

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.414 of 2015

Shankar Lal Vyas (Died) Through LRs

1. Ashok Kumar Vyas, aged about 66 years.
2. Anand Kumar Vyas, aged about 62 years.
3. Om Prakash Vyas, aged about 56 years.
4. Shiv Kumar Vyas, aged 51 Years.

All are sons of Late Shankar Lal Vyas, R/o Chbali Ghati, Kattri Maholla, Bikaner (Rajasthan)

5. Smt. Pushpa Devi, W/o Shri Purshottam Purohit, R/o Chainpur, Jaisalmer (Rajasthan)

(Plaintiffs)
---- Petitioners

Versus

1. Sripal Sharma, S/o Shri Nemichand Sharma, aged about 60 years.
2. Santosh Sharma, S/o Shri Sripal Sharma, aged about 32 years.

Both residents of Kailash Nagar, Rajnandgaon (C.G.)

(Defendants)
---- Respondents

For Petitioners: Mr. Vivek Chopda, Advocate.
For Respondents: Mr. Parag Kotecha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

24/11/2016

1. The trial Court by its impugned order has rejected the application under Section 13(6) of the Chhattisgarh Accommodation Control Act, 1961 (for short 'the Act') declining to exercise the jurisdiction vested in it by the provisions contained in Section 13(6) of the Act against which this writ petition has been preferred under Article 227 of the

Constitution of India by the original plaintiff.

2. Mr. Vivek Chopda, learned counsel appearing for the petitioners / plaintiffs, submits that the provisions contained in Section 13(6) of the Act are mandatory and therefore the trial Court ought to have allowed the application striking-out the defence of the defendants / tenants.
3. Whereas, Mr. Parag Kotecha, learned counsel appearing for the respondents / defendants, submits that the provisions contained in Section 13(6) of the Act are directory as well as discretionary and since the dispute is to the title, the trial Court is absolutely justified in rejecting the application under Section 13(6) of the Act.
4. I have heard learned counsel for the parties, perused the order impugned and considered the rival submissions made on behalf of the parties.
5. The question as to whether the provision of Section 13(6) of the Act is discretionary or not came up before a Full Bench of the Madhya Pradesh High Court in the matter of **Jagdish Kapoor v. The New Education Society**¹ in which the Full Bench of the Madhya Pradesh High Court has clearly answered holding that Section 13(6) of the Act is not mandatory and Court has discretion which has to be exercised judicially having regard to the facts and circumstances of each case and finally, answered the reference holding that the provision of Section 13(6) of the Act is not mandatory. In paragraphs 11 and 12 of the order, the Full Bench has crystallized continuously as under: -

"11. In our judgment, under section 13 (6) it is not compulsory for the Court to strike out the defence on finding that the tenant has failed to deposit or pay any

1 1967 M.P.L.J. 837

amount as required by section 13. The Court has discretion in the matter of striking out of the defence and that discretion has to be exercised judicially having regard to the facts and circumstances of each case.

12. The view expressed by Golvalker, Bhargava and Surajbhan JJ, in the cases referred to earlier and by Krishnan J, in *Laxmi Kumar Baori's case*² that section 13 (6) is mandatory, with all respects to the learned Judges, is not correct."

6. It is also well settled law that if there is a dispute as to relationship of landlord and tenant and to whom the amount is payable, the trial Court may direct for deposit of rent till the dispute of landlord-tenant relationship is finally decided, before the trial Court which has also been held in **Smt. Sona Bai** (supra).

7. In the matter of **Kamla Devi (Smt) v. Vasdev**³, the Supreme Court while dealing with the Delhi Rent Control Act, 1958 has held that the provisions contained in Section 15(7) of the said Act, which gives a discretion to the Rent Controller to strike out the defence, are not mandatory provisions for striking out the defence of the tenant against eviction and observed as under in paragraph 23: -

"23. We are unable to uphold the contention of the appellant that the case of [Ram Murti v. Bhola Nath](#)⁴ was wrongly decided and reliance was wrongly placed in that case on the decision of a Bench of three Judges of this Court in the case of Shyamcharan Sharma v. Dharamdas⁵. In our view, sub-section (7) of [Section 15](#) of the Delhi Rent Control Act, 1958 gives a discretion to the Rent Controller and does not contain a mandatory

2 Civil Revn. No.44 of 1966 decided on 2-12-1966 (Gwalior)

3 (1995) 1 SCC 356

4 (1984) 3 SCC 111

5 (1980) 2 SCC 151

provision for striking out the defence of the tenant against eviction. The Rent Controller may or may not pass an order striking out the defence. The exercise of this discretion will depend upon the facts and circumstances of each case. If the Rent Controller is of the view that in the facts of a particular case the time to make payment or deposit pursuant to an order passed under sub-section (1) of [Section 15](#) should be extended, he may do so by passing a suitable order. Similarly, if he is not satisfied about the case made out by the tenant, he may order the defence against eviction to be struck out. But, the power to strike out the defence against eviction is discretionary and must not be mechanically exercised without any application of mind to the facts of the case."

8. In **Shyamcharan Sharma** (supra), the Supreme Court while considering Section 13(6) of the Act of 1961 has held in no uncertain terms that Section 13(6) of the Act of 1961 is discretionary in nature and court has power under Section 13(6) to condone delay in depositing rent and condensely crystallized as under: -

"4. ... Section 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 straightway passed against him. Section 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 Section 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 time stipulated by Section 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 Section 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 Section 13(1). If the court has the discretion not to strike out the defence of a tenant committing default in payment or deposit 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. Another construction may lead, in some cases, to a perversion of the object of the Act, namely, 'the adequate protection of the tenant'. Section 12(3) entitles a tenant to claim protection against eviction on the ground specified in Section 12(1)(a) if the tenant makes payment or deposit as required by Section 13. On our construction of Section 13 that the court has the power to extend the time for payment or deposit, it must follow that payment or deposit within the extended time will entitle the tenant to claim the protection of Section 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 Section 13(1) as the consequence of non-payment was proposed to be dealt with by a separate sub-section, namely Section 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 Section 13(6) covering the situation."

9. In the case in hand, the trial Court has clearly recorded a finding that the defendants have pleaded to be owners of the suit accommodation by virtue of will in their favour and have declined to exercise the discretion in favour of the original plaintiff by striking out the defence. Once the discretion has been exercised, it would be inappropriate to strikeout the defence of the respondents / defendants. It has not been shown that the trial Court has not exercised the discretion judicially and it has been exercised arbitrarily, capriciously or perversely. Therefore, once the discretion has been exercised by the trial Court judicially, this Court in exercise of jurisdiction under Article 227 of the Constitution of India would not like to interfere.
10. Applying its earlier decision in the matters of **Surya Dev Rai v. Ram Chander Rai**⁶ and **Shalini Shyam Shetty v. Rajendra Shankar Patil**⁷, the Supreme Court in the matter of **Sameer Suresh Gupta through PA Holder v. Rahul Kumar Agarwal**⁸ has held that supervisory jurisdiction under Article 227 of the Constitution of India is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. It has also

6 (2003) 6 SCC 675

7 (2010) 8 SCC 329

8 (2013) 9 SCC 374

been held that supervisory jurisdiction or certiorari jurisdiction is not available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion.

11. In view of the above, the writ petition deserves to be dismissed and is accordingly dismissed. However, the trial Court is directed to expedite the trial and conclude it expeditiously preferably within a period of six months from the date of receipt of a copy of this order. Nothing in this order can be construed as an opinion expressed by this Court on the merits of the case. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge