

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.372 of 2014**

Vinod Agrawal, S/o. Late Heeralal Agrawal, aged about 55 years, R/o. National Medical Stores, Bhagat Singh Complex, Power House Road, Korba, Police Station and Post Korba, Civil and Revenue District Korba (CG)

---- Appellant/Defendant

Versus

Mangat Singh Chawla, S/o. Bhagat Singh Chawla, aged about 65 years, R/o Mangat Singh Complex, Power House Road, Police Station and Post Korba, Civil and Revenue District Korba (CG)

---- Respondent/Plaintiff

For Appellant/Defendant	: Mr.Manoj Paranjape, Advocate
For Respondent/Plaintiff	: Mr.K.A.Ansari, Senior Advocate with Mrs.Meera Ansari, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

28.08.2019

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

“1. Whether the first appellate Court was justified in reversing the findings of the lower Court holding that there is bona-fide reasons established by the plaintiff directing the appellant for evicting the premises ?

2. Whether the first appellate Court was justified in holding that there was default on the part of the appellant in payment of rent particularly when the application Under order 13 rule 2 and Under Order 13 rule 6 was rejected on 16.04.30 and 05.12.06 respectively ?

3. Whether the first appellate Court was justified in holding that the case in favour of the landlord has been made out u/s 12(a) of the Accommodation Control Act ?”

[For the sake of convenience, parties would be referred

hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. Plaintiff-Mangat Singh Chawla filed a suit for eviction and for arrears of rent on the ground enumerated under Section 12 (1) (a) and 12 (1) (f) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter called as “the Act of 1961”) pleading inter-alia that he is owner of the suit accommodation of shop No.1 situated at Bhagat Singh Complex, Korba, which was let-out to the defendant on a monthly rent of ₹ 1800/- w.e.f. 1st February, 2001 for 11 months, which the defendant failed to deposit the rent from October, 2001 and despite statutory notice under the Act of 1961, he did not deposit the rent and therefore, he is liable to be evicted under Section 12(1)(a) of the Act of 1961 and the suit accommodation is required bona fide for starting business of his son Baljit Singh and he has no reasonably suitable alternative accommodation in the township of Korba for the said purpose under Section 12(1)(f) of the Act of 1961.
3. The defendant filed his written statement and stated that he has deposited the entire arrears of rent and the plaintiff has other alternative suitable accommodation in his possession, as such, the suit deserves to be dismissed as the plaintiff is not entitled for decree of eviction.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 30.1.2013, dismissed the suit holding that both the grounds for eviction are not made out. On appeal being preferred by the plaintiff, the first

appellate Court allowed the appeal and granted decree based under Section 12 (1) (a) and 12 (1) (f) of the Act of 1961. Questioning the judgment and decree of 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 formulated by this Court, which have been set-out in the opening paragraph of this judgment.

5. Mr. Manoj Paranjape, learned counsel for the appellant/defendant, would submit that the first appellate Court is absolutely unjustified in granting decree under Section 12 (1) (a) and 12 (1) (f) of the Act of 1961. He would submit that ultimately, the rent was deposited by order of the Court dated 20.12.2003 in an application filed by the respondent/landlord and therefore, decree could not be passed under Section 12 (1) (a) of the Act of 1961. He would also submit that after filing of the suit on 24.9.2002 two shops were got vacated on 31.7.2005 and on 8.8.2003 respectively, which were in possession of Rakesh Kumar Gupta and Jairaman V.K. and handed over to the plaintiff and on 3.10.2002 shop No.D-3 was let out by the plaintiff to one V.K.Soman and another shop was let out to Ajay Kumar Tiwari on 11.1.2010, therefore, it cannot be held that he has no other reasonably suitable accommodation in his possession for starting business of his son, as such, the second appeal deserves to be allowed by setting aside the judgment and decree of the first appellate Court. He relied upon the judgment of the Supreme Court in the matter of **Deena Nath v. Pooran Lal**¹.

¹ (2001) 5 SCC 705

6. Mr.K.A.Ansari, learned Senior Counsel with Mrs.Meera Ansari, learned counsel for the respondent/plaintiff, would submit that the defendant did not deposit the rent despite service of statutory notice before filing of the suit and also not deposited the rent after receipt of summons by the Court under Section 13 (1) of the Act of 1961 and ultimately deposited the rent only by order dated 20.12.2003. He never filed an application for extension of time in depositing the rent. He would further submit that the landlord is the best judge of his requirement of suit accommodation and he is also entitled to beneficial enjoyment of his property in his own way and the tenant cannot dictate as to how the landlord has to use and utilize the suit accommodation, as such, the judgment and decree of the first appellate Court is strictly in accordance with law and the second appeal deserves to be dismissed.
7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

Answer to first substantial question of law:-

8. The trial Court has held that the plaintiff has other alternative suitable accommodation in his possession in the township of Korba, therefore, no decree under Section 12(1)(f) of the Act of 1961 can be granted, which has been reversed by the first appellate Court holding that the plaintiff is the best judge as to which accommodation is best suited for his requirement and granted decree under Section 12(1)(f) of the Act of 1961.

9. Section 12 (1) (f) 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

(f) that the accommodation let for non-residential purposes is required bonafide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably non-residential accommodation of his own in his occupation in the city or town concerned.”

From the above-stated provision, it is quite vivid that clause (f) would apply, if following requirements are satisfied;

- (1) That the accommodation is let-out for non-residential purposes.
- (2) That the accommodation so let-out is required bonafide by the landlord.
- (3) That the requirement is for the purpose of continuing or starting business.
- (4) That the said business is his or that of any of his major sons or unmarried daughters or that of any person for whose benefit the accommodation is held as the case may be.
- (5) That either the landlord or any other person for whose benefit the accommodation is held, as the case may be, is the owner of the premises.
- (6) That the landlord or such other person, as the case may be, has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.

10. The Supreme Court in the matter of Hasmat Rai and another v. Raghunath Prasad² while dealing with Section 12 (1) (f) of the M.P. Accommodation Accommodation Control Act, 1961 has held that when an action was brought by the landlord under Rent Restriction Act for eviction on the ground of personal requirement, his need must not only be shown to exist at the date of the suit but must exist on the date of the appellate decree or on the date when a higher court deals with the matter. It was further held that silence of the landlord on the point of alternative accommodation in possession is fatal to the suit and observed as under:-

“16.....Section 12(1)(e) specifically provides for a landlord obtaining possession of building let for residential purposes if he bona fide requires the same for his own use and occupation. But there is an additional condition he must fulfil namely he must further show that he has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. Utter silence of the landlord on this point would be a compelling circumstance for the Court not to go in search for same imaginary requirement of the landlord of accommodation for his residence.....”.

11. The principle of law laid down in Hasmat Rai (supra) was followed with approval by Supreme Court in Amarjit Singh v. Smt. Khatoon Quamarain³ and it has been held that the landlord is not only required to establish the bonafide need but must be pleaded and proved that landlord has no other reasonably suitable accommodation in his possession. It was observed as under:-

“If the landlady could have reasonable accommodation after her need arose and she by her own conduct disentitled herself to that property by letting it out for higher income, she would be disentitled to evict her tenant on ground of her need. If a proceeding for the

² AIR 1981 SC 1711

³ (1986) 4 SCC 736

ejection of a tenant on the ground of personal requirement under a statute controlling the eviction of tenants, unless the statute prescribes to the contrary, the requirement must continue to exist on the date when the proceeding was finally disposed of either in appeal or revision by the relevant authority....”

12. It is not in dispute that the suit accommodation let-out for non-residential purpose is required bonafide by the plaintiff for starting business of his son Baljeet Singh and he is owner thereof. The only dispute relates to second limb of Section 12 (1) (f) of the Act of 1961, whether the plaintiff has any other reasonably alternative suitable accommodation of his own in his possession at Korba for his bonafide need.
13. A careful perusal of the plaint would show that the plaintiff in his plaint even did not aver and plead that he has no other reasonably suitable accommodation of his own in the occupation in the township of Korba, whereas the defendant while filing written statement by way of amendment in the shape of para 4(A) and 5(A) has specifically pleaded the availability of suitable alternative accommodation with the plaintiff and also pleaded that on 1.6.2011 the plaintiff let-out one shop to Raees Ahmad. In cross-examination, the plaintiff has categorically admitted that on 31.7.2005 after filing of the suit on 22.10.2002 Rakesh Babu Gupta delivered the peaceful possession of one shop situated at Bhagat Singh Complex, Korba to the plaintiff and thereafter one Jairaman V.K. delivered vacant possession of one shop on 8.8.2003 to the plaintiff and he has let-out one shop on 3.10.2002 V.K.Soman and one shop to Ajay Kumar Tiwari on 11.1.2010. The aforesaid admission on the part of the plaintiff would

