the trial Court by the learned lower appellate Court. Taking this Court to the order dated 16.2.2006, passed in the Civil Suit, learned senior counsel for the appellant/plaintiff has pointed out that the amount as demanded by notice was said to be sent on 21.1.1999. The reply to this notice was given by the respondents/defendants on 30.1.1999 Ex.D/1. It was incumbent on the respondents to make payment of rent for the month of February 1999 by 15.2.1999, but again no payment whatsoever was made in this respect. Similarly, for the month of March 1999, no payment was made upto 15th of March 1999. Again the rent for the month of April 1999 was not paid upto 15th of April and, lastly, the rent for the month of May 1999 was not paid upto 15th of May 1999. On the other hand, a money order in respect of rent for five months i.e. with effect from January 1999 to May 1999 was sent only on 28.5.1999. Again for the month of June, July and August of 1999, no payment of rent was made. Ultimately, the suit was filed on 20.9.1999 by the appellant/plaintiff, claiming a decree u/s 12(1)(a) of the Act also.

6 : When the writ of summons of the suit was served on the respondents/

defendants, they obtained a permission from the Court on 17.1.2000 and deposited the rent from the month of June 1999 to December 1999 in the Civil Court. Written statement was filed on 14.2.2000, but again the rent for the month of January and February 2000 was not paid upto 15th of those months. On the other hand, the application was made on 29.11.2004 for condoning the delay in making the deposit of the rent in which it was categorically said that the rent for the month of July 1999 to January 2000 was paid on 27.1.2000. The rent for the month of February 2000 to November 2000 was paid on 18.8.2000. The rent for the month of December 2000 to May 2001 was paid on 8.12.2001. The rent for the month of June 2001 to October 2001 was paid on 16.10.2001 and again the rent for the month of November 2001 to March 2002 was paid on 22.1.2002. Likewise, it was said that the rent for the month of April to June 2002 was paid on 30.4.2002. The rent for the month of July 2002 to December 2002 was paid on 13.8.2002. The rent for the month of June 2003 to May 2003 was paid on 13.5.2003. Likewise, the rent for the month of June 2004 to May 2004 was paid on 20.1.2004. The rent for the month of June 2004 to December 2004 was paid on 30.4.2004.

7 : From these facts as have been mentioned by the original respondent/defendant in his own application, learned senior counsel for the appellant contends that admittedly there was sheer non-compliance of sub-section (1) of Section 13 of the Act, and, therefore, the protection u/s 12(3) of the Act was not available to the respondents. These aspects were considered by the learned trial Court and a decree u/s 12(1)(a) of the Act, was granted in favour of the appellant/plaintiff. However, while reversing the judgment and decree of the trial Court, the reasons assigned by the learned lower appellate Court were, as given in paragraph 13, only this much that the rent with effect from July 1996 to October 1998 was already paid even before filing of the suit, by sending a money order by the tenant/respondents, therefore, there was no cause of action available to the appellant/plaintiff to file a sit u/s 12(1)(a) of the Act. The other reason assigned was that in case the rent during the pendency of the suit was not paid or that there was any default on the part of the tenant/respondent, course open to the trial Court was to proceed u/s 13(6) of the Act, but no decree u/s 12(1)(a) of the Act could have been granted. The other reason assigned was that the findings as have been given by the trial Court with respect to the payment of arrears of rent which was subject matter of earlier suit, could not have been treated as a default enough for grant of a decree u/s 12(1)(a) of the Act. The reason assigned by the learned lower appellate Court was that for recovery of such an arrears, the execution proceedings could have been done pursuance to the earlier decree granted, but no decree u/s 12(1)(a) of the Act could have been granted to the appellant/plaintiff. It was further held that because of the typographical error in the earlier judgment of the trial Court since there was a full decree granted for the recovery of sum towards the rent in favour of the appellant/plaintiff, this could not have been made a ground for grant of a decree of eviction u/s 12(1)(a) of the Act.

8 : Learned senior counsel for the appellant/plaintiff has contended that this was not at all the case of the appellant/plaintiff as set-forth in the plaint. Categorically it was said that after giving notice to the respondents/defendants, the amount was paid by the tenant through money order. Since the amount of rent was due with effect from July 1996, the amount sent by the respondents/defendants by money order was adjusted towards the rent which was after the passing of the judgment and decree in the earlier suit of the appellant/plaintiff and since thereafter there were default on the part of the respondents/defendants to make payment of rent regularly, the tenant was liable to be evicted from the suit premises on the ground of Section 12(1)(a) of the Act. It is further contended by the learned senior counsel that though such an aspect was replied by the respondents/defendants, but nothing was said about the specific pleadings which the appellant/plaintiff has made in plaint paragraph 6. It is contended by the learned senior counsel for the appellant/plaintiff that if such was the situation, specific reply of the allegations was required to be given by the respondents/defendants or else the same was to be treated to be admitted in terms of the provisions of Order 8 Rule 5 (3) of C.P.C.. Even in the special pleadings, nothing was said in this respect as to how the rent was regularly paid and whether the respondents/defendants was in arrears of rent or not. Thus, it is contended that if these facts are taken into consideration, the findings of the learned trial Court were just and proper and were not to be interfered in the manner, the same have been interfered with by the learned lower appellate Court.

9 : Placing reliance in the decision of this Court in the case of Satish Chandra Vs. Janki Prasad (1992 MPLJ 90), it is contended by the learned senior counsel for the appellant that the protection of sub-section (3) of Section 12 of the Act is available only when the compliance of provisions of Section 13 of the Act is done. Since there was sheer non-compliance of the provisions of Section 13 of the Act, admitted default of the respondent/tenant were there, therefore, there was no question of giving any benefit of the said provision. It is contended by the learned senior counsel that as per the law laid down by the Full Bench of this Court in the case of Mankuwarbai Vs. Sunderlal Jain (1978 J LJ 326), this Court has already reached to the conclusion in case of Satish Chandra (supra) that if in an earlier suit there was some arrears of rent and for that a decree of recovery of rent only was granted and, if, that rent was not paid, the same is to be treated as a default and protection u/s 12(3) of the Act, is not available. Learned senior counsel further relied on a decision of Apex Court in the case of Sobhagyalal and Another Vs. Gopal Das Nikhra, , and has drawn the attention of this Court to the specific law laid down by the Apex Court in paragraphs 9 and 10 of report, which reads thus :-

"9. From the aforesaid, it is clear that Section 12(3) of the Act provides for an exception to the general rule contained in Section 12(1)(a) that in the event tenant becomes a defaulter, he is liable to be evicted. From the proviso to section 12(3) of the Act, it is clear that the protection given to the tenant is only one time protection. Proviso appended to Section 12(3) controls the main provisions.

The exemption contained in Section 12(3), thus, is not extended to the tenant who becomes a defaulter for more than once. In view of the aforesaid, we are of the opinion that once the tenant had availed the benefit of the proviso to Section 12(3) of the Act, the said benefit was not available to the tenant in committing a further default in payment of rent for three consecutive months.

10. The tenant can only be protected against ejectment on the ground of arrears of rent in the subsequent proceedings if he deposits the rent in the Court or pay it to the landlord during the pendency of the proceedings in the Court or pay it to the landlord after the suit is decided by the Court. If there is a default for three consecutive months in the payment of rent and the rent has not been tendered within two months of the service of notice by the landlord for payment of arrears, a cause of action accrued in favour of the landlord to initiate proceedings for ejectment of the tenant by filing a suit u/s 12(1)(a) of the Act and thereafter Section 12(3) or Section 13(5) would not be attracted."

10 : Thus, it is contended by the learned senior counsel that if this was the situation, learned trial Court was right in granting a decree u/s 12(1)(a) of the Act to the appellant/plaintiff and the reasons on the basis of which such a finding of the trial Court is reversed by the learned lower appellate Court are unfounded and misconceived.

11 : Learned counsel for the respondents/defendants contended in reply that such was not the situation. Since in earlier case, the decision was rendered against the respondents/defendants only with respect to the payment of rent, the same came to an end after decision by the First Appellate Court. It is further contended that the provisions of Section 12(3) of the Act are attracted moment the suit is filed and what is required to be seen, is whether from the date of demand the arrears of rent is paid or not. Since the previous arrears were not to be calculated and computed in the arrears for which the demand was made, the respondent/tenant was right in complying with the provisions of Section 13 of the Act. Once the provision of Section 13 of the Act are complied with the protection under sub-section (3) of Section 12 becomes automatically available and, therefore, there was no occasion to grant a decree of eviction u/s 12(1)(a) of the Act. It is further contended that there was no cause of action available to the appellant/plaintiff to file a suit claiming a decree u/s 12(1)(a) of the Act, inasmuch as, the demand as made by the notice was complied with. For the said purposes, learned counsel for respondents has relied on a decision of this Court in Lachoo Ram Vs. Bipin Kumar, and has drawn the attention of this Court to the specific findings of this Court in the said case in paragraphs 8, 11 and 12. It is contended by the learned counsel for respondents/defendants that this Court has very categorically said that it is candidly clear that proviso to sub-section (3) of Section 12 of the Act, debars such tenant to get the benefit even on deposit of arrears of rent in accordance with Section 13 of the Act, who could not avoid his ejectment on the ground u/s 12(1)(a) of the Act. But for seeking a decree for eviction on the ground of Clause (a) of Section 12(1) of the Act, a landlord, in

subsequent suit claiming eviction on the ground of default in payment of arrears of rent must disclose the ground as contemplated by Clause (a) of sub-section (1) of Section 12 of the Act and for that purpose, it is essential to disclose that despite service of notice of demand for arrears of rent due, the tenant failed to pay or tender the amount of arrears of rent within two months from the date of service of such notice.

12 : It is, thus, contended by learned counsel for respondents/defendants that since the rent as demanded was already paid by sending a money order well within the time of the period of notice which fact has been admitted by PW/1, in his statement, if the trial Court has wrongly granted the decree for eviction u/s 12(1)(a) of the Act, learned lower Appellate Court was just and proper in reversing such a finding of the trial Court. It is further contended by learned counsel for respondents/defendants that in view of the law laid down by this Court in case of Bachchoobhai Vs. Premanand Bhiogadhe, in such circumstances, the course open to the learned trial Court was to proceed under sub-section (6) of Section 13 of the Act and strike off the defence of respondents/defendants, but not to grant a decree u/s 12(1)(a) of the Act for eviction. Similarly, it is said that since service of notice on the respondents/defendants, was not proved, by making application of MP. General Clauses Act, it is deemed that the notice is served within a month from the date of dispatch and within two months from the date of receipt of such notice, if the arrears of rent as demanded is paid, a suit for eviction u/s 12(1)(a) of the Act, could not have been filed. For the said purposes, learned counsel for respondents/defendants has relied on decision of this Court in Budha and Others Vs. Bedariya, . Thus, it is contended by learned counsel for respondents/defendants that the suit as filed u/s 12(1) (a) of the Act for eviction of the tenant was not maintainable, but the learned trial Court has not considered these aspects and has wrongly granted a decree u/s 12(1) (a) of the Act for eviction of the tenant. Such findings of the trial Court were rightly interfered with by the learned lower appellate Court and, therefore, there is no substance in this appeal and the same is liable to be dismissed.

13 : After hearing learned counsel for the parties at length, this Court is of the considered opinion that there was a folly on the part of the lower appellate Court in partly allowing the appeal of the respondents/defendants. Firstly, it was to be seen that the earlier suit was for eviction u/s 12(1)(a) of the Act, on the ground of non-payment of arrears of rent. The trial Court in the first suit granted the protection available u/s 12(3) of the Act to the respondents/defendants and instead of granting a decree of eviction which was specifically refused, the decree for recovery of rent was granted. Had it not been extension of the protection to a tenant against the eviction as provided under sub-section (3) of Section 12 of the Act, the decree of eviction would have been passed in the earlier suit because admittedly there was default of payment of rent of demise premises on the part of tenant. The law has been well settled now by the Apex Court in the case of Sobhagyamal and another (supra) where the Apex Court has categorically held that this protection is available once only. If even for the recovery of the rent for

