

Lachoo Ram Vs. Bipln Kumar

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Court : Madhya Pradesh

Decided On : Jun-23-1992

Reported in : AIR1993MP17

Judge : S.K. Dubey, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 12(1), 12(3) and 13

Appeal No. : Second Appeal No. 159/1982

Appellant : Lachoo Ram

Respondent : Bipln Kumar

Advocate for Def. : M.M. Kaushik, Adv.

Advocate for Pet/Ap. : D.K. Katate, Adv.

Disposition : Appeal allowed

Judgement :

S.K. Dubey, J.

1.This second appeal by the defendant/tenant is against the judgment and decree of eviction, passed under Section 12(1)(a) of the M.P. Accommodation Control Act, 1961 (for short the 'Act'), which was admitted by this Court for hearing on 4-4-

1983 on the following substantial question of law:--

'Whether the suit was not maintainable for a ground under Section 12(1)(a) of the M.P. Accommodation Control Act, even when the defendant was not entitled to the benefit of Section 12(3) of the Act, because the suit was instituted before expiry of two months of the notice of demand regarding the arrears of rent, as averred in paragraph 4 of the plaint ?'

2. It is not disputed that the respondent/landlord instituted an earlier Suit No. 113-A/73 for eviction under Section 12(1)(a) of the Act in the Court of Civil Judge Class II, Vidisha, wherein the appellant/ tenant having deposited the arrears of rent within one month from the date of service of writ of summons, the order of eviction was not made on the ground specified in Clause (a) of Sub-section (1) of Section 12 of the Act, because of the benefit granted under Section 12(3) of the Act. The tenant again committed default in payment of rent of the accommodation for more than three consecutive months, hence, the landlord served a notice of demand dated 23-1-1976 (Ext. P/2) for the payment of arrears of rent legally recoverable, which was received by the tenant on 29-1-1976, to which the tenant replied vide letter dated 11-2-1976 (Ext. D/2). The landlord without waiting for the expiry of the period of two months of the date on which notice of demand was served, instituted a suit on 14-2-1976 for eviction under Section 12(1)(a) of the Act, and for recovery of arrears of rent. The tenant deposited the arrears of rent, as claimed, within one month from the writ of summons, but, the trial Court decreed the suit as the tenant was not entitled to the protection and benefit in view of proviso to Sub-section (3) of Section 12. Against the said decree, the tenant preferred an appeal, which having been dismissed, he has preferred this second appeal.

3. Shri D. K. Katare, learned counsel for the appellant, in the backdrop of the admitted facts, contended that the decree for eviction passed under Section 12(1)(a) of the Act, is without jurisdiction as the landlord filed the suit before accrual of cause of action, that is before expiry of two months' period of the date on which notice of demand was served, hence, for eviction ground of Clause (a) of Section 12(1) of the Act was not available; to support the contention, reliance was placed on the decisions of this Court in *Sunder Prasad Pandey v. Rajaram Shukla*,

1972 JLJ 759 : SA No. 18 of 1967 (J), decided on 30-4-1971; Allarakhi v. Goverdhandas, (1990) 1 MPWN 172, SA No. 120 of 1977 (G), decided on 24-1-1990, Shantilal v. Gauswami, 1984 MPWN 494 : SA No. 568 of 1974 (I), decided on 9-8-1984; and Gulabibai v. Aziz Mohd., 1984 MPWN 578; SA No. 81 of 1976 (I), decided on 14-9-1984.

4. Faced with the forceful contention, Shri M. P. Kaushik, learned counsel for the respondent/landlord raised two contentions; firstly, having once availed of the benefit under Section 12(3) of the Act, on further default of not paying rent for three consecutive months, no further notice of demand as required under Section 12(1)(a) was necessary as it would be against the intention and spirit of the proviso to Sub-section (3) of Section 12, whereby the landlord gets absolute- right of eviction under Section 12(1)(a) of the Act, for that counsel relied on a decision of this Court in case of Chandmal v. Inayat Hussain, 1972 JLJ SN 23; SA No. 828 of 69(J), decided on 21-8-1971, and secondly, as the tenant did not raise the objection before the Courts below, on principle of waiver, the same cannot be allowed to be raised in second appeal.

5. To appreciate the first contention raised by the respondent's Counsel, it is necessary to extract the statutory provision from Section 12 of the Act, which is relevant for the purposes of the present appeal.

'12. Restriction on eviction of tenants -

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

(2) 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 prescribedmanner.

XXX XXX XXX (3) 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

deposits as required by Section 13: Provided that no tenant shall be entitled to the benefit under this sub-section, if, having obtained such benefit once in respect of any accommodation he again makes a default in the payment of rent of that accommodation for three consecutive months.'

6. A bare reading of Section 12(1) shows that a landlord can file a suit for eviction of his tenant, provided he gets a cause of action for eviction on any one or more of the grounds enumerated in Clauses (a) to (p) of Sub-section (1) of Section 12, and the Court can pass decree of eviction in respect of such grounds, in regard to which entitlement is found duly established.

7. In the present case, the cause of action is founded on the ground of Clause (a) of Section 12(1). For seeking a decree under this clause, it is necessary for the landlord to prove the three ingredients of the grounds, namely (i) the tenant is in arrears of rent; (ii) a valid notice of demand was served on him; and (iii) the tenant failed to tender or pay the amount of arrears of rent within two months of the date of service of such a notice. If any of the ingredients is missing, a landlord does not get a cause of action for eviction, on the ground specified in Clause (a).

8. Admittedly, the present suit was filed before expiry of two months period from the date of service of demand, to meet that, the counsel for the respondent placed much stress on the effect of proviso to Sub-section (3) of Section 12. The legal effect of this proviso came up for consideration before a Full Bench of this Court in case of *Mankunwarbai v. Sunderlal Jain*, 1978 J LJ 326 : 1978 MPLJ 405 : (AIR 1978 MP 165) which observed in para 15 thus:

'After having availed himself of the benefit of Section 12(3) once, the tenant can afford to commit default in payment of rent for two consecutive months only, but not three. If he does so, the landlord will be free to give him notice and in case of non-payment of rent within the next two months, he is assured of a decree for eviction in his suit to be instituted, and, in such a case, even if the tenant deposits all arrears of rent under the first part of Section 13(1) and also goes on depositing regularly rent for the current month, even then, a decree will be passed against him. This is the effect of the proviso to Section 12(3).'

9. A learned Judge of this Court in case of Satish Chandra v. Jankiprasad, 1992 MPLJ 90, following the decision in Mankunwarbai's case (supra), restated the effect of proviso to Sub-section (3) of Section 12 on default of payment of rent of the suit accommodation for three consecutive months.

10. From the above, it is candid clear that the proviso to Sub-section (3) of Section 12 debars such tenant to get the benefit even on deposit of arrears of rent in Court in accordance with Section 13 of the Act, who could not avoid his ejectment on the ground under Section 12(1)(a) of the Act. But for seeking a decree for eviction on the ground of Clause (a) of Section 12(1) of the Act, a landlord, in subsequent suit claiming eviction on the ground of default in payment of arrears of rent must disclose the ground as contemplated by Clause (a) of Sub-section (1) of Section 12 of the Act, and for that purpose, it is essential to disclose that despite service of notice of demand for arrears of rent due, the tenant failed to pay or tender the amount of arrears of rent within two months from the date of service of such notice. On such a ground created, a suit for eviction can be brought, in such a subsequent suit, the effect of proviso to Sub-section (3) of Section 12 comes into play, i.e. the tenant would not be entitled to claim protection even by making deposit of arrears of rent in accordance with Section 13 of the Act which applies to a stage subsequent to the institution of the suit. If the contention raised by the landlord/plaintiff that after the default of three consecutive months, notice of demand is not necessary as required by Clause (a) of Section 12(1) of the Act, is accepted, then it would amount to add one more ground for eviction under Section 12(1), namely, default for these consecutive months by a tenant who had already availed of the protection of Sub-section (3) of Section 12, which is not permissible, being not Court's function. See 1980 JLJ 123 : (AIR 1980 NOC 175 (MP) ; Vishnudayal v. Anjori Bai; and 1980 MPRCJ note 114; S. A. No. 252 of 1977 (J), decided on 12-1-1980, Mithu Lal v. Gopilal.

11. It is also clear that the stage for applying the proviso to Section 12(3) comes only when in a subsequent suit there is a ground for decreeing the claim for eviction as specified in Section 12(1)(a). Mere default in payment of rent for three consecutive months is no ground for instituting a suit for eviction; if a tenant availed himself of the protection under Section 12(3) in a previous suit, and

subsequently again falls into arrears of three months rent, but tenders or pays the amount of arrears of rent within two months of the notice of demand by the landlord, no ground subsists for a subsequent suit under Section 12 (1)(a), and therefore, no question of bar of availability of protection under the proviso to Sub-section (3) of Section 12 arises. Therefore, it is essential that in the subsequent suit the landlord must disclose the ground as contemplated by Clause (a) of Section 12(1) of the Act. See 1981 MPLJ 155, Jagannath Prasad Onkarprasad Sharma v. Moharsingh Karansingh.

12. In view of the above discussion, it is clear that a subsequent suit can only be instituted or filed for eviction founded on Clause (a), if the conditions contemplated in Clause (a) of Section 12(1) are fulfilled. As the present suit was filed before the expiry of two months from the service of notice of demand, no cause of action for default in paying the arrears of rent was available to the respondent/ landlord on the date of filing of the suit, therefore, the suit could not have been decreed on that ground as is the view of this Court in cases of Sunder Prasad Pandey, Allarakhi, Shantilal and Gulabibai (supra).

13. Reliance of Kaushik on the decision in case of Chandlal (supra) is of no help, as in that case too, the suit was filed after expiry of two months' period after service of notice. Moreover, the Court has not considered that in a Government suit existence of the necessary ingredients, contemplated in Clause (a) of Section 12(1) of the Act are necessary or not.

14. Re Waiver;

A look at Section 12(1) shows that a suit for eviction of a tena'nt cannot be filed by the landlord, unless any one or more of the grounds enumerated in Clauses (a) to (p) of Sub-section (1) of Section 12 exists. Therefore, on the date of filing of a suit for eviction, existence of cause of action on one or more ground is a condition precedent, then only a decree for eviction can be passed, if such ground is found established.

15. It is well settled/understood rule of law that if a thing is to be done in a particular manner, it must be done in that manner or at all. Other modes of

compliance are excluded. Clause (a) of Sub-section (1) of Section 12 of the Act does not confer a jurisdiction on a Court to pass a decree for eviction, if the essential requirements as contemplated in Clause (a) are not fulfilled. If a decree is passed without fulfilment of the necessary conditional, that would be in contravention of Section 12(3)(a) of the Act. Therefore, non raising of an objection of filing of the suit before expiry of two months from the date of service of notice of demand will not give jurisdiction to court to pass a decree, as there can be no estoppel against statute, if any authority is needed, see AIR 1955 SC 504 Thakur Amar Singh v. State of Rajasthan.

16. In the result, the appeal is allowed, the decree of eviction from the suit accommodation is set aside, with no orders as to costs of this appeal. However, the landlord would be entitled to the arrears of rent and rent deposited from time to time till date and the costs of two Courts below. A decree be prepared accordingly.