

Mohanlal Vs. Lakhekhan

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Court : Rajasthan

Decided On : Oct-05-1972

Reported in : 1972WLN753

Judge : J.P. Jain, J.

Appeal No. : S.B. Civil Regular Second Appeal No. 715 of 71

Appellant : Mohanlal

Respondent : Lakhekhan

Advocate for Def. : Mr. P.C. Mathur

Disposition : Appeal dismissed

Judgement :

J.P. Jain, J.

1. In this second appeal the appellant is a tenant against whom a decree for ejectment has been passed by the Additional Munsif, Jodhpur and maintained in appeal by the Additional District Judge No. 1, Jodhpur.

2. There is a building properly known as Lakhekhan building situate in Jodhpur inside Swanchi Gate Respondent Lakhekhan is the owner of this building The suit premises is a shop in this building. Appellant Mohanlal has been a tenant in the

shop at the rent of Rs. 15/- per month. The respondent served a notice of eviction under Section 106 of the Transfer of Property Act terminating the tenancy of the appellant. The tenant did not vacate the suit shop. Respondent-plaintiff therefore instituted the civil suit No. 49/67 in the court of Munsif on 4.7.1967. He claimed eviction of the tenant on three grounds: (1) That the defendant neither paid nor tendered rent from Bhadwa Sudi 2 Samwat 2021 corresponding to 8 9.1964, (ii) that the defendant made certain material alterations in the suit shop without the plaintiff's consent and (111), that the shop was required for the plaintiff's son Wali Khan and his requirement was reasonable and bona fide. Lakhekhan accordingly prayed for the eviction of the tenant from the suit shop; a decree of Rs. 590.25 as arrears or rent; meane profits at the rate of Rs. 30 /. per month for use and occupation of the shop from the date of the suit, interest on the above sums 6% per annum and the costs of the suit.

3. The defendant-tenant admitted the tenancy and having paid rent up to Bhadwa Sud 1 Samwat 2021. It was, however, alleged by him that he was not at all a defaulter. Ha seat the rent by money order, but it was not accepted by the landlord. He denied having made any alterations in the suit shop. He also refuted the contention of the landlord that the shop was required for his son Wali Khan He also alleged that the plaintiff had been pressing him to increase the rent to Rs. 50/- per month.

4. 12 9.67 was the first date of hearing on which the defendant put in appearance. He made an application on that date to determine the rent due&to; fix up a date for depositing the said amount in the court. The case was fixed on 23.9 67 for the plaintiff to file his reply to this application. The Munsif was: then transferred. His successor in office by his order dated 20.10.1967 ordered the arrears of rent and interest to be deposited in the court upto 20.11.1967. The defendant then deposited Rs. 783/-on 16.11.1967. The break up of this amount is as follows;-
Rent for the period

(i) From Bhadwa Sud 2 Samwat 2021 to Pos Sud 2Samwat 2024 Rs. 615.00(ii)
Costs of the suit Rs. 122.50(iii) Interest on arrears of rent Rs. 45.50Total: Rs.
783.00

The court proceeded with the hearing of the suit and framed the following three issues on 5.1.1968:

(1) Whether the plaintiff required the suit shop for himself bonafide and reasonably?

(2) Whether the defendant has made material alterations and is liable to be evicted?

(3) Whether the plaintiff is entitled to recover Rs. 30/- per month as mesne profits for use and occupation of the shop?

5. While the trial of the suit was in progress, plaintiff moved an application under Section 13(6) of the Rajasthan Premises (Control of Rent and Eviction) Act. 1950 (hereinafter referred to as the Act) on 8.11 1968 asking the court to strike out the defence of the defendant against eviction as he failed to comply with the requirement of Section 13(4) of the Act. This application was opposed by the defendant by a written reply dated 22.11.1968. The learned trial Judge, after hearing the parties, allowed the application and the defendant's defence against eviction was struck out by his order dated 18th January, 1969. This order was challenged in appeal, but without success. The order was also challenged in revision but it was found to be correct and accordingly maintained, (vide *Mohanlal v. Lakhekhan* 1969 Weekly Law Notes 370).

6. The learned Munsif continued the trial of the case. Plaintiff had already closed his case on 3.8.1968. As a result of the order striking out the defence, the defendant could not produce his evidence. The first two issues were decided in favour of the plaintiff, while the third issue was decided against him. The plaintiff's suit was decreed for ejectment and for arrears of rent and surprisingly he was also granted a decree for the recovery of mesne profits at the rate of Rs. 30/- per month from the date of the institution of the suit to the date of delivery of possession, even when issue No. 3 was decided against the plaintiff. Being aggrieved of this decree the defendant preferred an appeal. The Additional District Judge No I, Jodhpur, who dealt with the appeal, while upholding the finding on issue No. 1 disagreed with the conclusion of the learned trial Judge on issue No.

