
(2011) 01 MP CK 0046
In the Madhya Pradesh High Court
Case No : Second Appeal No. 387 of 2010

Smt Kanta Salaria and Others

APPELLANT

Vs

Prakash Chandra and Others

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 151
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 11, 12(1), 12(11), 13, 13(1)

Citation : (2011) ILR (MP) 1524

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

U. C. Maheshwari J.

1. The Appellants/Defendants have directed this appeal u/s 100 of the Code of CPC being aggrieved by the judgment and decree dated 24.12.2009 passed by 17th Additional District Judge (Fast Track Court), District Jabalpur in regular civil appeal No. 8-A/08 affirming the judgment and decree dated 22.10.07 passed by III Civil Judge Class-I Jabalpur in original civil suit No. 123-A/03, decreeing the suit of the Respondents against them for eviction with respect of the disputed residential premises on the grounds enumerated u/s 12(1)(a) and (o) of the Madhya Pradesh Accommodation Control Act, 1961 (In short "the Act").

2. The facts giving rise to this appeal in short are that the Respondents/Plaintiffs, being landlord of House No. 924 (Old No. 1644/3), situated in Ward No. 24 of Napier Town, Jabalpur, have filed the aforesaid suit for eviction against the Appellants contending that one Nihalchand, the predecessor in title of the Appellants, being tenant was in possession of the aforesaid disputed house. On purchasing the house by the Respondents, such Nihalchand, by attornment, has become the tenant of the Respondents. Subsequent to death of Nihalchand, the Appellants had accepted such tenancy on the same terms and conditions,

according to which said Nihalchand and thereafter the Appellants, being monthly tenant of the Respondents @ of Rs. 75/-per month were remained in occupation of such premises for residential purpose. The disputed premises is elaborately described in the plaint as well as shown in red color in the map annexed with the plaint. Initially the rent was deposited by the predecessor-in-title of the Appellant and subsequent to his death, was being paid by the Appellants. As the parties had good relations with each other, therefore, the receipt of depositing the rent was not given at any point of time to the Appellants. As per further averments, the Appellants, being defaulter in payment of rent, had not paid the same from the month of May,1989 upto October, 2001 i.e near about 149 months. Such arrears of the rent was Rs. 11,175/-. Besides this, the Respondents No. 1 to 3, the Plaintiffs, were in bonafide, genuine need of such accommodation for the residence of Respondent No. 3 and his family for which they did not have any other convenient and suitable alternate accommodation of their own in the town of Jabalpur. At present, Respondent No. 3 and his family is residing along with his mother and family of Respondent No. 2 in House No. 531, situated in Kotwali Ward Jabalpur. One brother of Respondent No. 3 who is under insanity, is also residing with him. It is also stated that the accommodation in which the Respondent No. 3 is residing with his mother and other family members is not sufficient for them as per their requirement. By mentioning some particulars, it is stated that looking to the standard of living of the Respondents, it is necessary for them to reside separately in different houses and while residing in such houses they would be in need of some premises also for the garage or their vehicles. It is also stated that after vacating the premises, Respondent No. 3 shall reconstruct the house for his alleged need. It is also stated that the wife of Respondent No. 3 did not have good relations with his mother Smt Champa Bai, as such, the daughter-in-law and mother-in-law did not have good relations and, in such premises, also it is not possible for them to reside together in one home. It is also pleaded that besides the tenanted accommodation, the Appellants and their predecessor, by encroaching the adjoining land of Respondents No. 1 to 3 near about 2290 sq.ft and without taking any consent or permission from the Respondents has made some permanent construction on the same. Such construction being illegal and contrary to the interest of the Respondents has caused substantial injury to the right and ownership of the Respondents with respect of such property. In such premises, the Municipal Corporation, Jabalpur had also given a notice to the Appellants but, however, by taking advantage of their relations with the officials of the Municipal Corporation, the Appellants successfully got closed such proceedings. Some of the part of such house is in possession of Respondents No. 1 to 3 in which their employee and some family members are residing and some of the part is being used for business of Respondent No. 1. Some times it is also used as guest house for their family guests. On such available grounds, before filing the suit, a notice dated 24.4.2001 (Ex.P/8) making demand of the arrears of the rent along with terminating the tenancy with the intimation to vacate the premises was given to the Appellants. Inspite the service of the same on the Appellants, neither the