show that other shops were available to the plaintiff for his need which were not pleaded and demonstrated to be not reasonably suitable for his bonafide need. Even otherwise, it has not been averred in the plaint that he has no other reasonably suitable non-residential accommodation of his own though the aforesaid suit shops came in possession of the plaintiff during the pendency of suit, which were let-out to other persons in the same premises, in which suit shop is situated, as such, the plaintiff has failed to plead and establish that he has no other reasonably suitable non-residential accommodation of his own in his occupation in the township of Korba as he has conveniently let-out three shops which came in his possession after institution of suit for eviction under Section 12 (1) (f) of the Act of 1961. The plaintiff/landlord is required not only to aver but also establish that he has no other reasonably suitable non-residential accommodation of his own in his possession in the concerned township or accommodation in possession is not sufficient for the reasons assigned and the burden is on the plaintiff/landlord. Accordingly, first substantial question of law is answered in favour of the defendant and against the plaintiff by holding that he has failed to plead and establish that he has no other reasonably suitable non-residential accommodation of his own in his possession at Korba.

Answer to substantial questions of law No.2 and 3:-

- 14.** In order to evict defendant/tenant on the ground under Section 12(1) (a) of the Act of 1961, he was served with the statutory notice of two months to make payment of arrears of rent from 1.10.2001 to 31st

May, 2002, which was received by the defendant, yet arrears of rent was not paid and the suit for eviction was instituted on 22.10.2002. The defendant appeared before the trial Court on 22.11.2002 and within one month from the date of service of summon he did not make payment of arrears under Section 13(1) of the Act of 1961 to the plaintiff/landlord and he moved an application under Section 13(2) of the Act of 1961 on 27.2.2003. That application was rejected by the trial Court on 16.4.2003 and thereafter on 18.8.2003 the plaintiff filed an application under Section 13(1) of the Act of 1961 for direction to the defendant to deposit arrears of rent and upon direction of the Court on 20.12.2003 the defendant/tenant ultimately deposited arrears of rent on 20.12.2003.

15. The question for consideration would be whether the alleged deposit of arrears of rent by the defendant/tenant after the expiry of statutory period, the first appellate Court is justified in granting decree under Section 12 (1) (a) of the Act of 1961 in favour of the plaintiff/landlord ?

16. Section 12 (1) of the Act restricts the right of landlord to evict his tenant only on the grounds enumerated in the said section:

12. Restrictions on eviction of tenants :-

(1) Notwithstanding anything the contrary contained in any other law or contract, no suit be filed in any civil court against a tenant for his eviction from any accommodation except one of more of the following grounds only, namely :-

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally 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;

X X X X

Section 12(3) of the Act of 1961 provides as under :

“No order for the eviction of a tenant shall be made on the ground specified in clause (a) of sub-section (1), if the tenant makes payment or deposit as required by Section 13.

X X X X

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

“On a suit or proceeding being instituted by the landlord on any of the grounds referred to in Section 12, the tenant shall, within one month of the service of the writ of the summons on him 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.”

Similarly, Sections 13(5) & (6) of the Act of 1961 state as under:-

“(5) If a tenant makes deposit or payment as required by sub-section (1) of sub-section (2), no decree or order shall be made by the Court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the Court may allow such cost as it may deem fit to the landlord.

(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.”

- 17.** The Supreme Court in the matter of B.C. Kame v. Nemi Chand Jain⁴ has held that tenant has two opportunities to make payment of rent to avoid decree of eviction and inter alia observed as under:-

“5. It is clearly intended thereby that for non-payment of rent, the tenancy shall not be terminated and the Court shall not pass a decree in ejectment if within two months of the date on which a notice of demand for rent has been served on the tenant he makes payment of the amount or tenders the amount of rent due by him to the landlord. If he does so no suit will lie against him on the ground of default in the payment of rent. Even if no such payment is made within two months as provided by Section 12(1)(a) the tenant may within one month from the service of the writ of summons deposit the amount in Court or pay to the landlord the amount due by him till then and continue to pay or deposit "month by month" the rent accruing due. Even if he does not pay the amount within one month he may on an application made by him ask for extension of time, and if the Court grants the extension the amount may be paid by him within such extended time. In such a case by virtue of sub-section (5) of Section 13, on the ground of default in payment of rent, the Court will not proceed to pass a decree in ejectment. But It is clear that under sub-section (1) of Section 13 the normal period during which the amount has to be paid to the landlord or deposited in Court is one month from the service of the writ of summons. If the tenant pays the amount of rent in arrears within one month he is immune from liability to be evicted for default in that behalf. If, however, he does not pay the amount or deposit it in Court, any subsequent payment made by him will come to his aid only if on an application made by him the Court extends the time.”

- 18.** Thereafter, the Supreme Court in the matter of Shyamcharan Sharma v. Dharamdas⁵ has held that court has jurisdiction to extend time for deposit of payment of monthly rent which became due after the filing of suit and held as under:-

⁴ 1970 (3) SCC 281= AIR 1970 SC 981

⁵ (1980) 2 SCC 151

“4.....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.”

19. The Supreme Court in the matter of R.C. Tamarkar v. Nidhi

Lekha⁶ has held that mere depositing the rent without filing an application for extension of time for payment of all the arrears of rent due, tenant is not entitled to avoid decree for eviction under Section 12(1)(a) of the Act and held as under:-

“8..... Reading both the sub-sections together, we are of the opinion that the benefit of sub-section (5) shall be available to a tenant provided he tenders the arrears of rent or deposit it in the court within one month of service of writ of notice or notice of appeal or any other proceeding or within one month of the institution of the appeal or any other proceeding by the tenant or within such further time as the court may on an application made to it allow in this behalf. In the case in hand the tenant did not deposit the arrears of rent either prior to filing of the suit or during its pendency before the Trial Court. In the First Appellate Court rent was deposited and it was not clear whether he continued to deposit the rent as per sub-section (1) of Section 13. The First Appellate Court set aside the findings of defaulter on the ground that the rent was deposited in the Appellate Court. The High Court was of opinion that after the Trial Court passed the decree holding that the tenant was in the arrears of rent, mere depositing the amount without filing an application for extension of time for payment of all the arrears of rent due, the finding of the Appellate Court that tenant was not a defaulter is not sustainable. The High Court further recorded that the First Appellate Court did not give any finding that entire amount of arrears of rent was paid. This finding of the High Court cannot be faulted in view of clear provision of sub-section

(1) of Section 13 and, therefore, tenant is not entitled to get protection under sub-section (5).”

- 20.** Similarly, in the matter of Sayed Akhtar v. Abdul Ahad⁷ Their Lordships of the Supreme Court while dealing with Section 13(1) and 13(5) of the Act of 1961 clearly held that application for condonation to the court by the defaulter is mandatory. It was observed as under:-

“6. A bare perusal of the aforementioned provision would clearly go to show that although the court has the jurisdiction to extend the time for depositing the rent both for the period during which the tenant had defaulted as well as the period subsequent thereto but therefore an application is to be made. The provision requiring an application to be made is indisputably necessary for the purpose of showing sufficient cause as to why such deposit could not be made within the time granted by the Court. The court does not extend time or condone the delay on mere sympathy. It will exercise its discretion judicially and on a finding of existence of sufficient cause.”

- 21.** The Supreme Court in the matter of Sobhagyamal and another v. Gopal Das Nikhra⁸ has held as under:-

“9. Sub-section (3) of Section 12 puts a caveat on the right of the landlord to get ejectment on the ground of arrears of rent if the tenant makes payment or deposit as required by Section 13. However, by virtue of the proviso to sub-section (3), the benefit given to the tenant, on compliance of the payment of rent as provided under Section 13, would be available to him only once in respect of that accommodation, but on default in the payment of rent in respect of same accommodation for three consecutive months he would not be entitled for protection by depositing the rent as provided under Section 13 in the subsequent proceedings initiated by the landlord for ejectment of the tenant on the ground of arrears of rent.

10. Section 13 of the Act requires that the tenant shall within one month of the service of writ of summons or notice of appeal or of any other proceeding deposit the rent when the proceedings are initiated by the landlord on any of the grounds referred to in Section 12 or within

