

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No.894 of 1998****Judgment reserved on : 15.01.2019****Judgment delivered on: 28.01.2019**

- 1(a) Smt. Mali Bai Wd/o Late Lunkaran Khati, aged about 83 years, resident of Sadar Bazar Ward No.31 (now ward No.36), Rajnandgaon, District Rajnandgaon (CG)
- 1(b) Uttam Chand Khati, son of Late Lunkaran Khati, aged about 62 years, resident of Durga Chowk, Rajnandgaon, District Rajnandgaon (CG)
- 1(c) Murli Khati son of late Lunkaran Khati, aged about 59 years, resident of Lakholi, Rajnandgaon, District Rajnandgaon (CG)
- 1(d) Raj Kumar Khati, son of late Lunkaran Khati, aged about 55 years, resident of Janta Colony, Lakholi, Rajnandgaon, District Rajnandgaon (CG)
- 1(e) Mohan Lal Khati, son of late Lunkaran Khati, aged about 48 years, resident of Janta Colony, Lakholi, Rajnandgaon, District Rajnandgaon (CG)
- 1(f) Vinod Khati, son of late Lunkaran Khati, aged about 41 years, resident of Janta Colony, Lakholi, Rajnandgaon, District Rajnandgaon (CG)
- 1(g) Deepak Khati son of late Lunkaran Khati, aged about 38 years, resident of Janta Colony, Lakholi, Rajnandgaon, District Rajnandgaon (CG)
- 1(h) Smt. Parmeshwari Bai wife of Chandalmal Jangid, aged about 61 years, resident of Babi Bans, Sardar Sahar, District Churu Rajasthan.
- 1(i) Smt. Leela Bai wife of Vijay Kumar Janigid, aged about 52 years, resident of Babi Bans, Sardar Sahar, District Churu Rajasthan
- 1(j) Smt. Seeta Sharma wife of Mahendra Sharma, aged about 32 years, resident of Gaya Nagar, Durg, District Durg (CG)

**---- Appellants****Versus**

- 1. Smt. Gaytri Devi Mishra Wd/o Santan Bhagwan Mishra R/o Sadar Bazar Rajnandgaon, Dist. Rajnandgaon
- 2. Smt. Shakti Mishra W/o Jagdeesh Prasad Mishra aged about 50 years D/o Shri Santan Bhagwan Mishra R/o Janta Aata Chakkee Pratapgang Jagdalpur, Distt. Bastar

3. Smt. Preeti Trivedi, aged about 48 years, W/o Shri Suresh Trivedi, D/o Sanatan Bhagawan Mishra, R/o Sadar Bajar, Rajnandgaon, Dist. Rajnandgaon

---- Respondents

---

|                 |   |                          |
|-----------------|---|--------------------------|
| For Appellants  | : | Mr.Renu Kochar, Advocate |
| For Respondents | : | None present             |

---

**Hon'ble Shri Justice Sanjay K. Agrawal**

**C.A.V. Judgment**

1. The substantial questions of law involved, formulated and to be answered in the second appeal preferred by the defendant are as under:-

“1. Whether the lower appellate Court was right in holding that the appellant is liable to be evicted for non-deposit of rent by every 15<sup>th</sup> of the month, despite the fact, it set aside the judgment and decree of the trial Court u/S. 12 (1) (a) of M.P. Accommodation Control Act, 1961 ?

2. Whether the respondent has proved his bona fide requirement for the suit-house for his residence and also proved the fact that he had no reasonably suitable alternative accommodation for his occupation as his residence ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. Original plaintiff-Santan Bhagwan Mishra filed a suit for ejectment and arrears of rent on the ground enumerated under Sections 12 (1) (a) and 12 (1) (e) of the M.P. Accommodation Control Act, 1961

(hereinafter called as “the Act of 1961”) stating inter-alia that he is landlord of the suit accommodation, which has been let-out to the defendant on a monthly rent of ₹ 85/- for residential purpose, which the defendant has not paid from 1.1.1988 to 31.12.1989 and the suit accommodation is required bona fide for his own residence and he has no reasonably suitable alternative accommodation in the township of Rajnandgaon, therefore, the decree for eviction be granted in his favour under Section 12 (1) (a) and 12 (1) (e) of the Act of 1961.

3. The defendant filed his written statement refuting the plaint allegations stating inter-alia that in order to enhance the rent the present suit has been filed, which is liable to be dismissed.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 24.3.92 decreed the suit of the plaintiff on the ground of Section 12 (1) (a) and 12(1) (e) of the Act of 1961.
5. On appeal being preferred by the defendant, the First Appellate Court set aside the decree on the ground of Section 12 (1) (a) of the Act of 1961, however, granted fresh decree under Section 12 (1) (a) of the Act of 1961 and confirmed the decree of the trial Court under Section 12 (1) (e) of the Act of 1961.
6. Questioning legality and validity of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/defendant, in which substantial questions of law have been framed by this Court, which

have been set-out in the opening paragraph of this judgment.