arrears of the rent was paid or tendered nor the accommodation was vacated in compliance of the same. On the contrary, the same was replied vide dated 23.6.2001 (Ex.D/1) under the false pretext, on which, after expiry of the statutory period of two months as per requirement of Section 12(1)(a) of the Act, the impugned suit for eviction was filed against the Appellants on the grounds available u/s 12(1)(a),(m),(o) and (e) of the Act.

3. In the written statement of the Appellants, it is stated that the Respondents/Plaintiffs No. 1 to 3 have to plead their own case to prove their ownership. The map annexed with the plaint was also disputed. However, they admitted that they are the legal representatives of deceased Nihalchand. It is categorically stated that no default has been committed in payment of the rent of the premises with the averment that the Respondents/Plaintiffs are not entitled to receive the sum of the arrears of rent which had become barred by time, the demand of such arrears of the rent could be made only for the sum recoverable under the provisions of the Limitation Act. It is also stated that Appellant No. 2 had paid the rent regularly to Respondent No. 1 for which no receipt has been given to him. The alleged bonafide, genuine requirement of the disputed premises to the Respondents/Plaintiffs is also denied, with the averments that in the House of Champa Bai all necessary facilities are available to them. It is also stated that the Respondents/Plaintiffs are having their joint hindu family and besides the disputed premises they had some other alternate vacant accommodation of their own in Jabalpur for which some particulars and description was also given in the pleadings. In such premises, it is stated that the Respondents/Plaintiffs are having more suitable and convenient accommodations with all facilities for their alleged need. In further averments it is stated that they have not made any illegal construction in the tenanted premises or at the place adjoining to it. In the disputed portion four latrine and bathroom are included. One temporary shed is also coming in existence in the tenancy since long which was constructed with the consent of the Respondents/Plaintiffs. In such premises, it is denied that any construction contrary to the rights of the Respondents/Plaintiffs was carried-out by the Appellants in the disputed premises. Whatsoever repairing was done, the same was carried-out with the consent of the Respondents/Plaintiffs. In such repairing work, the Appellants have spent Rs. 6500/-. It is also stated that the Respondents/Plaintiffs, by giving some intimidation, were insisting the Appellants for enhancing the monthly rent @ of Rs. 500/-per month for which the Appellants were not prepared, on which by stating false averments, the present suit is preferred against them. With these averments, the prayer for dismissal of the suit is made.

4. In view of the pleadings of the parties, after framing the issues, the evidence was recorded and on appreciation of the same, the grounds of eviction enumerated u/s 12(1)(e) and (m) were not found to be proved and till that extent the suit was dismissed while the same was decreed on the grounds of arrears of rent u/s 12(1)(a) of the Act and also held that the Appellants have made some illegal construction contrary to the rights of the Respondents/

landlord and caused the injury to their rights u/s 12(1)(o) of the Act.

5. On challenging such decree by the Appellants herein before the subordinate appellate court, on re-appreciation of the evidence, by dismissing such appeal, the decree of the trial court was upheld by the appellate court, on which, the Appellants have come forward to this Court with this appeal.

6. Shri Ravish Agarwal, learned Senior Advocate assisted by Shri Pranay Verma, Advocate after taking me through the pleadings of the parties, their evidence available on the record and the exhibited documents said that in the available circumstances, the courts below while dismissing the suit of the Respondents/Plaintiffs on the grounds u/s 12(1)(e) and (m) of the Act ought to have dismissed the suit on the other grounds also. As such, the Respondents/Plaintiffs had failed to prove such grounds of eviction against the Appellants with all probability. In continuation, he said that while passing the decree by the trial court on the ground u/s 12(1)(o) of the Act and also on upholding the findings on such ground by the appellate court, both the courts had not taken into consideration the provision of Section 12(11) of the Act. While, on passing the decree on such ground, the courts below are bound to take the note of Section 12(11) of the Act and also bound to give appropriate direction in that regard and prayed for admission of this appeal on this ground also. However, he fairly conceded that unless involvement of the substantial question of law on aforesaid both the grounds u/s 12(1)(a) and (o) of the Act are found, this appeal could not be admitted for final hearing only on single ground for academic purposes. With these submissions, he further argued that undisputedly, after receiving the demand notice of the Appellant Ex.P/1, the dues of the rent were denied and no rent was either sent or tendered to the Respondent by the Appellants and after receiving the summons of the suit, the arrears of the rent was not deposited by the Appellants but in continuation he said that in pendency of the suit as well as in the appeal the recurring rent of the accommodation was always deposited in advance for 2-3 months or more than this. He also referred the receipts placed by the Appellants before the appellate court along with an application filed u/s 13(1) of the Act read with Section 151 of the Code of CPC for condoning the delay in depositing the rent. In this connection he also submitted that the Respondents/Plaintiffs could have recovered the arrears of rent of three years only which was legally recoverable under the Limitation Act and not beyond that. So such recoverable rent of preceding three years from the date of filing the suit was deposited by the Appellants in pendency of the appeal in the subordinate appellate court and an application for condoning the alleged delay in this regard was also filed. He further said that on proper appreciation of the averments of the application, the appellate court, by allowing such application ought to have condoned the delay in depositing the rent. As such there was bonafide conduct of the Appellants in non-depositing the alleged dues of the rent but without taking into consideration the averments of the IA with proper approach and also the circumstances of the Appellants family, contrary to the provisions of Section 13(1) of the Act their application was dismissed and, in such premises, the

decree of the trial court passed u/s 12(1)(a) of the Act has also been affirmed. In support of his contention, by placing his reliance on the reported case of this Court in the matter of Gurbachan Singh Vs. Vimlabai, and Manoharlal Gopilal Pande Vs. Dr. Abdul Mazid Khan, prayed for admission of this appeal on the proposed substantial questions of law annexed with the appeal memo.

7. Having heard the counsel, keeping in view his arguments, I have carefully gone through the record of both the courts below along with the impugned judgments and the aforesaid case laws cited for condoning the delay in depositing the arrears of rent.

8. As per concurrent findings of the court's below Appellants are found to be tenant of the Respondent in the disputed premises at the rate of Rs. 75/-per month, and such findings being in consonance with the pleadings and available evidence could not be interfered u/s 100 of the CPC. Thus, keeping in view such established relationship between the parties as landlord and tenant this Court has to examine the matter for admission of this appeal.

9. In the available circumstances, the court has to examine mainly three things in the matter to find out the circumstances whether this appeal is involving any substantial question of law requiring any interference u/s 100 of the CPC. The same are as follows:

firstly, had the court's below committed any substantial error on appreciation of the available record in passing the impugned decree on the ground enumerated u/s 12(1)(a) of the Act, secondly, while affirming such decree, the appellate court has committed any error in dismissing the Appellant's application filed for condoning the delay in depositing the outstanding arrears of the rent and thirdly the defence of the Appellants available to him under the Act with respect of ground of eviction was rightly struck-out by the courts below u/s 13(6) of the Act. To answer all these questions, the case law of the Apex Court in the matter of Jamnalal and Others Vs. Radheshyam, appears to be relevant in which it was held as under:

13. The tenant's liability to deposit the rent for any of the periods, noted above, in the court does not depend upon and has no relation to depositing the rent for any of the earlier periods. When the rate of rent payable each month and the quantum of arrears of rent are admitted, no problem arises in complying with Section 13(1) of the Act. Difficulty may, however, arise in complying with the two requirements of Sub-section (1) of Section 13, noted above, when dispute is raised by the tenant with regard to either the amount of rent payable by him or with regard to the person who is entitled to receive the rent.

14. Sub-section (2) of Section 13 of the Act takes care of the situation when there is dispute as to the amount of rent payable by the tenant and directs fixation of a reasonable provisional rent in relation to the accommodation, which will be a summary inquiry, by the court. The dispute may arise in any of the following circumstances;

(i) rate of rent and the quantum of arrears of the rent are in dispute though not the period for which arrears of rent are due;

(ii) rate of rent and the quantum of arrears of rent are in dispute and also the period for which it is due;

(iii) rate of rent is admitted but the quantum of arrears of rent or/and the period for which it is due are disputed.

15. A careful reading of Sub-section shows that the court is enjoined to fix a reasonable provisional rent, in relation to the accommodation, to be deposited or paid in accordance with the provision of Sub-section (1) if there is a dispute as to the amount of rent, payable by the tenant. The clause "the court shall" fix a reasonable provisional rent in relation to the accommodation clearly indicates that "any dispute as to the amount of rent" is confined to a dispute which depends on the rate of rent of the accommodation either because no rate of rent is fixed between the parties or because each of them pleads a different sum. Where the dispute as to the amount of rent payable by the tenant has no nexus with the rate of rent, the determination of such dispute in a summary inquiry is not contemplated under Sub-section (2) of Section

13. Such a dispute has to be resolved after trial of the case. Consequently, it is only when the obligations imposed in Section 13(1) cannot be complied with without resolving the dispute under Sub-section (2) of that section, that Section 13(1) will become inoperative till such time the dispute is resolved by the court by fixing a reasonable provisional rent in relation to the accommodation. It follows that where the rate of rent and the quantum of arrears of rent are disputed the whole of Section 13(1) becomes inoperative till provisional fixation of monthly rent by the court under Sub-section (2) of Section 13, which will govern compliance of Section 13(1) of the Act. But where rate of rent is admitted and the quantum of the arrears of rent is disputed, (on the plea that the rent for the period in question or part thereof has been paid or otherwise adjusted), Sub-section (2) of Section 13 is not attracted as determination of such a dispute is not postulated thereunder. Therefore, the obligation to pay/deposit the rent for the second and the third period afore mentioned, referred to in Section 13(1), namely, to deposit rent for the period subsequent to the notice of demand and for the period in which the suit/proceedings will be pending (that is future rent) does not become inoperative for the simple reason that Section 13(2) does not contemplate provisional determination of amount of rent payable by the tenant. As resolution of that category of dispute does not fall u/s 13(2) the tenant has to take the consequence of non-payment/deposit of rents for the said periods. If he fails in his plea that no arrears are due and the court finds that the arrears of rent for the period in question were not paid, it has to pass an order of eviction against the tenant as no provision of Section 13 of the Act protects him.

10. In view of the aforesaid legal position on examining the case at hand, it is apparent undisputed fact on record that during trial of the case inspite having

knowledge of the rate of monthly rent and the relationship of landlord and tenant between the parties neither the sum of outstanding arrears of rent nor the recurring rent was deposited by the Appellants. So, in such premises, voluntarily the Appellants have committed default in depositing the rent as the same was neither deposited within the statutory period from the date of the demand notice or within one month from the service of summons of the suit on the Appellants and thereby they committed default in depositing the same. As per contention of the Appellants' counsel the legally recoverable amount of arrears of the rent of preceding three years from the date of filing the suit was deposited by the Appellants on filing the appeal before the subordinate appellate court with a further submission, the Appellants were not obliged to deposit the arrears of the rent which had already become barred by time on the date of filing the suit. But in the light of the aforesaid supreme court decision, the submission of the Appellants counsel itself is sufficient to draw an inference that the Appellants committed the default in depositing the rent as per requirement of Section 13(1) of the Act and in such premises the alleged delay could not be condoned on the basis of the averments stated by the Appellants in their application filed before the subordinate appellate court for condoning the alleged delay in depositing such rent. After going through the averments of such IA and the records of the courts below I have not found any perversity in the findings of the courts below holding the Appellant has committed default in payment of the arrears and recurring rent of the premises in compliance of the provision of Section 13(1) of the Act and, pursuant to that, it could not be said that the courts below have committed any error in striking out the defence of the Appellants and passing the decree u/s 12(1)(a) of the Act.

