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## SHYAMCHARAN SHARMA

v.

DHARAMDAS

December 4, 1979

B

[V. R. KRISHNA IYER, R. S. PATHAK AND O. CHINNAPPA REDDY, JJ.]

C

*Madhya Pradesh Accommodation Control Act, 1961 (41 of 1961), Ss. 12, 13(1) and 13(6)—Suit for eviction of tenant for failure to pay arrears of rent—Monthly rent falling due after filing of suit—Default in payment of—Court whether can extend time for payment and condone delay—Protection against eviction—Whether tenant can claim.*

D

The respondent-landlord sought eviction of the appellant-tenant from the suit premises for failure to pay arrears of rent, despite service of notice of demand. The trial court found that the tenant was in arrears of payment of rent, but the tenant having deposited the arrears of rent within the time allowed by the court on his application the tenant was entitled to avail the protection of section 12(3) of the Madhya Pradesh Accommodation Control Act, 1961, and dismissed the suit for eviction.

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The landlord preferred an appeal and while the same was pending, the tenant filed an application under section 13(1) of the Act for condonation of delay in depositing the rent, month by month, which had become payable after the filing of the suit. On several occasions, when the suit and the appeal were pending before the trial court and the appellate court respectively, the tenant had deposited the monthly rent a day or two or three beyond the prescribed date, and the same had been received by the court and drawn out by the landlord, without any protest. The landlord, taking advantage of the filing of the tenant's application for condonation of delay, contended that the court had no power to extend the time for deposit of the monthly rent and that he was entitled to a decree for eviction consequent on the non-compliance with the provisions of section 13(1) of the Act. The appellate court negated this contention and dismissed the appeal. In the second appeal preferred by the landlord, the High Court held that the Court had no power to extend time and decreed the suit for eviction.

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In the tenant's appeal to this Court on the question whether the Court had the power to condone the delay in depositing the monthly rent falling due after the filing of the suit for eviction.

HELD :1. The court had the jurisdiction to extend time for deposit or payment of monthly rent falling due after the filing of the suit. [339 G]

H

2. In order to entitle a tenant to claim the protection of section 12(3), the tenant had to make payment or deposit as required by section 13. The arrears of rent should be paid or deposited within one month of the service of the writ of summons on the tenant or within such further time as may be allowed by the court, and should further deposit or pay every month by the 15th, a sum equivalent to the rent. [338 A-B]

3. Failure to pay or deposit a sum equivalent to the rent by the 15th of every month, subsequent to the filing of the suit for eviction will not entitle the landlord, straightaway, to a decree for eviction. The consequences of the deposit or payment and non-payment or non-deposit are prescribed by sub-sections (5) and (6) of section 13. [338 B]

4. A discretion is vested in the court under section 13(6) to order the striking out of the defence against eviction. [338 D]

5. If the court has the discretion not to strike out the defence of a tenant committing default in payment or deposit of rent as required by section 13(1), the court surely has the further discretion to condone the default and extend the time for payment or deposit. Such a discretion is a necessary implication of the discretion not to strike out the defence. Any other construction may lead, to a perversion of the object of the Act, namely, 'the adequate protection of the tenant.' [338 F-G]

6. Section 12(3) entitles a tenant to claim protection against eviction on the ground specified in section 12(1)(a) if he makes payment or deposit as required by section 13. As the court has under section 13, the power to extend the time for payment or deposit, payment or deposit, within the extended time will entitle the tenant to claim the protection of section 12(3). [338 H]

7. Express provision for extension of time for deposit or payment or rent falling due after the filing of the suit was not made in section 13(1) as the consequence of non-payment was dealt with by a separate sub-section, section 13(6). The discretion given to the court under section 13(6) must imply a discretion to condone the delay and extend the time in making deposit or payment under section 13(1). [339A, E]

*Jagdish Kapoor v. New Education Society* (1967) Jabalpur L.J. 859 disapproved.

*B. C. Kame v. Nem Chand Jain*, A.I.R. 1970 S.C. 981, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 854 of 1977.

Appeal by Special Leave from the Judgment and Order dated 2-8-1976 of the Madhya Pradesh High Court in S.A. No. 440/71.

*S. S. Khanduja and Lalit Kumar Gupta* for the Appellant.

