

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 264 of 2016

- Vashi Mohammad S/o Late Gafur Mohammad, Aged About 45 Years, Occupation Training R/o Muslim Ganj, Tirkapara, Raigarh, Chandani Chowk, Palace Road, Raigarh, District Raigarh (C.G.)....
(Defendant)

---- Appellant

Versus

- Latif Mohammad S/o Mohammad Ismail, Aged About 60 Years, Occupation Service, R/o Palace Road, Raigarh, Tahsil & District Raigarh (Chhattisgarh).....Plaintiff

---- Respondent

For Appellant : Shri H.S. Patel, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

28/07/2016

1. The suit filed by the respondent/plaintiff for eviction on the ground of Section 12(1)(a) of the Chhattisgarh Accommodation Control Act, 1961 (for short 'the Act, 1961) was decreed by the trial Court. In an appeal preferred by the defendant/tenant, that decree was affirmed by the First Appellate Court. Feeling aggrieved against the judgement and decree, second appeal under Section 100 of the Code of Civil Procedure (for short 'the CPC') has been filed by the defendant/tenant.
2. Shri H.S. Patel, learned counsel appearing for the appellant would submit that concurrent findings recorded by two courts below holding that the plaintiff is entitled for decree under Section 12(1)(a) of the Act, 1961 are perverse as the defendant has already deposited the

arrears of rent in the year 2015 and therefore, that perversity gives rise to substantial question of law for admission of this appeal.

3. I have heard learned counsel for the appellant and have gone through the judgements of the Courts below.

4. The two Courts below have clearly recorded a finding that defendant did not deposit the arrears of rent within two months from the date of receipt of notice statutorily issued by the plaintiff and also failed to deposit the rent even after receiving the summons and appeared before the trial Court. After appearance before the trial Court, the defendant/tenant only deposited the rent after passing of the order by the trial Court on 12-08-2010, on an application under Section 13(6) of the Act, 1961 and directed to deposit of rent within two months, then only the defendant deposited the arrears of rent before the Trial Court. The question whether such deposit can be considered to be valid deposit to avoid a decree under Section 12(1)(a) of the Act, 1961. This Court relying upon the decision of the Supreme Court in the matter of **Shivshankar Gurgar vs. Dilip**, reported in **2014 (1) Scale 52**, held in para 18 as under:

“18. In the considered opinion of this Court, arrears of rent deposited by the defendant/tenant in compliance of peremptory order passed by the trial Court on an application filed by the plaintiff/landlord

for striking out of the defence cannot be said to the compliance of Section 13(1) of the Act of 1961 read with Section 12(3) of the Act of 1961 unless in duly constituted application filed by the tenant for extension of time, Court extends the time for depositing the arrears of rent, the defendant/tenant cannot avoid eviction under Section 12(1)(a) of the Act.”

5. The above stated decision squarely applies to the facts of the case.

6. In view of the stated legal position, I do not find any illegality or perversity in the decree passed by the Trial Court duly affirmed by the First Appellate Court and the appeal deserves to be and is dismissed. However, at the request of learned counsel for the appellant/defendant, six months' time up to 31-01-2017 is granted to the appellant/defendant to vacate the accommodation subject to following conditions:

- (i) The defendant shall furnish an undertaking within a period of one month from today before the trial Court that it shall vacate the suit accommodation on or before 31-01-2017 and shall handover the peaceful possession to the plaintiff and that it shall neither create any third party interest in respect of the accommodation in question nor shall sublet the same.
- (ii) The defendant shall deposit the entire arrears of rent if not already deposited as well as costs within one

month from today and shall continue to comply with the provisions of Section 13(1) of the Act during the period for which it remains in occupation of the accommodation in question.

- (iii) In case of violation of any of the aforementioned conditions, the decree for eviction shall become executable forthwith.

7. No order as to cost(s).

Sd/-
(**Sanjay K. Agrawal**)
JUDGE