

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 760 of 2016

- M/s Central Automobiles Through The Owner Shri Shankar Rao, S/o. Late Shri H. B. Rao, Age 61 Years, Address- Mahatma Gandhi Road, Near Manju Mamta Hotel, Raipur, District Raipur (Chhattisgarh)

---- Petitioner

Versus

- Saurabh Natthani S/o. Shri Narayan Natthani, Aged About 30 Years R/o. Saddani Chowk, Sadar Bazar, Raipur, Tahsil & District Raipur (Chhattisgarh)

---- Respondent

For Petitioner	:	Shri Adhiraj Surana, Advocate
For Respondent	:	Shri Vikram Singh, Advocate

Hon'ble The Acting Chief Justice

Order On Board

06/03/2017

1. With the consent of the parties, this petition is disposed of finally at the motion stage itself.
2. Plaintiff/respondent herein filed a suit against the defendant/petitioner herein under Section 12 (1) (a), (d) & (h) of the CG Accommodation Control Act, 1961 (for short 'the Act of 1961') praying for eviction of the petitioner herein on the ground of non-payment of rent of the tenanted accommodation for a period of three years preceding from filing of the plaint and that the tenanted accommodation is in dilapidated condition. During the pendency of eviction suit, the plaintiff/respondent herein filed an application under Section 13 (6) of the Act of 1961 for striking out the defence of the defendant/petitioner herein as he failed to deposit the rent

for use and occupation of tenanted premises from the date of filing of suit till the date of filing of application. The Court below vide order dated 4.10.2016 directed the petitioner herein to deposit the entire arrears of rent within a period of 30 days from the date of order failing which his defence will be struck off and a further direction was given to the petitioner that he shall continue to deposit the monthly rent from month to month till final disposal of the matter. Since the petitioner herein did not comply with the order dated 4.10.2016, the Court below vide order dated 22.11.2016 struck off the defence of the petitioner for non-compliance of the provisions of Section 13 (6) of the Act of 1961.

3. Counsel for the petitioner submits that due to financial constraints the petitioner could not pay the rent, however, now he has deposited rent payable upto February, 2017 i.e. Rs.1,29,600/-. He further submits that on account of striking out of the defence of the petitioner, he will not be in a position to defend his case on all available grounds and the same would cause irreparable loss to him. He further submits that if the impugned order striking out the defence of the petitioner is not set aside, irreparable loss would be caused to him which would not be compensated in any manner. He also submits that the petitioner is ready to pay the suitable cost also.
4. Counsel for the respondent submits that till date the petitioner has not deposited the entire amount of rent. According to the respondent, total arrears is for 58 months i.e. Rs.1,56,600/- at the rate of Rs.2700/- per month, whereas the petitioner has only deposited Rs.1,29,600/- and therefore, the petitioner may be directed to deposit the remaining arrears of rent.
5. I have heard counsel for the parties and perused the impugned orders.

6. Admittedly, the petitioner-tenant fails to comply with the orders of the Court below giving direction for depositing the rent in arrears, but this Court feels that failure to comply with an earlier direction should not necessarily visit the tenant with the consequence of his defence being struck off because there might be myriad situations in which default may be committed. The provisions contained in Section 13 (6) of the Act of 1961 have been held to be not mandatory but discretionary by the Full Bench of the Madhya Pradesh High Court in the matter of **Jagdish Kapoor v The New Education Society** reported in **1967 MPLJ 837**. Likewise, in the matter of **Shyamcharan Sharma v. Dharamdas** reported in **(1980) 2 SCC 151**, the Supreme Court while dealing with Section 13 (6) of the Act of 1961 has held that Section 13 (6) is discretionary in nature and the Court has power and jurisdiction to condone the delay in depositing rent.
7. Therefore, the petition is allowed and the impugned order of the trial Court striking off the defence of defendant/petitioner is set aside, subject to petitioner's paying a cost of Rs.5,000/- (Five Thousand only) to the respondent herein and depositing remaining amount of rent in arrears with the Court below before the next date of hearing. On doing so, the defendant/petitioner be permitted to raise his defence in the eviction suit.
8. As the matter relates to eviction, the trial Court is directed to decide the suit, which is pending since the year 2011, within a period of three months from the next date of hearing fixed before the Court below. It is made clear that the matter be decided as per its own merit in accordance with law and without any influence of the present order.

Sd/-
(Pritinker Diwaker)
Ag. Chief Justice