*T. P. Naik and S. K. Gambhir* for the Respondent.

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J.—The respondent-landlord sought eviction of the appellant-tenant from the suit premises on two grounds : (i) failure to pay arrears of rent of Rs. 158.25 despite service of notice of demand and (ii) bonafide requirement of premises for landlord's personal occupation. The second ground was rejected by all the subordinate courts and we are no longer concerned with that ground. In regard to the first ground, the trial court found that the tenant was

**A** in arrears of payment of rent but that the tenant was entitled to the protection of s. 12(3) of the Madhya Pradesh Accommodation Control Act, 1961, as the tenant had deposited the arrears of rent within the time allowed by the Court on his application. When the appeal preferred by the landlord was pending before the Additional District Judge, Satna, the tenant filed an application for condonation of delay in depositing the rent, month by month, which had become payable after the filing of the suit, as stipulated by s. 13(1) of the Act. It appears that, on several occasions, when the suit and the appeal were pending before the trial court and the appellate court respectively, the tenant had deposited the monthly rent a day or two or three, beyond the prescribed date. The amount had been received by the court and drawn out by the landlord, apparently without any protest. Taking advantage of the filing of the tenant's application for condonation of delay, the landlord contended that the court had no power to extend the time for deposit of the monthly rent and that he was entitled to a decree for eviction consequent on the non-compliance with the provisions of s. 13(1) of the Madhya Pradesh Accommodation Control Act. The appellate court negated the landlord's contention and dismissed the appeal. The landlord preferred a Second Appeal to the High Court of Madhya Pradesh. The High Court, holding that the court had no power to extend time, decreed the suit for eviction. The tenant, having obtained special leave, has appealed to this Court.

**E** Shri Khanduja, learned counsel for the appellant, raised two contentions before us. The first contention was that the High Court was wrong in holding that the Court had no power to condone the delay in depositing the monthly rent falling due after the filing of the suit for eviction. The second contention was that, in the circumstances of the case, the respondent must be considered to have waived or abandoned the right to insist on dis-entitling the tenant of the protection to which he was otherwise entitled. Shri Naik, learned counsel for the respondent, contended to the contrary on both the questions.

**F** The Madhya Pradesh Accommodation Control Act, 1961, was enacted, as recited in the statement of objects and reasons, "for the purpose of controlling, letting of and rents of residential and non-residential accommodation and giving adequate protection to tenants of such accommodation in areas where there is dearth of accommodation". Section 12(1) of the Act provides that no suit shall be filed in any civil court against a tenant for his eviction from any accommodation except on one or more of the grounds specified therein. Several grounds are specified, such as, failure to pay the arrears of rent after the service of notice of demand, unlawful sub-letting of the whole or

part of the accommodation, creation of a nuisance, bonafide requirement of the accommodation by the landlord for his own occupation, causing of substantial damage to the accommodation etc. etc. The ground with which we are concerned is that mentioned in s. 12(1)(a) and it is : "that the tenant has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner". Thus, where a tenant is in arrears of rent, a landlord is obliged, before instituting a suit for eviction on that ground, to serve a notice of demand calling upon the tenant to pay or tender the whole of the arrears of rent within two months of the date of service of the notice. S. 12(3) provides that an order for the eviction of a tenant shall not be made on the ground specified in s. 12(1)(a), if the tenant makes payment or deposit as required by s. 13. S. 13, sub-ss. (1), (5) and (6) which are relevant for the present purpose are as follows :

"13. (1) On a suit or proceeding being instituted by the landlord on any of the grounds referred to in s. 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 up 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.

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(5) If a tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no decree or order shall be made by the Court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the Court may allow such cost as it may deem fit to the landlord.

(6) 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."