11. In view of the aforesaid decision of the Apex Court governing the field of the involved question, the case law of this Court cited on behalf of the Appellant in the matter of Gurbachan Singh Vs. Vimlabai, and in the matter of Manoharlal Gopilal Pande Vs. Dr. Abdul Mazid Khan, are not helping them because the cited cases were decided by this Court long before giving the interpretation to Section 13 of M.P. Accommodation Control Act, 1961 by the Apex Court in the matter of Jamnalal (supra). In the aforesaid premises, I have not found any circumstance or substance in this appeal giving rise to any question of law rather than substantial question of law assailing the decree passed u/s 12(1)(a) of the Act or to consider any question for condoning the delay in depositing the rent u/s 13 of the Act.

12. Besides the above, long back considering such question in the matter of Bharosilal v. Rihan Ahmad 2002(1) MPWN 146, this Court has expressed the view that if the tenant want to claim the benefit of non-eviction then he has to deposit even the time barred rent. Undisputedly, as per the case of the Respondent/ Plaintiffs, the Appellants committed default in depositing the rent and the same was not deposited by them since the year 1989, therefore, in view of the aforesaid case law of this Court also, this appeal does not involve any substantial question of law on the aforesaid ground but in such premises also the courts

below have not committed any error in decreeing the suit on the ground enumerated u/s 12(1)(a) of the Act.

13. In view of the aforesaid discussion, in the lack of involvement of any substantial question of law, this appeal is not being admitted for final hearing on the question of Section 12(1)(a) and/or Section 13 of the Act, therefore, it is not necessary for the court to examine the position for admission of this appeal on the ground enumerated u/s 12(1)(o) of the Act but in order to avoid the technical complications between the parties, I deem fit to examine this matter to find out the possibility of framing the substantial question of law on such aspect also.

14. True it is that whenever the decree is passed on the ground u/s 12(1)(o) of the Act then while passing such decree the court is bound to take the note of Sub-Section 11 of Section 12 of the Act and court is bound to give some directions keeping in view such provision of Sub-Section 11 of Section 12 of the Act but I am of the considered view that whenever the eviction decree is passed on more than one grounds enumerated u/s 12 of the Act then on proving some other grounds of eviction as proved in the case at hand u/s 12(1)(a) of the Act, the subordinate court was not bound to take note of Section 11 and Section 12 of the Act for passing the appropriate direction in that regard while decreeing the suit u/s 12(1)(o) of the Act. For the sake of arguments, even if some direction is made under Sub-Section 11 of Section 12 of the Act even then the eviction of the Appellants from the decree passed u/s 12(1)(a) of the Act could not be stayed and in that circumstance firstly it is held that such question is not involving any substantial question of law and secondly, in view of the concurrent decree passed u/s 12(1)(a) of the Act against the Appellants I do not find fit to admit this appeal by framing any substantial question of law on Section 12(1)(o) of the Act only for academic purpose.

15. In the aforesaid premises, I have not found any perversity, infirmity, illegality in the impugned judgments giving rise to any substantial question of law requiring any consideration u/s 100 of the Code of CPC at the stage of second appeal. Consequently, this appeal being devoid of any such question is hereby dismissed at the stage of motion hearing. In the available circumstances there shall be no order as to the cost.