which the decree was granted, a demand is made and the said demand is not fulfilled within the stipulated period, a tenant has no say to claim the protection under sub-section (3) of Section 12 of the Act. If such is allowed to continue like this that on every occasion and in every suit, the protection is available to the tenant, the insertion of the proviso under sub-section (3) of Section 12 of the Act by the legislature would render redundant and meaningless. This being so, such a claim made by the respondents/defendants that the earlier rent for which the decree was granted, was not to be computed as arrears of rent and no fresh demand could be made, cannot be accepted. Secondly, the protection of sub-section (3) of Section 12 of the Act is available only when the provisions of sub-section (1) of Section 13 of the Act are complied with. Section 13(1) of the Act reads thus :-

"13(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 any 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 at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto upto to 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 till the decision of the suit, appeal or proceeding, as the case may be."

14 : A bare reading of this provision makes it clear that not only the rent is required to be deposited by the tenant within one month from the receipt of the notice of appeal or suit, but he/she is further required to deposit the rent on each and every succeeding month on or before 15th of that month. On one default, the requirement of law is to seek condonation of the same because the Court has been given the power to condone such a default as is contemplated in this sub-section. Proviso to sub-section (3) of Section 12 of the Act talks about three consecutive defaults. That makes it clear that even for one and two default, no ground is available for granting a decree u/s 12(1)(a) of the Act, but in case of three consecutive defaults, the protection is automatically gone and the proceedings can be done u/s 13(6) of the Act or to grant a decree u/s 12(1)(a) of the Act. As has been pointed out, the original respondent on his own had moved an application pointing out the default committed by him in making the deposit of the rent after institution of the suit. For the said purposes, the application was considered and rejected by the trial Court vide order dated 16.2.2006. The said order was never called in question anywhere and it had become final. If the Court has refused to condone the default of payment of rent, that itself was enough to grant a decree u/s 12(1)(a) of the Act. The trial Court

could have proceeded to strike off the defence of the respondents/defendants, but since the entire evidence was recorded by that time, the case was closed for arguments, the trial Court did consider it proper and appropriate to decide the issue in the suit itself and not to strike off the defence of the respondents/defendants. If that was so, the trial Court was just and proper in granting the decree of eviction against the respondents/defendants u/s 12(1)(a) of the Act. The striking off defence at such a stage was not appropriate action to be taken as that would have debarred the respondent to participate in the proceedings. The proceedings being culminated in full except the hearing of the arguments of the counsel, it was not necessary to exercise the power under sub-section (6) of Section 13 of the Act. Keeping in view such a situation, the trial Court was just and proper in granting a decree u/s 12(1)(a) of the Act also. The cases cited by the learned counsel for the respondents, therefore, are distinguishable and in view of the law laid down by the Apex Court in case of Sobhagyamal and another (supra) are not applicable in the present case.

15 : Now coming to the consideration of such an aspect by the learned lower appellate Court. As has been pointed out, the learned lower appellate Court has completely misread the provisions of Section 12(3) of the Act and the proviso read with Section 13(1) of the Act and has misconstrued in holding that there was no power left with the trial Court to grant a decree for eviction u/s 12(1)(a) to the appellant/plaintiff. Further, the learned lower appellate Court has considered that since the arrears of rent was for the claim which was subject matter of earlier suit, both could not have been clubbed together and no decree could have been granted for eviction of the tenant for non-payment of such arrears of rent. The learned lower appellate Court further misread the provisions of law and totally failed to understand that in fact such a tenant was not entitled to any sympathetic consideration nor was entitled to be given the protection under sub-section (3) of Section 12 of the Act as the said protection was earlier granted in earlier suit which was only for eviction on the ground of non-payment of arrears of rent. Thus, the finding of the learned lower appellate Court cannot be affirmed. Consequently, answering the question of law framed in affirmative, this appeal is allowed. The judgment and decree of the learned lower appellate Court whereby the decree granted by the trial Court u/s 12(1)(a) of the Act is set aside, is hereby, set aside. The decree of eviction granted by the learned trial Court against the respondents/defendants u/s 12(1)(a) of the Act is affirmed. Looking to the facts in the present case, the parties to the appeal will bear their own costs.