

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on: 21.10.2016****Order delivered on: 07.11.2016****Writ Petition (227) No. 298 of 2016**

Shabbir Hussain S/o. Abdul Rehman, age 60 years, R/o. Khaparganj, Beside Madarsa Irfaniya, Bilaspur, Tahsil and District Bilaspur (Chhattisgarh).

---Petitioner/Plaintiff**Versus**

Abdul Hanif S/o. Abdul Mazid, age 65 years, R/o. Khaparganj, Near Madarsa Irfaniya, Peti Karkhana, Bilaspur, Tahsil and District Bilaspur (Chhattisgarh).

---Respondent/Defendant

For petitioner : In person.

For respondent : Mr. Ahmad Hussain, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**ORDER [C.A.V.]**

1. The petitioner/plaintiff filed a suit for eviction and arrears of rent against the respondent/defendant stating *inter alia* that the plaintiff is the owner of suit accommodation (double storeyed building) and the first floor of the said suit accommodation was let out to the defendant in the month of April, 1998 on the monthly rent of ₹ 800/- for residential purpose and tenancy commences from the first day of English calendar month and ends on the last day of said month. It was also pleaded that the rent was enhanced to ₹ 2,000/- from the month of April, 2007,

but thereafter defendant stopped making payment of rent from the month of October, 2007 for which registered notice dated 03.12.2009 demanding arrears of rent was served to him which was replied by defendant on 31.12.2009, but he did not make the payment of rent and stated that Shri Aslam Hussain is the owner of suit accommodation and he is the tenant of Shri Hussain, led to filing of the instant civil suit for eviction and arrears of rent.

2. Respondent/defendant has filed his written statement before the trial court stating *inter alia* that plaintiff has filed suit for eviction on the basis of forged sale deed dated 06.08.1979. It has also been pleaded that Aslam Hussain is the owner of the suit accommodation by denying the title and ownership of plaintiff and he has taken the suit accommodation on rent from Shri Hussain and continuing in possession as a tenant of Shri Hussain.
3. The application filed by the petitioner under Section 13(6) of Chhattisgarh Accommodation Control Act, 1961 (hereinafter called as 'Act of 1961') was rejected by trial court by order dated 31.10.2015 declining to strike out the defendant's defence, whereas the petitioner's application under Section 151 of CPC was rejected by order dated 25.01.2016 and the application for review of order dated 25.01.2016 was rejected by order dated 23.02.2016.

4. Feeling aggrieved against above-stated orders, this writ petition under Article 227 of the Constitution of India has been filed by the petitioner herein.
5. Shri Shabbir Hussain petitioner/plaintiff appearing-in-person would submit that, the defendant has disputed his title and set up title in favour of Shri Aslam Khan and he is not depositing the rent, whereas the defendant is bound to deposit the rent under Section 13(1) of the Act of 1961 and in case of dispute as to the person to whom the rent is payable as in the instant case the defendant has disputed his ownership, the trial court ought to have directed the defendant to deposit the rent in C.C.D. and as such orders passed by the trial court deserve to be set aside.
6. Shri Ahmad Hussain learned counsel for the respondent/defendant would submit that, the trial court is absolutely justified in rejecting the applications filed by the petitioner. He would further submit that defendant is not the tenant of plaintiff and therefore he is not obliged to deposit the rent under Section 13(1) of the Act of 1961 and relied upon the judgment of the Supreme Court in the matter of **Modula India Vs. Kamakshya Singh Deo**¹.
7. I have heard the petitioner-in-person and learned counsel for the respondent and also considered their rival submissions made hereinabove and gone through the record with utmost

¹ AIR 1989 SC 162

circumspection.

8. The short question for consideration would be what would be the course available to the trial court in a suit for ejectment filed under Section 12(1) of the Act of 1961, where the defendant disputes and denies the relationship of landlord and tenant between them and sets up the ownership/landlordship on a third person.
9. In order to answer such a plea raised at the Bar it would be appropriate to notice Section 13 (1) and (3) of the Act of 1961, which read as under:-

“13. When tenant can get benefit of protection against eviction—(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 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 till the decision of the suit, appeal or proceeding as the case may be.

(2)

(3) If, in any proceeding referred to in sub-section (1), there is any dispute as to the person or persons to whom the rent is payable, the Court may direct the

tenant to deposit with the Court the amount payable by him under sub-section (1) or sub-section (2), and in such a case, no person shall be entitled to withdraw the amount in deposit until the Court decides the dispute and make an order for payment of the same.

(4) to (6) **** **** **** ”

10. On careful perusal of the above-stated provisions, it is *quit vivid* that in any proceeding under sub-section (1) of Section 13 of the Act of 1961, if there is any dispute as to whom the rent is payable by the tenant, the trial court may direct that the amount payable under sub-section (1) of Section 13 of the Act of 1961 be deposited in the court and no person would be entitled to withdraw the amount so deposited with the court till the dispute is finally decided by that court.

11. The Supreme Court in the matter of **Babulal Bhuramal and another v. Nandram Shivram and others**², considered the question and held as under:-

“8.The plaint in the suit in the City Civil Court admits that the defendants were landlords of the premises at various stages and the plaintiffs were their tenants. The suit, therefore, was essentially a suit between a landlord and a tenant. The suit did not cease to be a suit between a landlord and a tenant merely because the defendants denied the claim of the plaintiffs. Whether the plaintiffs were the tenants would be a claim or question arising out of the Act or any of its provisions which had to be dealt with by the Court trying the suit. On a proper interpretation of the provisions of S. 28 the suit contemplated in that section is not only a suit between a landlord and a tenant in which that relationship is admitted but also a suit in which it is claimed that the relationship of a landlord and a tenant within the meaning of the Act subsists between the

2 AIR 1958 SC 677

parties. The Courts which have jurisdiction to entertain and try such a suit are the Courts specified in S. 28 and no other.

9.If it is possible to avoid a conflict between the provisions of S. 28 and S. 29A on a proper construction thereof, then it is the duty of a Court to so construe them that they are in harmony with each other. It is possible to conceive of cases where in a suit under S. 28 a question of title to premises which does not arise out of the Act or any of its provisions may be determined incidentally. Any party to the suit aggrieved by such a determination would be free to sue in a competent Court to establish his title to such premises by virtue of the provisions of S. 29A. On the other hand, in a suit where a question of title entirely arises out of the Act or any of its provisions, the jurisdiction to try such a suit was exclusively vested in the Courts specified in S. 28 and no other. That is to say, a title which could not be established outside the Act but which arose under the provisions of the Act by virtue of a claim made thereunder must be determined by a Court specified in S. 28 and a title de hors the Act may be determined in any other Court of competent jurisdiction.”

12. Way back, the Division Bench of the Madhya Pradesh High Court in the matter of **Inderlal Balkiram v. Mahngi Bai Imratlal and others**³, considered the issue and held that even if the defendant has denied the relationship of landlord and tenant, then also provision contained in Section 13(1) of the Act of 1961 would apply and tenant is obliged to deposit the rent. The report states as under:-

“3.Once a suit for ejectment, on any of the grounds referred to in S. 12, is instituted, the provisions of sub-section (1) of section 13 operate against the defendant, and the Court acquires jurisdiction to deal with any claim or question arising under any of the provisions of section 13, no matter whether the relationship of landlord and tenant is admitted or denied by the defendant. Section 13(1) does not say, or intend

3 1967 MPLJ 125

to say, that the plea of the defendant will determine whether he is or is not liable to make any deposit under that provision. It proceeds on the basis that a suit by a person claiming to be a landlord has been filed against the person alleged to be his tenant on any of the grounds mentioned in section 12. It is plain from section 12 that in a suit for eviction, founded on any of the grounds mentioned therein, the plaintiff must allege that he is the landlord and that the defendant is his tenant. Therefore, the word “tenant” used in section 13(1) of the Act is merely connotative of the description which the plaintiff has given of the defendant and means nothing more than “defendant”. It does not imply a defendant who has found to be a tenant by the Court.”

13. The Madhya Pradesh High Court again in the matter of **Manaram v. Omprakash and others**⁴, following the principle of law laid down in **Inderlal Balkiram** (supra) held that, in a suit for eviction, defendant denying the plaintiff to be his landlord, the provisions of Section 13(1) of the Act of 1961 are still to be complied with and tenant is bound to deposit the rent, which will not be withdrawn till relationship is decided. The relevant extract states as under:-

“7. A look to the pleadings about the dispute raised in the written statement, filed by the petitioner, clearly shows that the dispute raised is that the respondent/plaintiff is not his landlord and there is no privity of contract between him and the plaintiff. When there exists such a dispute in a proceeding under section 13(1) of the Act, the Court under section 13 (3) may direct the tenant to deposit with the Court the amount payable by him under sub-section (1) and in such a case no person shall be entitled to withdraw the amount in deposit until the Court decides the dispute and makes an order for payment of the same, and that is what has been done in the present case by the two Courts below. Therefore, the petitioner cannot escape from the mandate of section 13(1) of the Act.....”

4 1990 J LJ 197

14. Thereafter, in the matter of Jamnalal and others v. Radheshyam⁵, Their Lordships of the Supreme Court considered the scheme of the Section 13 of the Act exhaustively and held as under:-

“10. The scheme of Section 13 of the Act suggests that the provisions thereof are intended for the benefit of both the tenant as well as the landlord. While Section 13 affords protection to a defaulting tenant, willing to abide by the obligation to pay the rent regularly, against eviction on the ground of default in payment of rent, it also ensures payment of rent to the landlord, which he is entitled to receive for both the pre-litigation period as well as during the pendency of the litigation. A perusal of sub-section (1) of Section 13 discloses that it imposes twin obligations on the tenant against whom a suit or proceeding is instituted on any of the grounds mentioned in sub-section (1) of Section 12. The first is that 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, the tenant shall deposit in the court or pay to the landlord an amount, representing (a) arrears of rent for the period for which the tenant may have made default, and (b) rent for the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made, duly calculating the same at the rate of rent at which it was paid. And the second is payment/deposit of rent for the period thereafter, that is, future rent which he shall continue to deposit or pay, month by month, by the 15th of each succeeding month, at that rate. For the purpose of depositing the amount of rent, sub-section (1) refers to three periods in chronological order, i.e.,

(i) period for which arrears of rent are due, which is the subject-matter of notice of demand served on the tenant;

(ii) period for which rent became due subsequent to the notice of demand till the date of deposit of rent in court; and

(iii) period for which rent will become due in future, after the date of deposit as aforementioned, till the decision of suit or appeal.

5 2000(2) J LJ 1 : (2000) 4 SCC 380

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15. Sub-section (3) of Section 13 of the Act deals with a case where the dispute is as to the person or persons to whom the rent is payable. If the court is satisfied that the dispute raised by the tenant in regard to the person or persons to whom the rent is payable is false or frivolous, sub-section (4) says, the court in its discretion may order striking out the defence against the eviction instead and proceed with the hearing of the case. So also sub-section (6), in the case of non-compliance in depositing or payment of rent of any amount as required by Section 13(1) of the Act, enables the court to order striking out the defence against the tenant instead and proceed with the hearing of the suit. Sub-section (5) directs that if the tenant makes deposit or payment as required under sub-section (1) or sub-section (2) of Section 13 of the Act, the court is barred from making a decree or order for the recovery of the possession of the accommodation on the ground of default in payment of rent by the tenant but the court may allow such cost as it may deem fit to the landlord.

16. Where the rate of rent payable by the tenant for the accommodation is not in dispute and the quantum of arrears of rent is not paid/deposited either because the tenant pleads that he has paid the arrears of rent or adjusted the same towards the amounts payable by the landlord or in the discharge of his liability, the tenant succeeds or fails on his plea being accepted or rejected in that behalf by the court, in such a case sub-section (2) is not attracted because the plea taken by the tenant has to be adjudicated by a full-fledged trial and not in a summary inquiry postulated for fixing a reasonable provisional rent in relation to the accommodation in question. This being the position a tenant takes the risk of suffering an order of eviction by raising a dispute in regard to the amount of rent payable by him while admitting the rate of rent and not making payment or deposit under sub-section (1) because where the dispute raised by the tenant is outside the ambit of sub-section (2), sub-section (1) of Section 13 of the Act does not become inoperative.

17. There can be no debate on the proposition that the tenant is relieved of the consequences of default in payment of rent on his paying/depositing the rent under sub-section (1) at the rate last paid or at the rate fixed provisionally under sub-section (2) of Section 13 of the Act but if the tenant takes a false or frivolous plea in

regard to the amount of rent payable by him, which does not involve fixation of provisional rent under Section 13(2), he runs the risk of suffering an order of eviction either under sub-section (6) of Section 13 or after trial under Section 12(1)(a) of the Act. We are not persuaded to accept the contention of the learned amicus that the legislature, having provided a ground for eviction of a tenant under Section 12(1)(a) of the Act, has not merely diluted but has nullified its effect by enacting Section 12(3) and sub-sections (2) and (5) of Section 13 of the Act. A liberal but harmonious construction of clause (a) of sub-section (1), sub-section (3) of Section 12 and sub-sections (1), (2), (5) and (6) of Section 13 does not lead us to the conclusion that clause (a) of sub-section (1) of Section 12 has in effect been rendered illusory.

15. Following the law laid down by the Madhya Pradesh High Court and the Supreme Court in above-stated cases, if the facts of the case are examined it is *quit vivid* that in the suit for eviction and arrears of rent filed by petitioner/plaintiff, defendant has denied the relationship of landlord and tenant with the plaintiff, and not complying the provisions contained in Section 13(1) of the Act of 1961 as he has not deposited the arrears as well as not depositing the current rent. Since the provisions of Section 13(1) of the Act of 1961 would be applicable, the defendant is required to deposit the rent in C.C.D. as provided in Section 13 (3) of the Act of 1961 as the person to whom the rent is payable is in dispute. Therefore the trial court could have directed the defendant to deposit the rent in C.C.D. as provided under Section 13(3) of the Act till the relationship is decided by that Court. Thus the trial court has committed legal error in not doing so and rejecting the applications filed by the petitioner.

Concludingly, the impugned orders are set aside and respondent/defendant is directed to deposit the entire rent in C.C.D. within one month from the date of appearance before the trial court *i.e.* on 28.11.2016. Parties are directed to appear before the trial court on said date, on failure to deposit the rent plaintiff would be at liberty to repeat his application under Section 13(6) of the Act of 1961, however, parties will not be entitled to withdraw the amount till the relationship between the plaintiff and defendant is finally decided by the trial court. The suit filed by plaintiff is pending since 30.03.2010 and there is no substantial progress in the suit, therefore, the trial court is directed to expedite the trial of suit and conclude it expeditiously preferably within a period of four months from the date of receipt of a copy of this order.

16. The writ petition is allowed to the extent indicated hereinabove.

No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-