7. Mrs.Renu Kochar, learned counsel for the appellant/defendant, would submit that both the Courts below are concurrently unjustified in holding that the plaintiff is entitled for decree under Section 12 (1) (e) of the Act of 1951 and also under Section 12 (1) (a) of the Act of 1951 for setting aside the decree based on Section 12 (1) (a) of the Act of 1961, as such, the findings recorded by two Courts below are perverse and liable to be set aside.
8. None present for the respondent/plaintiff though served with notice of appeal by this Court.
9. I have heard learned counsel for the appellants, perused the judgment and decree impugned and went through the records with utmost circumspection.

**Answer to substantial question of law No.1:-**

10. It is true that the First Appellate Court has set aside the decree granted under Section 12 (1) (a) of the Act of 1961 while considering the appeal, but it is also true that the First Appellate Court has also recorded the finding that the defendant has not complied with the provisions contained in Section 13 (1) of the Act of 1961 during pendency of the appeal, as such, the plaintiff is entitled for decree under Section 12 (1) (a) of the Act of 1961.
11. Section 12 (1) (a) of the Act of 1961 provides as under:-

**“12. Restriction on eviction of tenants.-(1)**  
Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner:"

Thus, the following are the requirements of the above-stated provisions for granting a decree under Section 12 (1) (a) of the Act of 1961:-

- (i) There must have been arrears of rent against tenant.
- (ii) The landlord must have made a demand of such arrears by a written notice.
- (iii) The notice must have been served on tenant in the prescribed manner.
- (iv) Two months must have expired from the date of service of such demand notice.
- (v) The tenant has neither neither tendered, nor paid the whole amount of arrears of rent legally recoverable from him within the period of two months after service of notice upon him.

12. Section 13 (1) of the Act of 1961 provides as under:-

**"13. When tenant can get benefit of protection against eviction.** (1) On a suit or any other proceeding being instituted by a landlord on any of the grounds referred to in Section 12, or in any appeal or any other proceeding by a tenant against any decree or order for his eviction, the tenant shall, within one month of the service of writ of summons or notice of appeal or of any other proceeding, or within one month of institution of appeal or any other proceeding by the tenant, as the case may be, or within such further time as the Court may on an application made to it allow in this behalf, deposit in the Court or pay to the landlord, an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made ; and shall thereafter continue to deposit or pay, month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding, as the case may be."

If the tenant fails to deposit, the consequence is provided in Section 13 (6) of the Act of 1961 which provides as under:-

“(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.”

Thus, failure to comply with requirement envisaged under Section 13 (1) of the Act of 1961 in the event of pending appeal under Section 96 CPC, entails serious consequence vesting the court of appeal with appellate jurisdiction to strike out the defence put by the tenant against his eviction and proceed with hearing of the appeal, but failure to comply with Section 13 (1) of the Act of 1961 in pending appeal by tenant, a decree for eviction under Section 12 (1) (a) of the Act of 1961 cannot be granted in view of mandatory requirements as contained in said provision. Therefore, the First Appellate Court is absolutely unjustified in granting the decree under Section 12 (1) (a) of the Act of 1961 after setting aside the decree granted by the trial Court under Section 12 (1) (a) of the Act of 1961. The decree granted by the First Appellate Court under Section 12 (1) (a) of the Act of 1961 is accordingly set aside.

**Answer to substantial question of law No.2:-**

- 13.** The plaintiff has set-out his case that the suit accommodation is required *bona fide* for his own residence as he has no other alternative suitable accommodation in his possession in the township of Rajnandgaon. He has further stated that by Yaddastnama (Ex.P/1C) the suit accommodation in which he is

staying has fallen into share of his sister and therefore, the suit accommodation is required *bona fide* for his own residence. The trial Court after appreciating oral and documentary evidence available on record has clearly come to the conclusion that the suit accommodation is required *bona fide* for his own residence and he has no other alternative suitable accommodation in his possession in the township of Rajandgaon. On appeal being preferred, the First Appellate Court has concurred with the said finding. The finding recorded by two Courts below that the suit accommodation is required *bona fide* by the plaintiff for his own residence and he has no other alternative suitable accommodation in his possession in the township of Rajnandgaon is the finding of fact based on evidence available on record. Both the facts have been proved by the plaintiff by leading appropriate evidence, which is neither perverse nor contrary to record.

- 14.** Thus, the decree granted by the trial Court under Section 12 (1) (a) of the Act of 1961 is hereby set aside, while the decree granted under Section 12 (1) (e) of the Act of 1961 is hereby maintained. Resultantly, the second appeal is dismissed maintaining the decree of the First Appellate Court only under Section 12 (1) (e) of the Act of 1961. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)  
Judge