2. The appeal was eventually dismissed by his judgment dated 21 10.69. It is this decree which is the subject matter of challenge before me in this Court.

7. Learned Counsel for the parties made their respective submissions at length. After having heard them, I was inclined to remit the case by my order dated 11 5.1972 to the Additional District Judge for his finding on the following issue:

Whether the defendant neither paid nor tendered the amount of rent due from him from Bhadwa Sud 2, Samwat 2021?

The finding of the learned Judge in this regard if in the affirmative. I have again heard learned Counsel for the parties on 29.8,72. I will now deal with their contentions one by one.

8. Learned Counsel for the appellant has argued that the decision of the lower appellate court is based on an erroneous view of the law. He invited my attention to the observations made in para 2 of the first appellate court's judgment which read as follows;

Once under Section 13(6) of the Act of 1950, the court had ordered the defence against eviction to be struck out, no protection under Section 13(1)(a) to (k) was available to the tenant.

For this, the learned Judge placed reliance on some observations of Hon'ble Lodha, J. in this very case (1969 W.L.N 370) when this case had gone to him in revision. I will refer to those observations at the appropriate stage.

9. The first appellate court also relied upon another decision of Lodha Jain Bansi Lal v. Laxmi Chand 1971 RCJ 836. It was laid down that once the defence of the defendant against eviction has been struck out, the plaintiff is not bound to prove one of the conditions laid down for claiming ejectment under Section 13(1)(a) to (k) of the Act. On account of this view taken by Lodha J. the court of first appeal held that it was not necessary for the trial Judge to have given findings on the issue that the shop in dispute was required reasonably and bonafide by the plaintiff for his son Wali Khan and that the defendants had made material alterations in the premises without the permission of the plaintiff, though the learned Judge also

gave findings on issues No. 1 and 2 on merits. Mr. Shrikishan Mai Lodha has very strenuously challenged the view taken by the first appellate court and he also submitted that the view taken by Lodha J. was obiter, in the case of Mohanlal v. Lakhekhan, whereas in the case of Bansilal 1971 RCJ 836 he relied upon the statement of the plaintiff and did not appear to have expressed his final view in the matter. At any rate, it was urged that the view taken by Lodha J. was not sound. On behalf of the appellant, the finding on issue No. 1 that the requirement of the plaintiff was reasonable and bonafide has also been challenged. It has, therefore, become necessary for me to examine the real effect of striking out defence under Section 13(6) of the Act.

10. I will at the outset examine the scheme of the Act relating to the eviction of tenants. Rajasthan Premises (Control of Rent and Eviction) Act, 1950 was enacted to control the eviction from, letting of, and rents for, certain premises in the State of Rajasthan as it was expedient to provide for them. By Section 31 of the Act, the Act was originally enacted for a period of two years. This section was amended from time to time and its life was extended. It continues to remain in force to date. This Act provides that the provisions of this Act shall be in addition to and not derogatory to any other law on the subject for the time being in force. According to the provisions of the Transfer of Property Act, a tenancy can be determined in one of the modes contained in Section 111 of that Act. After determining the tenancy, a landlord is entitled to eject a tenant in the ordinary course of law. But this Act (No. 17 of 1950) provides that notwithstanding anything contained in any law or contract, no court shall pass any decree, or make any order in favour of a landlord, whether in execution of a decree or otherwise evicting the tenant, as long as he is ready and willing to pay rent therefore to the full extent allowable by this Act. This provision clearly lays down a legislative mandate that the Court shall not order eviction or evict a tenant in execution of a decree which may have been passed before the commencement of this Act as long as the tenant is ready and willing to pay rent in accordance with the provisions of this Act. This restriction provides certain exceptions and they are contained in Clause (a) to (1) of Section 13(1). If the court is satisfied on one or more of these grounds, it will be competent for the court to order eviction of the tenant. The grounds are set out below:

That the tenant has neither paid nor tendered the amount of rent due from him for six months; or

(b) that the tenant has wilfully caused or permitted to be caused substantial damage to the premises, or

(c) that the tenant has without the permission of the landlord made or permitted to be made any such construction as, in the opinion of the court, has materially altered the premises or is likely to diminish the value thereof; or

(d) that the tenant has created a nuisance or has done any act which is inconsistent with the purposes for which he was admitted to the tenancy of the premises or which is likely to affect adversely and substantially the landlord's interest therein; or

(e) that the tenant has assigned, sublet or otherwise parted with the possession of the whole or part of the premises, without the permission of the landlord; or

(f) that the tenant has renounced his character as such or denied the title of the landlord and the latter has not waived his right or condoned the conduct of the tenant; or

(g) that the premises were let to the tenant for use and residence by reason of his being in the service or employment of the landlord and that the tenant has ceased to be in such service or employment; or

(h) that the premises are required reasonably and bonafide by the landlord:

(i) for the use or occupation of himself or his family; or

(ii) for the use and occupation of any person for whose benefit the premises are held; or

(iii) for a public purpose;

(iv) for philanthropic use; or

(i) that the tenant has himself acquired vacant possession of, or being allotted a suitable residence; or

(j) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of suit; or

(k) that the landlord requires the premises in order to carry out any building work:

(i) at the instance of the State Government in pursuance of an improvement scheme or development scheme; or

(ii) because the premises have become unsafe or unfit for human habitation; or

(iii) upon the requisition of a local authority; or

(l) That the landlord was required by any authority under any law to abate the overcrowding of the premises.

After the tenancy of a tenant is terminated in accordance with the provisions of Section 111 of the Transfer of Property Act & there exists one or more of the grounds, the landlord will be entitled to seek eviction of the tenant under Section 13 of this Act and if the eviction is sought on the ground set form in Clause (a) referred to above with or without any other ground, this Act further provides protection to the tenant. The tenant is permitted to deposit in the court or pay to the landlord on the first date of hearing or on or before such date as the country may on an application made to it fix in this behalf or within such time not exceeding two months an amount calculated at the rate of rent at which it was last paid for the period for which the tenant may have made default including the period subsequent there to upto the end of the month previous to that in which deposit of the payment is made together with interest on such amount calculated at the rate of 6% per annum from the date when any such amount was payable up to the date of the deposit. The tenant is also required thereafter to continue to deposit or pay month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate. This is provided by Section 13(4). According to Section 13(5) if there is a dispute raised by tenant as to the amount of rent

payable by him which may be on account of rate of rent or the period for which the amount was payable, the court shall determine the amount to be deposited or paid to the landlord by the tenant within 15 days from the date of such order. If the amount is deposited or paid as required by Sub-section (4) or Sub-section (5) no decree for eviction on the ground specified in Clause (a) of Sub-section (1) of Section 13 shall be passed by the court. This mandate is contained in subSection (7) of Section 13. In the event the tenant fails to deposit or pay the amount as required by-Section (4) or Sub-section (5), then Sub-section (6) of Section 13 lays down that the court shall order the defence against eviction to be struck out and shall proceed with the hearing of the suit. It is the interpretation of this sub-section that falls for determination.

11. The meaning of the expression 'striking out the defence against eviction' came for consideration in *Mane Shah v. Ramkumar* 1966 RLW 446. Bhandari, J. who decided this case held that the striking of the defence against eviction meant only the defences raised by the tenant to contest his liability for ejection and it did not mean the defences outside the Act such as that his tenancy has not been validly terminated or that he is not a tenant at all or that he is a tenant of only a part of the property and not of the entire property for which the suit has been brought against him. It will be apt to reproduce para 10 of that decision:

The last sentence of Sub-section (5) makes it incumbent on the court to strike out the defence of the defendant against eviction in case the tenant fails to deposit the rent by the 15th of the next following month. What is meant by striking out the defence against the eviction? Does it mean the special defences to the grounds of ejection mentioned in Sub-section (1)(a) to (k) or all the defences raised by the defendants to contest his liability for ejection? In my opinion, the proper interpretation is that it does not mean the entire defence of the defendant because in a suit against eviction, the defendant may be taking up defence, such as his tenancy has not terminated, or that he is not tenant at all, or that he is a tenant of only a part of the property and not of the entire property for which the suit has been brought against him. It is contended that in the concluding part of this sub-section, it is mentioned that the tenant is to be placed in the same position as if he had not defended the suit and these words show that the entire defence of the

defendant should be struck out whether such defence relates to the denial of the tenancy, or to the rate at which the rent is payable, or to the termination of tenancy. In my opinion, such an interpretation is not warranted looking to the context in which these words have been used Sub Section (5) no doubt says that the defendant shall be placed in the same position as if he had not defended the suit, but preceding these words are the words which call upon the court to order the defence against eviction to be struck out, and these, words must be construed as meaning striking off the defence against eviction taken up by the tenant in answer to allegations of the landlord that his case falls under clauses (a) to (k) of Sub-section (1). If this interpretation is not adopted, a person who is in fact not a tenant, will be at the mercy of the plaintiff who alleges that the defendant is his tenant and that he had committed default in the matter of payment of rent. Let it not be forgotten that it is not even left to the discretion of the court whether to strike out or not the defence of the defendant on the failure of a person to deposit the rent for any month. It makes incumbent on the court to strike out the defence. In support of this view, I may cite *D.R. Gellatly v. R.R.W. Cannot* : AIR1953 Cal409 which was a case in which Section 14(4) of the West Bengal Premises Rent Control (Temporary Provisions) Act which contained a provision similar to Section 13(5) of the Act was considered. It empowered the court to order striking out the defence and placing the tenant in the same position as if he had defended the claim to ejectment in case the defendant contested the suit as regards the claim for ejectment and failed to make deposit of the rent at such rate month by month as ordered by the court. Chakravarti C.J. observed as follow:

If the person, sued as a tenant pleads that he is not a tenant, then till that question is decided against him, there can be no question of proceeding against him as a tenant or applying to him Section 14(4) or any other provision of the said Act. In my humble opinion, the defence of the defendant in the instant case that he was not a tenant had been wrongly struck off by the trial court.

This decision does not resolve the present controversy between the parties. The question that further arises is whether after the defence against eviction is struck out is it obligatory for the plaintiff to still satisfy the court that one or more of the grounds exist to seek an order of eviction against the tenant. Only two decisions of

this Court on this point have been referred to by learned, counsel for the parties and they have also been relied upon by the first appellate court.

12. As noticed earlier, this case had come in revision (1969 W.L.N. 370) before Lodha, J. While upholding the order of the Additional District Judge No. 2, Jodhpur, he observed:

Thus in a suit for eviction brought by the landlord on the ground of non-payment of rent, it is compulsory for the tenant to comply with Section 13(4) of the Act irrespective of all other considerations and if he does not do so the benefits of the Act would not be available to him. In this view of the matter there is no room for argument that the plaintiff had abandoned the ground of default by the tenant in payment of rent.

13. Learned Counsel for the petitioner urged that the opening words of Section 13(1) create a bar against a decree for eviction being passed against a tenant unless it was satisfied that the tenant has neither paid nor tendered the amount of rent due from him for six months, and, therefore irrespective of the provisions of Sub-section (4) and Sub-section (6) it is obligatory on the part of the court to enquire whether the default as contemplated by Clause (1) has been committed by the tenant? The answer to this question is furnished by the provisions of Sub-sections (4), (6) and (7). Sub-section (4) makes it obligatory on the part of the tenant to deposit the rent in arrears. and to continue to deposit or pay the monthly rent thereafter in the, manner provided therein and Sub-section (7) makes it clear that if the tenant' does so then he cannot be evicted even though he may have committed default in payment of rent as provided under Sub-section (1), Clause (a). But in order that he may claim protection from eviction on the ground set forth in Clause (a) of subSection (I) of Section 13, it is obligatory for him to comply with the provisions of Sub-section (4) and if he does not do so, his defence against eviction under the Act has to be struck out under Sub-section (6). In other words, the safeguards provided to the tenant under Section 13 of the Act which is a special law ceases to be available to him on his failure to carry out the statutory obligations, imposed upon him by that section itself.

14. The limited question before the learned Judge was whether the order of the trial Judge terminating the defence of the tenant against eviction on 18th January, 1969 was correct and whether it was rightly affirmed by the first appellate court. It was not in dispute that the requirements of Section 13(4) were not complied with. It was rather admitted that the rent for the subsequent months after 20-12-1967 was not deposited in accordance with Section 13(4) of the Act. It was urged on behalf of the tenant that he did not commit any default and the plaintiff in not having pressed for an issue on that question must be deemed to have abandoned the ground of default & he could not, therefore, by an application submitted after about a year, ask for the defence against eviction to be struck out. The learned Judge found that the plea cannot be deemed to have been abandoned, But he proceeded further and went on to observe that has been underlined by me. According to those observations, he meant to lay down the law that after the defence of the tenant against eviction is struck out, in his own words, 'the safeguards provided to the tenant under Section 13 of the Act' will cease to be available to him. Certainly, he was not called upon to decide this question. These observations are clearly obiter dicta and cannot be said to have decided the point in controversy in the present case. The first appellate court has placed reliance on these observations.

15. The next case which has been relied on by the first appellate court is *Bansilal v. Laxmichand* 1971 RCJ 836. In that case Laxmichand filed a suit against Bansilal for his eviction from a shop on the ground that he had not paid rent for more than six months and that he required the shop bonafide and reasonably for his personal use. Bansilal denied to have committed any default and also the personal requirement of the plaintiff being reasonable and bona fide. He also alleged that the notice of ejectment did not validly terminate the tenancy. The trial Judge dismissed the plaintiff's suit. The Additional District Judge, who heard the appeal, reversed the judgment and decreed the plaintiff's suit. The tenant came in appeal. In that case the defence of the defendant against eviction was struck out by the first appellate court and one of the contentions of the appellant in the second appeal was that as the striking off the defence was not sought in the trial court, it must be deemed to have been abandoned by the plaintiff. Another grievance made was that the suit was decreed by the lower appellate court without giving a finding

that one of the conditions laid down in Section 13(1)(a) to (k) was not satisfied. The first contention was overruled by the learned Judge in view of his earlier decision in *Jodhraj v. Suleman* 1970 RLW 170. I am not concerned with this point in the present case. As regards the second question, the learned Judge said that there was the plaintiff's statement that the defendant has committed default in the payment of rent as contemplated by Section 13(1)(a) of the Act. He accordingly held that in the absence of a rebuttal, the plaintiff's statement must be accepted and it must be held that the plaintiff has succeeded in proving that the defendant was a defaulter within the meaning of the Act. He, however, further proceeded to observe as follows:

Apart from that, I am not prepared to subscribe to the view as at present advised that inspite of the defence of the defendant having been struck out the plaintiff is yet bound to prove one of the conditions laid down for claiming ejectment under Section 13(1) to (k) of the Act. It appears to me that when the defence of the defendant tenant has been struck out it means all the defences available to him against ejectment under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 cannot come to his rescue. This is the view, I have held in the cases decided by me. Learned Counsel for the appellant, however, argued on the basis of two judgments relied by him *Krishnabai v. Laxmibai* A.I.R. 1970 M.P. 280 and *L.T. Thadani v. Coyashwar Dayal* 1971 K.C.R. 207 that even after the defence of the tenant had been struck out, the court has still to be satisfied that ground has been made out under the Act for ejecting the tenant and that striking out the defence of the tenant does not mean that an automatic order in favour of the landlord is to be passed. The Madhya Pradesh High Court and the Delhi High Court have undoubtedly taken this view on the interpretation of the provisions of Madhya Pradesh Accommodation Control Act, 1961, and Delhi Rent Control Act, 1958, which are somewhat different from the relevant provisions of our Act. To be brief, I do not feel persuaded to change the view, I have taken in the matter. But at any rate, so far as this case is concerned, as already stated above, there is the statement of the plaintiff that the defendant had committed default in payment of rent for more than six months and had consequently incurred the liability to be ejected from the shop in question.

The learned Judge was aware of the decisions of the Madhya Pradesh High Court and Delhi High Court, but he did not feel disposed to change his view. Yet he observed that so far that case was concerned, there was the statement of the plaintiff and it was sufficient to hold on that basis that the defendant, had commuted default in payment of rent for more than six months and there by he incurred the liability to be evicted from the shop in question It will be noticed that in Bansilal's case 1971 RCJ 836 there was the statement of Laxmichand and the defence having been struck out. there was no rebuttal and the learned Judge accepted his statement and came to the conclusion that there was sufficient evidence to hold that Bansilal was a defaulter within the meaning of Section 13(1)(a) of the Act From the reading of the judgment, it appears that he did not discuss the decision of the Madhya Pradesh High Court and that of the Delhi High Court in detail as it was not very necessary for him, though in a passing reference, he said that he did not feel persuaded to change the view he had already taken in the matter,

16. Mr. P.C. Mathur, learned Counsel for the respondent supports the view of Lodha J. He has not been able to lay his hand on any decision in support of his view except the two decisions of Lodha J. referred to above. After having considered the rival contentions canvassed before me, I regret am unable to subscribe to the view taken by Lodha J. and I state my reasons to hold a different view.

17. Section 13(4) in my opinion, is an additional protection given to a tenant who has been sued for eviction on the basis of a default. He is give n another opportunity to deposit or pay the amount on the first day of hearing or within the time allowed by the sub-section. He is also required to deposit the amount of rent for the subsequent months. If he deposits or pays the amount, he is protected under sub-section(7)of Section 13 If he fails to deposit, Section 13(6) empowers the court to strike out his defences against eviction, but the suit does not end there The requirement of the sub section is that the court will proceed to hear all the defences raised by the tenant outside the Act and to ascertain if any of the grounds contained in cLauses (a) to (1) exists making a tenant liable for eviction. I am unable to appreciate the position that if the tenant's defence is struck out

against eviction, allegations of the plaintiff will be assumed to be true and he will be entitled to a decree without proof of any of the conditions laid down in clauses (a) to (1). The defendant is not definitely reduced to a position worse than that when the case proceeds ex parte. The plaintiff can only succeed in view of the mandate contained in Section 13(1) when he satisfies the court that the tenant has made himself liable for one of the reasons mentioned in that section,

18. From a reading of Section 13, it will appear that Section 13(4) is merely an exception to Clause (a) of Section 13(1) and it is controlled by Section 13(6) and (7). *Lodha J*, appears to think that if the tenant fails to deposit or pay the amount referred to in Sub-section (4) or Sub-section (5), the benefit afforded by the Act (meaning thereby the whole Act) shall cease to be available to him. With due respect to the learned Judge, in my humble opinion it cannot be so. The whole Act cannot be deemed to have wiped out. As already noticed, the protection allowed by Section 13(4) is an additional protection and is controlled by Section 13(6) and (7). It cannot be said that after the defence against eviction is struck out under Section 13(6), the Act ceases to apply to the parties. Section 13(1) remains there and it is only the additional protection which is taken away after the tenant is found to have not been able to avail of it.

19. Then, on account of the language employed in Sub-section (4) of Section 13, the alleged amount under default has to be paid or deposited on the first date of hearing. By that date there is no judicial pronouncement that the tenant in fact is a defaulter. The tenant pays or deposits the amount only on the mere allegation of default, availing himself of the protection under; Section 13(4). If the view of *Lodha J.* is accepted, the result will be that the tenant will stand condemned as a defaulter without being adjudged as one.

20. I am unable to find anything in the language of Section 13(6) which may justify the conclusion that after the defence is struck out, the landlord will be entitled to a decree without bringing his case within one of the exceptions to Section 13(1). I feel myself fortified by the view taken in *Smt. Krishnabai v. Laxmibai* : AIR 1970 MP280 . It may be pointed out that Section 13(6) of the, Madhya Pradesh Accommodation Control Act (No. 41 of 1961) is almost similar to Section 13(6) of

the Rajasthan Act. Shiv Dayal J. speaking for the Court while dealing with the consequences of striking out of the defence observed as follows:

Two things are abundantly clear from the language of subSection (6). The first, is that the defence against eviction, which is struck out is the defence against eviction of the tenant Under Section 12 of the Act. Such striking out of the defence does not debar the tenant from taking any defence to which he is entitled under the Transfer of Property Act. Notwithstanding such striking out of the defence he can still show, for instance, that there is no relationship of landlord and tenant between him and the plaintiff, or that the lease was not determined as required by Section 111 of the Transfer of Property Act, so that during the subsistence of the lease he cannot be ejected. This was also the view taken in *Premdas v. Laxmi Narayan*. 1964 MP.L.J 190

This view is similar to the one taken by Bhandari J. in *Nane Shah's case* 1966 RLW 446. The learned Judge further observed:

The second consequence; that when the tenant's defence is struck out under Section 13(6), he loses his right to be heard on the question whether there exists a ground under Section 12 of the Act. This means that his written statement, so far as it relates to 'plaint averments' concerning Section 12, will be ignored and overlooked by the Court;-he cannot cross-examine witnesses produced by the plaintiff, and he cannot produce his own evidence in rebuttal. In effect therefore, the suit or proceeding is to be treated *ex parte* so far as the question of Section 12 is concerned

It was again observed in para 11:

On the above analysis, it must be said that as a consequence of the striking out of the defence under Section 13(6) of the Act, the plaintiff is placed in the same position as if the suit proceeds *ex parte* in the absence of the defendant. The striking out of the defence does not confer any additional right on the plaintiff, nor is he relieved of his burden, which he has to discharge in order to be entitled to an *ex parte* decree against. In every event he has to satisfy the Court that he is entitled to eviction under the general law as well as under the special law, that is,

Section 12 of the Act.

21. I am in respected agreement with the view of the Madhya Pradesh High Court that the tenant loses his right to be heard on defences he has taken against eviction. He will not be entitled to prove by evidence the incorrectness or the falsity of the averments made by the plaintiff. I must here respectfully point out that I do not happen to agree with the view that the defendant is also not entitled to cross examine the plaintiff's witnesses to demolish his case. I will deal with this point at a later stage. However, I am clear in my mind that it is obligatory upon the plaintiff to prove his averments to entitle him to a decree for eviction and by the mere fact that the defence of the tenant has been struck out, his allegations can-not be presumed to be true and he is not entitled to an automatic decree.

22. Another decision that lends support to my view is *L.T. Thadani v. Coyashwar Dayal* 1971 RCR 207. In this case counsel for the landlord urged that as the defence against eviction has been struck out, it was open to the Rent Controller straightway to pass a decree for eviction. *Rajinder Sacher J.* held that this was not a correct reading of the provision of Section 15(7) of the Act (Delhi Rent Control Act, 1958) which provides that after striking out the defence against eviction, the court shall proceed with the hearing of the application. This obviously meant, according to the learned Judge, that after the defence of the tenant had been struck out, under the Act the Court has still to be satisfied that the ground has been made out before a landlord can get relief.

23. On behalf of the appellant, reliance has been placed on *smt. Kaushalya Devi and Ors. v. K.L. Bansal* AIR 1970 SC 538. This case is not directly on the point. The case arose under the Delhi and Ajmer Rent Control Act (38 of 1952) for the ejectment of the tenant. The parties entered into a compromise and a decree for ejectment was passed against the tenant in terms of the compromise. According to the compromise, the decree was to be executed after a certain date. It was held by their lordships of the Supreme Court that the decree passed on the basis of an award was in contravention of Section 13 I) of the Act because the court had passed the decree in terms of the award without satisfying itself that the ground of eviction existed. Accordingly, the decree in so far as it directed the delivery of

possession of the premises to the landlord was a nullity and could not be executed. Though the question involved in that case was entirely different, but all the same it does lend support to the contention of the appellant that a decree for eviction without the court having satisfied itself as to the existence of any ground contained in clauses (a) to (1) of Section 13(1) cannot be passed. The case before the Supreme Court was on a worse footing. There the defendant agreed to abide by the award and to vacate the premises even if he was not asked to vacate. Here in the present case, the plaintiff comes with certain averments alleging that the defendant has made himself liable for eviction on the grounds specified in clauses (a) and (h). The defendant denied those allegations. The defence against eviction having been struck out will mean as if the defendant has not taken any ground for controverting the plaintiff's allegations. This situation does not take the place of the defendant having admitted the plaintiff's averments. In this state of affairs, the allegations in the plaint remain mere averments and must be proved. The plaintiff cannot be entitled to a decree as a matter of course. He must satisfy the court as to the existence of those grounds or any of them.

24. The next question that emerges for consideration is whether in such a case where the defence of the tenant has been struck off and the plaintiff is called upon to prove his allegations in the plaint as to the existence of one or more of the grounds, will the defendant be a mere spectator of the proceedings or can he be permitted to participate in the proceedings. I have no manner of doubt that the defendant, after his defence is struck out, cannot be permitted to lead evidence in support of his case or, say, counter allegations to the case of the plaintiff for the simple reason, that there will be none to survive. The proceedings in the case are not exactly in the nature of ex parte proceedings. Ex parte proceedings take place only when the defendant is absent. The question that needs to be resolved is whether he can be permitted to demolish the plaintiff's case when he cannot produce his own evidence and can he cross-examine the plaintiff's witnesses to show that the averments of the plaintiff as to the existence of the grounds making him liable to eviction are not correct. According to Clause (a) of Section 13(1) a tenant is defaulter only when he has neither paid nor tendered the amount of rent due from him for six months. In other words, if he has tendered the amount of rent,

he can not be said to be a defaulter. I can conceive of a case where the tenant has tendered the amount of rent regularly by money order and each time it was refused and there has been no lapse of six months in the tender made by him. The plaintiff sues him for eviction on the ground of default. In view of the decision in *Saligram v. Narotam Lal and Ors.* 1971 W L.N. 118 he must deposit the rent on the first date of hearing even when he is not a defaulter according to law. The defendant contests the suit and even produces the Money Order receipts and the coupons received back as 'refused.' As the money still remains due to be paid the tenant deposits the rent on the first date of hearing, and for one reason or the other, he becomes late in deposit of the rent for some subsequent month. His defence is struck out under Section 13(6). He cannot lead evidence to prove that the plaintiff is a liar, & he did remit the rent by Money Order regularly and refused. According to Lodha J, he cannot escape eviction, but as held above, the plaintiff will be required to produce his evidence in proof of his averment that the tenant has been a defaulter. Now will the tenant stand in the court as an idle spectator without being able to show that the statement of the plaintiff is false. According to Clause (a), the plaintiff has to show that the defendant has neither paid nor tendered rent due from him for 6 months. If the defendant is not permitted to cross-examine the plaintiff, he will get an easy walk over inspired by that fact that his averments are wholly untrue. In my opinion, the provision of Section 13(6) by which the defence against eviction is struck out is not violated if the defendant who appears in the court is permitted to cross-examine the plaintiff and his witnesses when they are called upon to show how that one or the other ground exists against the defendant making him liable for eviction. If no violence is caused to the provisions of Section 13 I do not find any reason why the defendant should be deprived to demolish the plaintiff's case by cross-examinations. In my considered opinion, though the defendant is not permitted after his defence is struck out to lead evidence in support of his own averments, he has a right to break the case of the plaintiff by cross-examination. There is another aspect of this matter. If the striking out of the defence means that the defendant shall not be heard to say anything, then he is also not entitled to address the Court and if he cannot address the court and he is allowed to stand only as an idle spectator to see a decree being passed against him, his right to appeal shall stand nullified, or at any rate

will remain an empty formality. There is no decision so far, to my knowledge, that a tenant whose defence has been struck out is not allowed to argue his case or to file an appeal on questions of defence arising within the Act, leaving aside the defence open outside the Rent Control Act. In this view of the matter, I hold that the tenant is entitled to cross examine the plaintiff & his witnesses who are produced by him in support of his allegations regarding the existence of grounds incurring the defendant's liability for eviction.

25. Being of this view, I sent this case to the Additional District Judge No. 1, Jodhpur by my order dated 11.5.1972. to record his finding on the question if the defendant neither paid nor tendered the amount of rent due from him after Bhadwa Sud 1 Samwat 2021 corresponding to 7.9.1964.1 also gave the direction permitting the tenant to cross-examine the witnesses produced by the plaintiff in this behalf. The plaintiff examined himself and one more witness. The defendant cross-examined them and as nothing could be elicited from them in favour of the defendant, the learned Judge recorded the finding that the tenant was a defaulter. Learned Counsel for the appellant could not satisfy me that this finding is in any way perverse. In this view of the matter, after having agreed with the legal contentions raised by learned Counsel for the appellant, I hold that the appellant was a defaulter within the meaning of Section 13(1)(a) of the Act and he is liable to be evicted on that ground.

26. The next contention raised on behalf of the appellant is that the finding on issue No. 1 recorded by the first appellate court is erroneous. He has submitted that the statement of Mohan Singh P.W. 4 was not considered by the learned Judge in appeal while arriving at his conclusion. The case of the appellant was that he required the suit shop for his son Wali Khan who wanted to start his business of Motor parts This fact was stated by him in his notice dated 12.6.1967 Ex,3 The defendant's allegations in this regard need not be gone into as his defence was struck out. In support of this, the plaintiff examined himself as P.W 1, Wali Khan as P.W. 2 and Mohansingh as P.W 4. The learned trial Judge came to the conclusion that the plaintiff has been able to prove his requirement as reasonable and bonafide. This finding has been confirmed by the lower appellate court. It is true that the learned Judge in appeal did not refer to the statement of

Mohan Singh, but that fact alone does not vitiate the finding of fact arrived at by him. Mr. Lodha on behalf of the appellant has laid stress on the fact that Mohan Singh stated some thing contrary to what the plaintiff had said about the personal necessity. Lakhe Khan has stated, according to him, that it was decided only two or three months back that Wali Khan will start business of motor parts in the suit shop, whereas Mohan Singh stated that it was two years ago that Wali Khan told him that he wanted to start the business of motor parts. I must state at once that there is no contradiction at all Lakhe Khan speaks of the final decision that Wali Khan will start the business of motor parts in the suit shop. Mohan Singh only refers to his talk with Wali Khan two years back. He does not speak of his or his father's decision in the matter. It may well have been that Wali Khan thought of starting this business two years ago and it came to be decided finally by his father Lakhe Khan only two or three months back. I find that this disregard of Mohan Singh's statement is of no much consequence. This is a finding of fact supported by evidence, on record and it does not call for any interference.

27. As a result of the foregoing discussion, I see no force in this appeal and it is hereby dismissed. Having regard to the circumstances of the case, I direct that the parties shall bear their own costs of this appeal.

28. Mr. Lodha prays for leave to appeal to a Division Bench. I have decided the question of law in his favour. But on facts this appeal has been dismissed. There is, therefore, no ground to certify this case as fit one for appeal. Leave to appeal is accordingly refused.