⁷ (2003) 7 SCC 52

⁸ (2008) 3 SCC 788

one month of institution of appeal or any other proceeding when taken by the tenant against any decree or order for his eviction. The period of one month given to the tenant for depositing the rent from the date of the summons or the notice of appeal or of any other proceeding could be extended by the court on an application made to it. The rent which is required to be deposited under the Section can be in the court or it may be made over to the landlord. The Section further requires that after the deposit of the arrears of rent the tenant shall continue to make deposit or pay month by month by 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. Sub-section (5) of Section 13 provides that if the tenant makes deposit or payment as required by sub-section (1) or sub-section (2) no decree or order shall be made by the court for recovery of possession on the ground of default in the payment of rent by the tenant. Sub-section (6) gives an option to the landlord if the tenant does not deposit the rent or pay it to the landlord as required under Section 13 to move an application for the defence against eviction to be struck out. Sub-section (5) of Section 13 has no application in a case when the ejectment is not sought by the landlord on the ground of arrears of rent, but the suit is instituted by the landlord on any other ground/s of Section 12 of the Act. **Striking out of the defence of the tenant on an application moved by the landlord, is a provision applicable in the suit for ejectment on any of the grounds mentioned under Section 12 inclusive of under Section 12(1)(a) of the Act, whereas sub-section (5) of Section 13 would apply only when the suit is instituted for ejectment on the ground of arrears of rent under Section 12(1)(a) of the Act."**

22. The Supreme Court in the matter of Shivshankar Gurgar v.

Dilip⁹ has held that sub Section (5) of Section 13 only protects the defaulting tenant in possession in the event of his complying with the requirement of Section 13(1) or (2) only in those cases where the eviction is sought only on the ground of arrears of rent falling under Section 12(1) (a) of the Act of 1961 and held as under:-

"24. A reading of Section 13, in our view clearly indicates

that the payment or the deposit of rent into the court by the judgment debtor (tenant) is contemplated only during the pendency of the suit for eviction or an appeal (by the tenant) against a decree or order of eviction. Section 13 has no application to the execution proceedings of a decree for eviction.

25. The language of Section 13(1) is very clear and explicit in this regard. We fail to understand as to how the Court could read into Section 13, a possibility of enabling the judgment debtor (tenant) to protect his possession by making the payment during the execution proceedings in spite of the fact that he had already been adjudged to be in default of payment of the rent to the landlord. Such an interpretation of Section 13 would be wholly destructive of Section 12(1)(a). Therefore, not only the language of Section 13(1), but also an irreconcilable inconsistency that would arise between Section 12(1)(a) and Section 13(1) if the interpretation placed by the executing court is accepted - in our view is sufficient to hold that the executing court's interpretation of Section 13(1) is unsustainable."

- 23.** From the principles of law laid down in above-stated judgments (supra), it is quite vivid and apparent that mere deposit of arrears of rent by a tenant after the period of one month from the service of summon to him, the tenant cannot avoid decree under Section 12(1) (a) of the Act of 1961 unless the period of one month is extended by the Court on application filed by the tenant. In the instant case, admittedly, the defendant/tenant within one month from the date of service of summons did not deposit the arrears of rent as it was due and ultimately, it was deposited in the application filed by the landlord to deposit arrears of rent, which was directed by the trial Court, but admittedly no extension of time was sought for depositing the rent, therefore, the defendant cannot avoid decree for eviction under Section 12 (1) (a) of the Act of 1961, as such, the first appellate Court has rightly held that the plaintiff is entitled for decree under Section

12(1)(a) of the Act of 1961 as the defendant has failed to comply with the provisions contained in Section 13(1) of the Act of 1961, as such, the judgment and decree of the first appellate Court is partly modified and it is held that the plaintiff is entitled for decree only under Section 12(1) (a) of the Act of 1961, but he is not entitled for decree of eviction under Section 12(1)(f) of the Act of 1961.

24. The second appeal is accordingly partly allowed modifying the judgment and decree of the first appellate Court leaving the parties to bear their own cost(s).

25. A decree be drawn-up accordingly.

26. At this stage, at the request of Mr. Manoj Paranjape, learned counsel for the appellant/defendant, 5 months' time upto 31st December, 2019 is granted to vacate the suit accommodation subject to following conditions:

(i) The appellant/defendant shall submit an usual written undertaking before the trial Court within 3 weeks from today that he shall vacate the suit accommodation on or before 31st December, 2019 by delivering peaceful possession to the plaintiff and will not create any right or interest over the suit accommodation in the meanwhile.

(ii) The appellant/defendant shall deposit a sum at the rate of Rs.1800/- per month with effect from 1st September, 2019 along with arrears of rent till the actual date of delivery of possession of the suit accommodation before the trial Court for the aforesaid period of 5 months for payment to the plaintiff towards

damages for occupation and use of the suit accommodation by him.

If the aforesaid conditions are not complied with, the decree granted in favour of the plaintiff, shall be executable forthwith in accordance with law.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-