

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.152 of 2016

Pawan Verma, S/o Late Shri Gulab Verma, aged about 56 years,
R/o Village & Post Tarpongi, P.S. Dharsiwa, Tahsil Tilda, District
Raipur (C.G.)

(Plaintiff)
---- Petitioner

Versus

Sanjay Kumar Hanumanta, S/o Shri T.P. Hanumanta, R/o Village
Khairkhut, Tahsil Tilda, District Raipur (C.G.)

(Defendant)
---- Respondent

For Petitioner: Mr. Anand Shukla, Advocate.
For Respondent: Mr. Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

15/11/2016

1. The petitioner / plaintiff filed a suit for ejectment and arrears of rent against the respondent / defendant and also filed an application under Section 13(6) of the Chhattisgarh Accommodation Control Act, 1961 (for short 'the Act') stating inter alia that the defendant is not paying rent after receipt of summon of the trial Court and not even paying current rent and therefore, the defence of the defendant be struck off under the said provision. The trial Court by its impugned order dated 9-12-2015 held that there is serious dispute of relationship of landlord and tenant between the parties, issue has also been framed in that regard and question of relationship would be decided between the plaintiff and the defendant only after recording evidence and therefore the defence

of the defendant cannot be struck off at this stage, and rejected the application filed under Section 13(6) of the Act. Feeling aggrieved and dissatisfied against the order rejecting the application under Section 13(6) of the Act, this instant writ petition has been preferred by the petitioner / plaintiff under Article 227 of the Constitution of India.

2. Mr. Anand Shukla, learned counsel appearing for the petitioner / plaintiff, would submit that the provision of Section 13(6) of the Act is mandatory in nature and even if the tenant is disputing the relationship of landlord and tenant between them, yet he has to comply the provision contained in Section 13(3) of the Act and continue to deposit the rent till the relationship is finally decided between the parties by that Court and therefore the trial Court is absolutely unjustified in rejecting the application under Section 13(6) of the Act. He would rely upon a decision of the Madhya Pradesh High Court in the matter of **Smt. Sona Bai and others v. Khoob Chand**¹ to buttress his submission.

3. On the other hand, Mr. Manoj Paranjpe, learned counsel appearing for the respondent / defendant, would submit that the plaintiff's brother Janak Lal Verma has filed suit against the plaintiff (i.e. his brother) for declaration of title and the respondent herein / defendant is tenant of Janak Lal Verma. He would further submit that the defendant is paying rent continuously to Janak Lal Verma and has also filed documents showing the details of deposit of rent to Janak Lal Verma and therefore if the defendant is directed to deposit rent, it will be causing great difficulty as he had already

1 AIR 1993 MP 173

paid all the rent due to Janak Lal Verma. He would also submit that the provision of Section 13(6) of the Act is not mandatory and is rather discretionary and in the fact situation of the present case, the trial Court is absolutely justified in exercising the discretion rejecting the application filed under Section 13(6) of the Act whereas, the dispute of landlord-tenant between the parties is pending and the suit between the petitioner herein / plaintiff and his brother Janak Lal Verma to whom the respondent herein / defendant is paying rent is also pending which has been duly demonstrated before the trial Court.

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. In order to decide the dispute, it would be appropriate to notice Section 13(6) of the Act which reads as follows: -

"(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, appeal or proceeding, as the case may be."

6. A careful perusal of the aforesaid provision would show that the Legislature has used the word 'may' by giving discretion to the trial Court even if the tenant fails to deposit or pay the amount as required by Section 13 of the Act. It is discretionary for the trial Court either to struck off the defence or may or may not struck off the defence, as such, the nature of order to be passed by the trial Court on that application is purely discretionary.

7. 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**² 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 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 SurajbhanJJ, in the cases referred to earlier and by Krishnan J, in *Laxmi Kumar Baori's case*³ that section 13 (6) is mandatory, with all respects to the learned Judges, is not correct."

8. 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

² 1967 M.P.L.J. 837

³ Civil Revn. No.44 of 1966 decided on 2-12-1966 (Gwalior)

been held in **Smt. Sona Bai** (supra).

9. In the matter of **Kamla Devi (Smt) v. Vasdev**⁴, 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 Nath⁵ 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. Dharamdas⁶. 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 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."

4 (1995) 1 SCC 356

5 (1984) 3 SCC 111

6 (1980) 2 SCC 151

10. 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."

11. In the case in hand, the trial Court has clearly recorded a finding that the case of the defendant is that he is paying rent to the plaintiff's brother and suit is also pending between the petitioner / plaintiff and his brother and details of rent has also been filed, and in the circumstances, the trial Court has recorded a finding that it

would be inappropriate to strike out the defence of the respondent / defendant. 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.

12. Applying its earlier decision in the matters of Surya Dev Rai v. Ram Chander Rai⁷ and Shalini Shyam Shetty v. Rajendra Shankar Patil⁸, the Supreme Court in the matter of Sameer Suresh Gupta through PA Holder v. Rahul Kumar Agarwal⁹ 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 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

7 (2003) 6 SCC 675

8 (2010) 8 SCC 329

9 (2013) 9 SCC 374

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.

13. 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. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge