

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on : 20.07.2018

Order delivered on : 09.08.2018

WP227 No. 269 of 2015

1. M/s Blazeflash Couriers Limited through Its Manager Ajay Singh Chouhan
Near Bal Ashram Behind The Medical Complex, Kachahri Chouk, Raipur
Police Station And District Raipur Chhattisgarh , Chhattisgarh
2. M/s Blazeflash Couriers Limited Through its B.M.D. Shri S.D. Agrawal
Blazeflash House, 2e/8 Jhandewalan Ext. New Delhi 110055

---- Petitioners

Versus

- Chanchal Sethiya S/o Akharaj Sethiya Aged About 40 Years R/o
Padmanabhapur Durg, Police Station And District Durg Chhattisgarh

---- Respondent

For petitioners	: Shri YC Sharma, Advocate
For respondent	: Shri Ashish Surana, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

CAV Order

1. The petitioners by this instant petition are challenging the legality and propriety of the impugned order dated 24.02.2015 passed by the learned 9th Additional District Judge, Raipur in Civil Suit- 39-A/2011 whereby the learned trial Court in a suit for eviction filed under provisions of Section 13(6) of the Chhattisgarh Accommodation Control Act, 1961 (for short, 'the Act of 1961'), allowed the application filed by the respondent.
2. Brief facts leading to the case are, respondent/plaintiff/landlord is owner of one shop situated near Bal Ashram behind medical complex,

Kacheri Chowk, Raipur. The shop is situated at the first floor and having maginane floor.

3. The petitioners/ defendants/ tenants have taken the aforementioned shop owned by respondent on rent for the purpose of courier service ie commercial purpose under agreement dated 26.02.2009 with one of the conditions that in every three years, rent will be increased by 15% of the agreed rent. As per agreement, tenant was to pay rent on first day of each month of English calendar. The rent agreed to be paid was Rs.7,000/- per month.

4. When respondent/ landlord asked petitioners/ tenants to vacate the suit premises for their *bona fide* need, some dispute arose between the parties. When the petitioners/ tenants failed to vacate the suit premises and also stopped paying rent, then the respondent/ landlord filed a Civil Suit before the competent Civil Court for eviction of the petitioners from the suit accommodation under provisions of Section 12(1)(a) and 12(1)(f) of the Act of 1961 claiming arrears of rent of Rs.63,000/-.

5. The petitioners submitted their reply and denied the claim of respondent and further stated that the respondent took loan of Rs.96,500/- from them with an understanding that the said amount will be adjusted towards rent. But the respondent not adjusted the loan amount towards rent. He further disputed amount of monthly rent and denied the grounds of eviction.

6. During the pendency of the suit for eviction and looking to the dispute raised with regard to the monthly rent by the petitioners/ tenants,

the learned trial Court passed an order for fixing the standard rent on 19.03.2013.

7. When the petitioners/ tenants did not comply with the provisions of the Act of 1961 of paying monthly rent to the respondent/ landlord, then the respondent/ landlord moved an application under Section 13(6) of the Act of 1961 for striking out the defence of petitioners/ tenants vide Annexure P/4. The petitioners/ tenants have resisted the said application and specifically pleaded that they have paid an amount of Rs.96,500/- as advance rent, but without adjusting the advance amount towards the rent. It is also pleaded by the petitioners/ tenants that the respondent/ landlord should first adjust the advance amount towards rent and then they will deposit the balance amount.

8. The learned trial Court allowed the application under Section 13(6) of the Act of 1961 and struck out the defence of the petitioners/ tenants by impugned order.

9. Learned counsel for the petitioners submitted that the petitioners under confusion, that the amount which was advanced by them ie Rs.96,500/- would be adjusted first and it is only thereafter, they are required to pay current monthly rent. He further submitted that the petitioners also deposited some rent in CCD at the rate fixed by the learned trial Court. Learned counsel only prays for one last opportunity to the petitioners to pay all arrears of rent from the date of fixing of standard rate till date after the adjustment of the amount deposited in CCD of Court.

10. Learned counsel appearing for the respondent/ landlord do not oppose the prayer made by learned counsel appearing for the petitioners and submits that the petitioners may be directed to pay entire arrears of rent within specified time after adjustment of rent paid by them in CCD of the Court only.

11. I have heard learned counsel for the parties. From perusal of the impugned order it reflects that the learned trial Court recorded the plea raised by the petitioners that advance amount/ loan amount of Rs.96,500/- was not adjusted towards arrears of rent in order, but while deciding the application under Section 13(6) of the Act of 1961 and giving its finding, the learned trial Court neither discussed nor any finding was given as to why the amount of Rs.96,500/- not to be adjusted or after adjusting what will be the amount due, but straight away passed the impugned order by calculating the arrears of rent from date of fixing standard rent and struck out defence of petitioners.

12. The provisions of Section 13 (6) of the Act of 1961 are not mandatory but it has been held to be discretionary by the Hon'ble High court of Madhya Pradesh in number of its judgements. The striking out of defence under the provisions of 13(6) of the Act of 1961 is not mandatory and there is a discretion in the matter and that has to be exercised judicially having regard to the circumstances of the case.

13. The striking out of a defence is a penal provision held in accord with the intent and spirit of law and defendant is able to show the *bona fide* reason then, atleast one further opportunity could have been granted to

the tenant on the expiry of time originally granted. That will be in consonance with the judicial exercise of discretion.

14. The submissions made by the learned counsel for the petitioners proposing for grant of an opportunity for depositing the entire arrears of rent from the date of fixing of the standard rent till date within some prescribed time appears to be *bona fide* prayer, particularly in view of the impugned order wherein the learned trial Court failed to consider the plea raised by the petitioners with regard to adjustment of the loan/advance amount towards arrears of rent. The learned trial Court not decided the said plea either way, but straight away passed the impugned order.

15. True it is that tenant committed default but looking to the pendency of the Civil suit for eviction since 2011 and also considering the grounds raised in eviction application and also considering submissions of both counsel appearing for parties without entering into merits of case in larger interest of justice and keeping in view the interest of respondent/ landlord, I am of the view that one opportunity be granted to the petitioners/ tenants to deposit the entire arrears of rent from the date of fixing of standard rent ie 19.02.2013 till date in which only the rent paid and deposited in Court or CCD by the petitioners be adjusted.

16. In view of the above it is directed that the impugned order dated 24.02.2015 is set aside subject to the petitioner's depositing/ paying the entire arrears of rent amount from 19.02.2013 till date within a period of two months in three equal instalments. The first instalment of the arrears of rent to be deposited within a period of 20 days and thereafter, two

instalments shall be deposited within a period of 20 days each from deposit/ payment of first instalment and will continue to deposit rent of each successive month regularly. It is made clear that the petitioners failing to comply with any part of order of payment of rent as directed above then the order passed by this Court will lose its efficacy.

17. In the result, the Writ Petition is partly allowed on the aforementioned terms.

18. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma