

Gurbachansingh Vs. Vimlabai

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Court : Madhya Pradesh

Decided On : Sep-30-1992

Reported in : AIR1993MP135

Judge : R.C. Lahoti, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 12 and 13;
[Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100

Appeal No. : S.A. No. 90 of 1986

Appellant : Gurbachansingh

Respondent : Vimlabai

Advocate for Def. : R.S. Saxena, Adv.

Advocate for Pet/Ap. : V.K. Bhardwaj, Adv.

Disposition : Appeal allowed

Judgement :

R.C. Lahoti, J.

1. The defendant-tenant, appellant herein, is escaping the decree of ejectment indeed by a hair's breadth.

2. The plaintiff/ respondent filed a suit for the ejectment of defendant/appellant on the grounds allegedly available under Clauses (a), (c), and (n) of Sub-section (1) of Section 12 of M.P. Accommodation Control Act, 1961 (hereinafter referred to as 'the Act', for short). The two courts below have found the grounds under Clauses (c) and (n) not to be available to the appellant. In so far as the ground under Clause (a) is concerned, the trial Court held that the provisions of Section 13 were complied with. During the pendency of the landlord's appeal before the lower appellate Court, the tenant defaulted in making deposits pending appeal and hence the lower appellate Court allowed the appeal directing ejectment of the appellant, refusing him the benefit of protection against eviction Under Section 12(3), for his failure to comply with the provisions of Section 13 before the appellate Court below.

3. Having filed this appeal and having secured stay of execution of decree for ejectment, the appellant has also moved simultaneously with the filing of the appeal an application Under Section 13(1) of the Act read with Section 148 C.P.C. seeking intension of time in making the deposits pending appeal also praying for condonation of the delay. The appellant has deposited all the arrears up-to-date as stated by the learned counsel for the appellant at the bar. That statement has not been disputed by the learned counsel for the respondent.

4. While admitting the appeal, no substantial question of law was framed. The hearing has been confined to the following questions:--

(i) Whether the defendant/tenant was justified in not complying with the provisions of Section 13 of the Act during the pendency of the appeal before the lower appellate Court?

(ii) Whether this Court can exercise power to condone the delay in making such deposits?

5. The suit was filed on 8-9-1971. Trial Court's decree was passed on 15-9-1983. First appeal was filed on 23-12-1983 and decided on 30-6-1986. Section 13 of the Act as it originally stood, did not apply to appeals. (See Sharadchand v. Vishnupant, AIR 1978 Madh Pra 143 (FB). Section 13 was substantially recast in

its present form making it obligatory on the tenant to deposit the rent even during the pendency of appeals. This amendment came into force with effect from 16-8-1983. Thus, the amendment had come into operation before the filing of the first appeal by the tenant herein.

6. Needless to say, the object behind the amendment is to curb the tenancy on the part of the incorrigible defaulter-tenants utilising the pendency of litigation as an excuse for harassing the landlords by successfully withholding the payment of rent and thereby compelling the landlords to resort to successive suits even to recover the rent in arrears pendente lite. Looking to the object behind its enactment, the amendment must apply to the pending appeals though arising out of suits filed prior to the enforcement of the amendment. The tenant was therefore obliged to comply with the provisions of the amended Section 13 before the lower appellate Court which therefore did not err in taking the view which it did.

7. It is also proved that the tenant did not file any application for condoning the delay in deposits made by him before the lower appellate Court though he did make a lump sum deposit of the arrears when faced with landlord's application seeking striking out of the defence of the tenant. It is regrettable to note the reprehensible conduct of the tenant raising all possible objections in reply to the landlord's application, instead of seeking condonation of defaults with humility which was all the more expected in the background of his having secured protection against eviction from the trial Court. The lower appellate Court was justified in refusing to condone the delay in the absence of an application having been filed for the purpose.

8. Section 13 of the Act speaks of the arrears of rent being deposited within one month of the service of writ of summons or notice of appeal or any other proceedings or within such further time as the Court may on an application made to it allow in this behalf. Thereafter, the tenant must continue to deposit or pay month by month by the 15th of each succeeding month, monthly rent calculated at the same rate, till the decision in the proceedings. Earlier, there was some controversy as to whether the delay in monthly deposits subsequent to the first deposit could be condoned by the Court or not. However that controversy stands

resolved with the law laid down by the Apex Court in *Shyamcharan Sharma v. Dharamdas*, AIR 1980 SC 587. Their Lordships held :--

'Where a tenant deposits the arrears of rent within time allowed by the Court but during pendency of suit for eviction and appeal thereto, deposits the monthly rent a day or two beyond the prescribed date on some occasions, held, the Court had discretion to condone the delay and if the Court granted extension of time for payment of monthly rent, the tenant would not be liable to eviction.'

'If the court has the discretion not to strike out the defence of a tenant committing default in payment of deposit as required by a Section 13(1), the Court surely has the further discretion to condone the default and extend the time for payment or deposit.'

Every discretion vesting in Court is, circumscribed by rules of reason, justice and fair play. No Court would be able to exercise its discretion in condoning the delay unless relevant facts having impact on exercise of such discretion were placed before the Court which, needless to say, would only be by filing an application.

9. In *B. C. Kame v. Nemichand Jain*, 1970 Jab LJ 703 : (AIR 1970 SC 981) the Apex Court held (at p. 984 of AIR) :--

'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.'

10. As far back as on 28-4-1964, it was held by this Court in *Harnamsingh v. Babulal*, 1964 Jab LJ (SN) 161:--

'On this analysis there can be no doubt that in order to get benefit of point No. (2) the tenant has to make an application to the Court. In other words, the Court cannot act suo motu. But no period is prescribed for making such an application. The parenthetical clause 'on an application made to it' is not qualified by the expression 'within one month.'

11. So was the view taken in *Sardar Jagmir Singh v. Birdhi Chand Jain*, (1977) 1 MPWN 599 :--

'According to the language of Sub-section (1) of Section 13, such an application is condition precedent for exercising the jurisdiction vested in the Court in the matter of extension of time to make the initial deposit.'

12. There is no reason to assume why the same principle should not be applied to monthly deposits. If the tenant defaults in monthly deposits, he must seek condonation of the delay by making an application, in absence whereof the Court may not exercise discretion in condoning the delay. The lower appellate Court rightly did not condone the delay.

13. In the case at hand, the balance however tilts in favour of the tenant in spite of his having suffered the decree for ejectment from the Court below for the several reasons to follow. It seems that there were certain alienations made by the landlord during the pendency of the lis whereby the landlord had alienated his interest in the suit property piecemeal to several purchasers. Legislative Amendment applying Section 13 to appeals was brought into force during the pendency of the lis. In reply to landlord's application seeking striking out of the tenant's defence, these were the two reasons stated by the opposing tenant. Though no application for condonation was filed before the lower appellate Court, the tenant had nevertheless cleared all the arrears, may be in lump sum. The delay was not condoned by the lower appellate Court. The tenant took care to move an application for condonation, along with filing of memo of second appeal before this Court and also took care in clearing the arrears during the pendency of this appeal too. These factors have persuaded this Court in taking a liberal view in favour of the tenant/appellant and condoning the delay in making monthly deposits during the pendency of the first appeal. The delay having been condoned, the tenant/appellant is held entitled to the benefit of Section 12(3) of the Act.

14. The appeal is allowed. The decree for ejectment passed by the lower appellate Court is set aside. The suit for ejectment filed by the plaintiff/respondent is directed to be dismissed. However, the defendant/appellant is directed to bear the costs incurred by the plaintiff/ respondent throughout. Counsel's fee Rs. 250/-, if pre-

certified.

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