

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 29th OF JANUARY, 2024

SECOND APPEAL No. 41 of 2003

BETWEEN:-

- 1. SMT. SAVITRI SONI W/O LATE SHRI N.K. SONI**
- 2. SUNIL SONI S/O LATE SHRI N.K. SONI, AGED
ABOUT 40 YEARS,
BOTH R/O LOHIYA BAZAR, LASHKAR,
GWALIOR (MADHYA PRADESH)**
- 3. NEERU DIXIT W/O SHRI K.K. DIXIT R/O CM - 10,
D.D. NAGAR, LASHKAR, GWALIOR (MADHYA
PRADESH)**

.....APPELLANTS

***(BY SHRI V.K. BHARDWAJ – LEARNED SR. COUNSEL WITH SHRI ANAND
RAGHUVANSHI – ADVOCATE)***

AND

**NEKSE S/O JUKTIRAM VAISHYA DECEASED
THROUGH HIS LEGAL HEIR (DEAD)
BENIBAI W/O LATE NEKSE R/O LOHIYA BAZAR
LASHKAR GWALIOR (DEAD) THROUGH
SMT SUDHA W/O NATHURAM (DEAD) D/O LATE
NEKSE**

- 1. SMT MADHURI W/O RAMESHWAR DAYAL D/O
NEKSE R/O LOHIYA BAZAR, LASHKAR,
GWALIOR (MADHYA PRADESH)**
- 2. SMT SHOBHA W/O GULABCHAND D/O LATE
NEKSE R/O LOHIYA BAZAR, LASHKAR,
GWALIOR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI A.K. JAIN - ADVOCATE)

Reserved on : 14.12.2023

Pronounced on : 29.01.2024

This appeal having been heard and reserved for orders, coming on for pronouncement this day, the Court passed the following:

ORDER

This second appeal has been filed by the appellants/ plaintiffs against the judgment and decree passed by the learned Second Additional District Judge, Gwalior in Civil Appeal No. 54-A/84 , judgment and decree dated 18.08.2001 wherein the appeal filed on 9.2.1982 by which the learned First Appellate Court confirmed the judgment and decree passed by the learned Fourth Civil Judge, Class II, Gwalior in C.S. No. 532-A/75 (Navalkishore Vs Nekse), judgment and decree dated 12.01.1982 dismissed the suit of the plaintiff for eviction of tenant from House No. 346/29, Lohia Bazar, Lashkar and payment of arrears of rent.

2. It is not disputed that the suit property was originally rent to Nekse on 01.09.1962 on a rent of Rs. 25/- per month.

3. The trial Court, after hearing the parties and on the basis of their pleadings and evidence adduced, held that the tenant has not encroached upon the additional space besides the area rented out to defendant. The trial Court further held that the plaintiff does not require rented premises for repair or for new construction and, therefore, do not find it *bonafide* for the same purpose. It further held that rent is due on defendant but on account of the fact that plaintiff did not accept the rent.

4. Learned First Appellate Court, during the hearing of the appeal found that the defendant had committed delay in payment of rent but that was for valid and genuine reasons and as per paragraph 23 and 26 of the

appeal judgment, dismissed the application of the appellant under Section 13(6) of the M.P. Accommodation Control Act dated 3.8.1984 and 1.9.92 and allowed the application of the respondent/ defendant filed under Section 151 of C.P.C. on 12.10.1993 & Section 13(1) of M.P. Accommodation Control Act dated 28.06.2001 and in the ultimate analysis dismissed the appeal.

5. This appeal has been filed assailing the judgment of the trial Court as well as First Appellate Court and on 21.01.2004, this second appeal was admitted on the following substantial question of law :-

“Whether the Court below has erred in condoning several defaults in depositing the rent ?”

6. The appellant on 3.8.1984 filed an application under Section 13(6) of the M.P. Accommodation Control Act that inspite of summons of appeal, due rent has not been deposited within one month as the copy of the application was received by the respondent on 3.8.1984. In reply to the above application filed on 15.03.1986, the defendant submitted that he has deposited the rent for the purpose of deciding this appeal. In reply certain entries are more relevant which are reproduced below :-

Date	Amount (Rs)	Period
8.3.83	375	January 82 to March 83
28.06.83	75	April to June
24.01.84	75	October to December 83
20.04.84	75	January 84 to March
12.07.84	75	April to June
22.01.86	125	September 85 to January 1986

At the bottom of the reply dated 15.03.1986 it is also mentioned that it is not necessary for the respondent to deposit rent during appeal proceeding.

7. By filing an application under Section 151 of C.P.C. on 12.10.93, respondent has submitted that original tenant Nekse expired and his wife Benibai is old and ill and daughters are married, therefore, she could not contact her advocate. On 11.10.1993 she contacted her advocate who told her that defendant has been struck off but it is submitted that she had sent the rent through her son-in-law and accordingly, prayed for condoning the delay in payment of rent.

Respondents have filed following citations in support of their case ;

- (i) Sunder Prasad Pandey v. Rajaram Shukla, 1972 JLJ 759
- (ii) S.S. Harishchandra Jain v. Capt. Inder Singh Bedi, 1977 JLJ 312
- (iii) Dhanbai v. State of M.P. and others, 1978 JLJ 879
- (iv) Jagdish Kapoor v. New Education Society, AIR 1968 M.P 1
- (v) Bharatchand v. Vishnupant, 1978 JLJ 227
- (vi) Manoharlal Gopilal Pande vs. Dr. Abdul Mazid Khan, 1997(1) MPLJ 232
- (vii) Dr. Gopaldas Vs. Rajesh , 2006(1) M.P.H.T. 53
- (viii) Manisha Lalwani Vs. Dr. D.V. Paul, 2007(2) M.P.L.J. 52
- (ix) Sardar @ Jayendra Rao v. Omprakash, 2008 (1) MPWN 39
- (x) Nonihal Singh vs. Maya Devi, 2019 (1) MPLJ 300

On consideration of rival cases of both the parties and on the basis of citations filed by the respondent they do not lend strength to his case or defence for the reason that in year 1983 in M.P. Accommodation Control Act, 1961, there was an amendment by which in Section 13 the words “appeal and other proceedings” were added besides the word “suit”, therefore, the citation for the period earlier to this amendment do not help the respondents.

8. Regarding other citation as filed by the respondent i.e. **Manoharlal Gopilal Pande** (*supra*) wherein it has been held that delay can be condoned when there is not much delay but looking to the reply of the

respondents before the appellate Court, in which he himself has submitted there is delay on payment of arrears of rent, it is seen that there is too much delay and delay is repeated again and again, therefore, this citation of **Manoharlal Gopilal Pande (Supra)** does not help the appellant in factual situation.

9. Regarding the judgment of **Sardar @ Jayendra Rao (Supra)**, it can be simply stated that not only after getting the notice of the suit, the tenant has to deposit arrears of rent but rent has to be deposited by respondent, be it appeal or other legal proceedings.

Regarding judgment of **Nonihal Singh (Supra)** again this question of fact whether delay has been properly explained when any application for extension of time in depositing rent was filed. As per the legal position, if a tenant is unable for any reason to deposit rent then he should file an application before the concerned Court as the case may be and seek time for extension in depositing rent and the legal position is not that after much delay when the other party raises objection then the tenant can deposit the rent as per his wish along with an application for condonation of delay. In any case, in this appeal it is also seen that along with an application for condonation of delay no documents were filed to substantiate the plea. It has to be remembered that the Civil Court has a onerous duty to do justice to the parties but strictly on the basis of settled legal position wherein it is a settled position that if someone seeks some relief based on some facts, then documents in support thereof should be filed along with the application.

Proviso under Section 12 (3) of the M.P. Accommodation Act provides that if there is default in payment of rent for the second time in consecutive three months then the eviction shall follow and looking to the chart as mentioned above, respondents/ defendants committed defaults

many times and no application for extension of time in depositing rent was filed along with documents.

10. In Ashok Kumar Mishra v. Goverdhan Bhai (D) through Lrs and another, AIR 2017 SC 1819, Supreme Court has held in para 13 :-

“13..... Accordingly, it provides a locus poenitentiae to the tenant. Sub-Section 13(5) of the Act reiterates the protection by stating that if the tenant makes payment post-suit in accordance with the provisions of sub-section 13(1) and 13(2) of the Act, he shall not be liable for eviction. This Section does not confer the power on the court to condone the defaults in payment of rent after the suit is filed.”

11. The Co-ordinate Bench of this Court in Tarunveer Singh vs. Mahesh Prasad Bhargava, 2018 (I) MPJR 49 in paragraphs 48 and 49 has held that in **Sayed Akhtar Vs. Abdul Ahad, (2003) 7 SCC 52** that the Court has been conferred power to extend time for depositing rent on an application made to it as the trial Court did not have *suo moto* power to extend time for depositing rent, therefore, the trial Court did not have any discretion to condone delay, without there being any application for the said purpose. Therefore, in considered view of this Court a very fine and subtle distinction can be made between application for extension of time and for condoning delay. In the first case, the party comes to the Court, expresses its difficulty in depositing rent whereas in the second case, party never approaches the Court for extension of time to deposit rent and makes a prayer for that purpose but when it deposits the rent then seeks condonation. In any case, as per Section 12(3) of the M.P. Accommodation Control Act when there is delay for the second time in depositing rent consecutively for three months then the consequences are fatal to the tenant.

12. In Rajendra Kumar and others Vs. Smt. Kasturi Bai and others, 2009(2) M.P.H.T. 115 in paragraphs 7 the Co-ordinate Bench of this Court has held as under :-

“ 7. As far as the application for condonation of delay filed by the appellants is concerned, the Supreme Court in the case of Aayedda Akhtar Vs. Abdul Ahad (supra) has held that the application for condonation of delay cannot be entertained after lapse of a long period of time of committing the default in the following terms, in Paragraph 9 :-

“9. The High Court in its impugned judgment did not point out as to how the court of appeal committed an error of records in arriving at the said finding. Admittedly, there had been two defaults i.e. rent for the month of November 1985 and rents for the months of May and June 1988. The High Court purported to have recorded that the appellant had applied for condonation of delay in payment of rent on 5-2-1990 in relation to default to deposit rent for the month of November 1985 and for the months of May and June 1988. An application for condonation of delay could not have been entertained on 5-2-1990 for commission of default in depositing the rent. We, therefore, are of the opinion that the High Court was not correct in interfering with the findings of fact arrived at by the first appellate court.”

13. Recently, Hon'ble Supreme Court in Heera Traders Vs. Kamla Jain, AIR Online 2022 SC 186 has held in paragraphs 16, 19, 25, 27, 29, 32 to 34 as thus :-

“16. The provisions of Section 13, as it stood prior to substitution in the year 1983, did not embrace a situation where any Appeal or other proceeding was filed by a tenant. On the other hand, under the erstwhile avatar, the Law-Giver confined the provision to a situation where a Suit or proceeding was instituted by the landlord.

19. Let us first analyse the impact of Section 13, as it stood prior to its substitution in the year 1983. Section 12(1)(a) confers a right upon the

landlord to seek eviction on the ground of the tenant falling into arrears of rent and remaining in arrears even after service of a notice of a demand. The default should persist for two months from the service of demand. The demand must relate to arrears of rent not barred by time. This is a ground available under Section 12(1)(a). It constitutes a cause of action for seeking eviction. However, Section 12(3) provided and continues to provide that no Order for the Eviction of a tenant shall be made on the ground under Section 12(1)(a), if the tenant makes payment or deposit, as contemplated in Section 13. The proviso to Section 13, however, tabooed and continues to prohibit the invocation of the protection under Section 12(3) read with Section 13, more than once, in respect of any accommodation. The tenant, in other words, stands shielded from eviction despite the availability of the ground under Section 12(1)(a), leading to an Eviction proceeding being filed. But, in respect of the same accommodation, in respect of which, the default took place, the tenant does not get insulated from eviction, if he defaults in payment of rent for the same accommodation for three consecutive months. This was the protection, which was actually contemplated under Section 13, prior to Section 13 being substituted in the year 1983. Till 1983, thus, the protection could not be availed by any tenant on the ground of payment of rent by him during the proceeding for eviction or Appeal.

25. What is, however, relevant from a reference to Chapter IIIA, which provides for eviction on the grounds of bonafide requirement, is that, vide Section 23H, Section 13 has been made applicable 'mutatis mutandis'. Section 23H makes Section 13 applicable, not only in an application for recovery of possession under Section 23A, but it also is made applicable in respect of a proceeding for Revision under Section 23E against a Final Order by the Authority under Section 23C and Section 23D, as they apply to a proceeding instituted under Section 12. It must be noticed that Chapter IIIA was inserted vide the very same amendment (Act 27 of 1983), which also resulted in Section 13 being substituted. In other words, Section 13, as

substituted, was intended to apply *mutatis mutandis*, undoubtedly, to a Revision maintained against a Final Order under Section 23C or Section 23D. Section 23C contemplates an Order of Eviction, being passed against the tenant, if the conditions in the said provision are satisfied. Section 23F also contemplates a stay being granted by the High Court in a Revision under Section 23E of the Order of Eviction. Therefore, when Section 13 is made applicable to a Revision filed against an Order of Eviction under Section 23C, the Revision would be a Revision filed by the tenant, who has suffered an Order of Eviction under Section 23C. What is, however, more important is that, under the scheme of Chapter IIIA, that is the fast-track procedure, as it were, contemplated for the special categories of landlords falling under Section 23J, it provides only for bonafide requirement as the ground for seeking eviction. If eviction is sought, in other words, on the ground of arrears of rent, it may be open to the landlord to invoke the provisions of Section 12. The special right, however, to invoke the shorter and faster route to obtain an Order of Eviction, is available to the landlord, falling under Section 23J, only in respect of grounds of bonafide requirement. The relevance of this lies in concluding that, by the insertion of Chapter IIIA along with the substitution of Section 13, and by virtue of Section 23H, making Section 13 applicable even to the proceeding under Chapter IIIA, when an Order for Eviction is passed under Section 23C and the tenant challenges such an Order of Eviction by a Revision, he is expected to pay the amount, as provided in Section 13(1), during the pendency of the Revision.

27. As already noticed, as far as a proceeding contemplated under Chapter III by the ordinary landlord is concerned, if we may use that expression, falling under Section 2(b), Section 13, as such, applies. We have only attempted to divine the impact of Section 23H, to find that, even in a proceeding by the special category of landlords, falling under Section 23J, and what is more, where eviction cannot be sought under Chapter IIIA, on the ground of arrears

of rent, Section 13 applies even after the passing of the Order for Eviction, when the matter is pending in a Revision. This aspect helps to reveal the mind of the Legislature, and the ambiguity shrouding its real intention, is to some extent, effaced.

29. The opening words of Section 13 provide that, on a Suit or any other proceeding, being instituted by a landlord on any of the grounds referred to in Section 12, the tenant is to deposit in Court or pay to the landlord, the amount equal to the rent. Can it, therefore, be contended that the words "any of the grounds", referred to in Section 12, is to apply only to a situation where Suit or any other proceeding is instituted by the landlord? To expatiate, after the above opening words in Section 13, by virtue of the substitution effected by Act 27 of 1983, can it mean that the words "or in an Appeal or in any other proceeding by a tenant against any Decree or Order for his eviction", is not to be read along with "on of the grounds referred to in Section 12"? To put it in a different manner, can it be said that the substituted provisions of Section 13 contemplated that the Appeal or any other proceeding by the tenant, must be in a proceeding instituted only under Section 12(1)(a), i.e., on the ground of arrears of rent, for the reason that the construction of the provision, which consists of an elongated sentence to which meaning cannot be attached, except by bearing in mind the statutory duty of the tenant to deposit the amount for the period for which the tenant may have made default. In other words, if the words "for the period for which the tenant may have made default" is an indispensable requirement to apply Section 13, then the substituted provisions, extending the protection in an Appeal or other proceeding by a tenant, would be confined to a proceeding under Section 12(1)(a). In this regard, we may also look for any inkling available in Section 13 for the proposition that Section 13 is attracted in an Appeal or other proceeding by the tenant, on any of the grounds under Section 12. In this regard, in *Sobhagyamal* (supra), this Court, we may recapitulate, has held as follows:

"Striking out the defence of the tenant, on an application moved by the landlord, the 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 instated for ejectment on the ground of arrears of rent under Section 12(1)(a) of the Act."

This would mean that Section 13 would apply even if the ground of eviction is not one under Section 12(1)(a).

32. The problem persists in the form of the logical culmination of the command to the tenant in an Appeal or other proceeding, against any Decree of Eviction, to deposit the rent or pay for the period, for which the tenant may have made default. Undoubtedly, in the context of Section 12(1)(a) read with Section 12(3), the words "for the period for which the tenant may have made default", is perfectly apposite. In other words, when Section 12(3) provides that no Decree shall be passed for eviction under Section 12(1)(a), if the tenant makes the deposit or payment of the amount of rent, under Section 13, it is intended to mean that, even if the tenant has invited the wrath of Section 12(1)(a), he would be protected under Section 12(3), if he complied with Section 13, made the deposit within a period of one month or the extended period of the service of summons and made further deposits/payment.

33. However, Section 13 clearly is intended to apply in a Suit or proceeding instituted by the landlord on any other grounds under Section 12. If that be so, the words, "for the period, for which, the tenant may have made default", may not apply, as the tenant may not be in default and no ground under Section 12(1)(a) may even be pleaded. Therefore, in such a proceeding by the landlord, the words, "for the period, for which, the tenant may have made default", pales into insignificance and irrelevance. It would then mean that, in a proceeding under Section 12, which does not involve Section 12(1)a), or in other words, when there is

no default within the meaning of Section 12(1)(a), the protection would be available to the tenant, only if, he makes a deposit or payment for the period during the pendency of the proceeding. In other words, throughout the proceeding by the landlord, on any of the grounds under Section 12, the tenant is obliged to deposit the amount of rent. The failure to do so, would attract Section 13(6) and it is open to the Court to strike off the defence and proceed further in the matter.

34. If that be so, in an Appeal or any other proceeding by the tenant against an Order of Eviction, which does not involve Section 12(1)(a), the intention of the Law- Giver appears to be that the tenant, so described, despite the Order of Eviction and the definition of the word "tenant" in Section 2(i), is obliged to pay or deposit the amount of rent under Section 13(1) or Section 13(2), as the case may be, in the manner provided, till the termination of the Appeal or proceeding.”

14. Therefore, on the basis of discussion as above, it is found that respondents/ defendants committed multiple (more than two times) delay in depositing rent. No application was filed for extension of time in the concerned Court for payment of rent and after long time deposited rent along with application for condonation of delay, which has not been decided by the learned First Appellate Court strictly on merits but nevertheless condoned by the learned First Appellate Court on wrong ground. Accordingly, regarding substantial question finding is in affirmative i.e. to say that the learned First Appellate Court erred in condoning delay in payment of rent.

15. As a consequence, this second appeal is allowed and it is directed that the respondents/ defendants shall hand over rented premises situated at House No. 346/29, Lohia Bazar, Lashkar, Gwalior to the appellants/ plaintiffs within three months along with payment of arrears of rent till the possession of suit premises is given.

In the facts and circumstances of the case, both the parties shall bear their own cost throughout.

Accordingly, the appeal stands **allowed**.

(AVANINDRA KUMAR SINGH)

JUDGE

VSG

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