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Court : Madhya Pradesh

Decided On : Jun-19-2015

Judge : Sheel Nagu

Appeal No. : W.P. No. 2808 of 2015

Appellant : Gopal Dutt Dholakhandi

Respondent : Dr. S.K. Tamotia and Another

Judgement :

1. The present writ petition under Article 226 of Constitution of India assails the interlocutory orders dated 12.09.2013 and 24.07.2014 passed by the Court below whereby an application under Section 13 (6) of M.P. Accommodation Control Act, 1961 (1961 Act for brevity) preferred by the landlord/plaintiffs has been allowed and the defence of the tenant/petitioner has been struck off for default in depositing rent in terms of Section 13(1) of 1961 Act.

2. Learned counsel for rival parties are heard on the question of admission.

3. The basic facts giving rise to the instant case are that in a suit for eviction and arrears of rent, an application under Section 13(6) of 1961 Act was filed by the landlord/plaintiffs. The defence of the tenant was sought to be struck off on the basis of undisputed fact that since April 2010 the defendant/tenant was in arrears of rent to the tune of Rs. 5,34,000/- against which an amount of Rs.3,90,750/- was deposited by the tenant. It was found by the trial Court that during pendency of the

suit the arrears of rent was not deposited by the tenant even after one month of receiving of summon as per Section 13(2) of 1961 Act.

4. In this view of the matter, the trial court vide order dated 12.09.2013 struck off the defence of the defendant/tenant for depositing of the rent. Instead of assailing the above said order dated 12.09.2013, the tenant acquiesced, and filed an application dated 07.10.2013 under Section 151 of C.P.C. vide Annexure P-9 seeking affording of opportunity to the defendant/tenant to defend himself on the strength of the facts that entire arrears of rent have since been deposited on 30.09.2013.

5. Thus, in sum and substance the application under Section 151 of C.P.C. was an application for review of earlier interlocutory order dated 12.09.2013.

6. The trial Court vide impugned order dated 24.09.2014 rejected the said application under Section 151 of C.P.C. on the ground that the same is nothing but an application for review of order dated 12.09.2013 which was never challenged by the petitioner in any higher court. It was further held by the trial Court that the petitioner/tenant is guilty of default for non-compliance of mandatory provisions under Section 13 (1) of 1961 Act.

7. Learned counsel for the petitioner/tenant has primarily contended that because of certain personal inconvenience and difficulties he could not pay the rent in terms of the provision of Section 13(1) of 1961 Act. It is contended that since entire arrears of rent has been deposited on 30.09.2013 and that every case deserves to be heard on merits it would be appropriate and in the interest of justice to recall the order of striking out of the defence of defendant/tenant/petitioner. It is further contended that Section 13(6) of 1961 Act is not a mandatory provision leaving it to the discretion of the Court to strike out the defence of the tenant on the basis of facts and circumstances of the case. It is thus contended that since the petitioner was prevented by cause beyond his control to comply with the mandatory provision under Section 13(1) of 1961 Act, the impugned orders deserve to be recalled.

8. In terms of the law laid down by the Apex Court in the case of Smt. Kamla Devi Vs. Vasdev reported in AIR 1995 SC 985 that unless default is willful on the part of the tenant extreme steps of striking out of the defence under Section 13(6) of 1961 Act should not be invoked, this court is obliged to scrutinize the cause shown in the application under Section 151 of CPC Annexure P-9.

9. The factual scenario which gets revealed by the application under Section 151 of C.P.C. is that the suit in question was filed on 15.05.2011. The arrears of rent to the tune of Rs.5,34,000/- till September 2013 were deposited in small installments of Rs.91,175/- on 10.05.2013 and Rs. 2,99,575/- on 22.11.2012, thereby leaving unpaid amount of Rs. 1,43,250/- as on the day of passing of order dated 12.09.2013.

10. Mandate of Section 13(1) of 1961 Act obliges the tenant to deposit the entire arrears of rent due on filing of the suit within one month of receiving of summon of the plaint and continue depositing thereafter on every 15th day of the month. The provision of Section 13(1) of 1961 Act are mandatory in nature.

11. The inconvenience shown as cause for default in making payment as contained in the application under Section 151 of CPC Annexure P-9 does not appear to be of such nature which could have prevented the petitioner/tenant from depositing arrears of rent for more than one year even after receipt of summon of the suit in question.

12. True it is that default is required to be established as willful to enable the trial court to successfully invoke provision of Section 13(6) of 1961 Act, but it is equally important to see that directory nature of Section 13(6) of 1961 Act and the tendency to interpret the same in liberal manner does not whittle down and erode the mandatory nature of Section 13(1) of 1961 Act.

13. Section 13(1) of 1961 Act is substantive provision which is couched in mandatory language. The object of the said provision is to prevent the 1961 Act from becoming protenant. If liberal interpretation of Section 13(6) of 1961 Act is permitted indiscriminately then the object of 1961 Act of striking a reasonable balance between rights and liabilities of landlord and tenant shall become otiose.

14. Moreover, Section 13(6) of 1961 Act merely qualifies and adds meaning to the substantive Section 13(1). Section 13(6) can not independently exist in the absence of Section 13(1), whereas Section 13(1) can very well exist and operate in the absence of Section 13(6). This is a clear indication of dominating nature of Section 13(1) over Section 13(6). Thus, the object of 1961 Act can be preserved and upheld only when Section 13(6) is interpreted in a manner which may not result in eroding the mandatory nature of Section 13(1). I am bolstered in my view by the decisions of the Apex Court in the cases of *British Airways Plc. v. Union of India*, (2002) 2 SCC 95 and *State of A.P. v. Mohd. Hussain*, (2014) 1 SCC 258 extract of which are reproduced herein below for ready reference and convenience :-

British Airways Plc. v. Union of India, (2002) 2 SCC 95

8. While interpreting a statute the court should try to sustain its validity and give such meaning to the provisions which advance the object sought to be achieved by the enactment. The court cannot approach the enactment with a view to pick holes or to search for defects of drafting which make its working impossible. It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the court to make such construction of a statute which shall suppress the mischief and advance the remedy. While interpreting a statute the courts are required to keep in mind the consequences which are likely to flow upon the intended interpretation.

State of A.P. v. Mohd. Hussain, (2014) 1 SCC 258

19. We cannot ignore that it is a well-settled canon of interpretation that when it comes to construction of a section, it is to be read in its entirety, and its sub-sections are to be read in relation to each other, and not disjunctively. Besides, the

text of a section has to be read in the context of the statute. A few sub-sections of a section cannot be separated from other subsections, and read to convey something altogether different from the theme underlying the entire section. That is how a section is required to be read purposively and meaningfully.

15. In the instant case, the trial court in the admitted factual scenario of default and consequential violation of Section 13 (1) of 1961 Act, has rightly upheld the objection made by the landlord by treating Section 13(1) of 1961 Act to be mandatory and of dominating character over and above Section 13(6) of 1961 Act.

16. This Court at this juncture hastens to add that, as observed by the trial court and in terms of the law laid down by the Apex Court in the case of Modula India Vs. Kamakshya Singh Deo reported in AIR 1989 SC 162, the other defences permitted under the law shall remain available to the tenant.

17. Consequently, the orders impugned dated 12.09.2013 and 24.07.2014 (Annexures P-1 and P-2) do not suffer from any jurisdictional arrear. Thus, no interference is called for in the limited supervisory jurisdiction of this Court under Article 227 of Constitution of India.

18. Accordingly, this writ petition deserves to be and is, therefore, dismissed.

No order as to cost.

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