

HIGH COURT OF CHHATTISGARH, BILASPUR
WP227 No.977 of 2018

1. Jitendra Sharma S/o Late Mahesh Sharma Aged About 42 Years
R/o House No. 174, Ward No. 30, Tamer Para, District Durg
Chhattisgarh
2. Rekha Alias Rakhi Jain W/o Kamal Jain Aged About 40 Years R/o
Lalauli Kamthi, District Nagpur (Maharashtra)
3. Smt. Reema Sharma D/o Late Mahesh Sharma Aged About 38
Years R/o Janta Colony, Lakholi Road, District Rajnandgaon
Chhattisgarh
4. Smt. Jyoti Sharma W/o Shri Pankaj Sharma Aged About 35 Years
R/o Ambika Cycle Store, Budhwari Bazar, District Balod
Chhattisgarh

---- Petitioners

Versus

1. Ravishanker Adani S/o Pawan Aged About 40 Years R/o Jai Bhawani
Book Depot, Hatri Bazar, District Durg Chhattisgarh
2. Municipal Corporation Durg Through Commissioner, Municipal
Corporation, Durg, District Durg Chhattisgarh

Respondents

For Petitioners : Mr.Gagan Tiwari, Advocate

For Respondent No.2: Mr.Arvind Shrivastava, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

26.11.2018

1. By the impugned order, the plaintiffs' application for striking out of the
defence under Section 13(6) of the Chhattisgarh Accommodation
Control Act, 1961 (hereinafter called as 'the Act of 1961') has been
rejected by the trial Court, against which, this writ petition has been
filed.
2. Learned counsel for the petitioners would submit that the trial Court is
absolutely unjustified in rejecting the application under Section 13(6)
of the Act of 1961.
3. I have heard learned counsel for the petitioner and perused the

impugned order.

4. 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."

5. 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.
6. 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 Society¹ 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

1 1967 M.P.L.J. 837

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."

7. 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).
8. 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. Dharamdas*⁵. 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

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

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."

9. 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."

10. This Court in the matter of Pawan Verma v. Sanjay Kumar Hanumanta (WP227 No.152 of 2016), decided on 15.11.2016 held as under:-

"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."

11. Reverting to the facts of the present case in the light of principle of law laid down in above-stated judgments (supra), it is quite vivid that the trial Court has exercised the discretion vested on it by rejecting the application under Section 13(6) of the Act of 1961p, which cannot be said to be perverse or contrary. I do not find any illegality or perversity in the impugned order.

12. Accordingly, the writ petition is dismissed. It is stated at the Bar that suit was filed on 2.9.2008 and there is no substantial progress in the trial. The trial Court is directed to expedite the trial and conclude it within three months from the date of receipt of certified copy of this order. A copy of this order be sent to the concerned Judge through fax/e-mail. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-