- A** It is true that in order to entitle a tenant to claim the protection of s. 12(3), the tenant has to make a payment or deposit as required by s. 13, that is to say, the arrears of rent should be paid or deposited within one month of the service of the writ of summons on the tenant or within such further time as may be allowed by the court, and should
- B** further deposit or pay every month by the 15th, a sum equivalent to the rent. It does not, however, follow that failure to pay or deposit a sum equivalent to the rent by the 15th of every month, subsequent to the filing of the suit for eviction, will entitle the landlord, straight-away, to a decree for eviction. The consequences of the deposit or
- C** payment and non-payment or non-deposit are prescribed by sub-ss. (5) and (6) of s. 13. Since there is a statutory provision expressly prescribing the consequence of non-deposit or non-payment of the rent, we must look to and be guided by that provision only to determine what shall follow. S. 13 (6) does not clothe the landlord with an automatic right to a decree for eviction; nor does it visit the tenant with the penalty of a decree for eviction being straightaway passed
- D** against him. S. 13(6) vests, in the court, the discretion to order the striking out of the defence against eviction. In other words, the Court, having regard to all the circumstances of the case, may or may not strike out the defence. If s. 13 were to be construed as mandatory and not as vesting a discretion in the Court, it might result in the situation that a tenant who has deposited the arrears of rent within the
- E** time stipulated by s. 13(1) but who fails to deposit thereafter the monthly rent on a single occasion for a cause beyond his control may have his defence struck out and be liable to summary eviction. We think that s. 13 quite clearly confers a discretion, on the court, to strike out or not to strike out the defence, if default is made in deposit or payment of rent as required by s. 13(1). If the court has the
- F** discretion not to strike out the defence of a tenant committing default in payment or deposit as required by s. 13(1), the court surely has the further discretion to condone the default and extend the time for payment or deposit. Such a discretion is a necessary implication of the discretion not to strike out the defence. Another construction may
- G** lead, in some cases, to a perversion of the object of the Act namely, 'the adequate protection of the tenant'. S. 12(3) entitles a tenant to claim protection against eviction on the ground specified in s. 12(1) (a) if the tenant makes payment or deposit as required by s. 13. On our construction of s. 13 that the Court has the power to extend the time for payment or deposit, it must follow that payment or deposit
- H** within the extended time will entitle the tenant to claim the protection of s. 12(3). One of the arguments advanced before us was that there was no express provision for extension of time for deposit or payment

of monthly rent subsequent to the filing of the suit whereas there was such express provision for payment or deposit of arrears of rent that had accrued before the filing of the suit. Obviously, express provision for extension of time for deposit or payment of rent falling due after the filing of the suit was not made in s. 13(1) as the consequence of non-payment was proposed to be dealt with by a separate sub-section, namely s. 13(6). Express provision had to be made for extension of time for deposit or payment of rent that had accrued prior to the filing of the suit, since that would ordinarily be at a very early stage of the suit when a written statement might not be filed and there would, therefore, be no question of striking out the defence and, so, there would be no question of s. 13(6) covering the situation.

In *Jagdish Kapoor v. New Education Society*<sup>(1)</sup>, a full bench of the Madhya Pradesh High Court held that s. 13(6) of the Madhya Pradesh Accommodation Control Act did not make it obligatory for the court to strike out the defence but vested in the court a discretion to strike out or not to strike out the defence. Having so held, the full bench stopped short of giving full effect to their conclusion by holding that the Court could condone the default and refuse to strike out the defence but it could not give the benefit of s. 12(3) or 13(5) to the tenant. We do not see any justification for adopting this narrow construction of ss. 12 and 13. In our view the discretion given to the court under s. 13(6) must be held to imply a discretion to condone the delay and extend the time in making deposit or payment under s. 13(1). In *B. C. Kame v. Nem Chand Jain*<sup>(2)</sup>, a tenant had committed default both in payment of arrears as well as in payment of the monthly rent which became payable after the filing of the suit. This Court took the view that on an application made by the tenant time for deposit or payment could be extended. Though the observations made by the Court read as if they were made with reference to the default in payment of arrears, a reference to the facts of the case as set out in the very judgment shows that there was default both in payment of the arrears of rent that had accrued before the filing of the suit and in payment of the monthly rent that fall due after the filing of the suit.

We are accordingly of the opinion that the Court has the jurisdiction to extend time for deposit or payment of monthly rent falling due after the filing of the suit. In that view it is not necessary to express our opinion on the question of waiver or abandonment. The appeal is allowed with costs and the suit for eviction is dismissed.

N.V.K.

*Appeal allowed.*

(1) (1967) Jabalpur L.J. 859.

(2) A.I.R. 1970 S.C. 981.