

CASE NO.:
Appeal (civil) 1839-1840 of 2004

PETITIONER:
Sobhagyamal & Anr

RESPONDENT:
Gopal Das Nikhra

DATE OF JUDGMENT: 22/02/2008

BENCH:
P.P. Naolekar & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NOS. 1839-1840 OF 2004

P.P. NAOLEKAR, J.:

1. The brief facts material for the decision of this case are that Gopal Das (respondent herein) was inducted as a tenant in the suit premises on the monthly rent of Rs.350/- w.e.f. 14.12.1973. As the respondent was not paying the rent of the suit premises regularly and was defaulter, a notice demanding arrears of rent was issued by the landlord on 28.6.1975. Despite the service of notice, the respondent did not pay the rent within two months from the service of notice and, therefore, the landlord filed a civil suit being Suit No. 75A/1979 for eviction of the respondent from the suit premises on the ground of Section 12(1)(a) of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter referred to as "the Act") (i.e. default in payment of rent) and on the ground of Section 12(1)(b) (i.e. sub-letting) and later on, by amendment, on the ground of Section 12(1)(f) (i.e. bonafide necessity of the accommodation for non-residential purposes). On institution of the suit, the respondent deposited the rent within one month of the service of writ of summon of the court on him. The suit was decreed by the trial court on the ground of bonafide requirement under Section 12(1)(f) of the Act. With regard to the default, the trial court found as under:

"14. Issue No. 9 is decided against defendant, hence rent of Rs.2800/- from 13.12.74 to 12.8.75, mesne profits 237/- and interest 161/- as per agreement total Rs.3198.00 are due of the plaintiff on the defendant and he is entitled to get the above amount, I give such finding.

15. Though, the defendant did not pay rent within two months after receipt of notice, but he raised dispute of rent under section 13(2) of the Act which was not decided. As such the defendant has deposited all the upto date amount, hence I give finding that defendant has not paid or deposited all the arrears of rent within two months from receipt of notice but deposited during pendency of suit. Therefore, the defendant will get benefit of Section 13(5) and Section 12(3) and the plaintiff is not entitled to get decree under section 12(1)(a) of the Act."

Thus, the respondent was given benefit under Section 12(3) of the Act. The respondent preferred an appeal being Appeal No. 27A/1980 challenging the decree for ejection on the ground of bonafide need. It would be pertinent to note that the landlord did not prefer any appeal or file any cross-objection challenging the refusal of decree on the ground of arrears of rent. The first appellate court confirmed the

decree passed by the trial court. The respondent preferred a second appeal being Second Appeal No.47/1982. The second appeal preferred by the respondent was allowed by the High Court and the suit of the landlord on the ground of bonafide need was dismissed as premature. While allowing the appeal of the respondent, the High Court observed: "No decree for ejectment on the ground under Section 12(1)(a) of the Act could have been passed against the Appellant, because he had, admittedly, complied with the provisions of Section 13(1) of the Act." Against the said judgment and decree of the High Court, the landlord filed a special leave petition in this Court. During the pendency of the proceedings, the then landlord Lakshmi Chand expired and his legal representatives (appellants herein) were brought on record. The special leave petition was converted into Civil Appeal No. 3931/1986. During the pendency of the aforementioned proceedings, since the respondent had not deposited the rent or paid it to the landlord, the appellants served a notice dated 27.2.1991 upon the respondent demanding arrears of rent intimating him that he had committed a default in payment of rent due from 13.12.1984 to 13.2.1991. The said notice was served on the respondent on 5.3.1991. Despite the service of notice of demand for arrears of rent, the respondent did not pay the rent within two months of the service. The appellants/landlord filed a second suit being Suit No. 78A/1992 against the respondent under Section 12(1)(a) of the Act on the ground of default in payment of rent. During the pendency of these proceedings, matter was taken up by the Supreme Court in Civil Appeal No 3931/1986 and was disposed of on 24.8.1994. The Supreme Court held that insofar as the finding recorded by the High Court on the question of bonafide necessity is concerned, the Court does not find any ground to interfere with the same. The Court further held:

"It appears that a second suit for eviction has been filed on the ground of default in payment of rent and the same is pending. The submission of Shri Jain is that the said suit may be prejudiced by the following observations contained in the judgment of the High Court:

"It is manifest that the suit for ejectment was not maintainable, because on the date of suit the period of lease as per clause (1) of the lease deed (Ext. P.1) had not come to an end."

Shri Jain has contended that the said observations can be construed to mean that the High Court has found that the earlier suit for eviction on the ground of default in payment of rent was premature. We are unable to construe the said observations in this light. In our view the said observations only refer to the suit insofar as it relates to eviction on the ground of bonafide personal necessity."

Thus, the first proceeding came to an end.

2. In the second proceeding, by judgment and decree dated 8.3.2000, the trial court decreed the suit holding that the rent from 13.12.1984 was due from the respondent and thus he had committed default in payment of rent and was liable to be ejected on the ground of arrears of rent. The respondent preferred an appeal in the High Court being F.A. No.86/2000. On 21.12.2000, the appeal of the respondent was allowed and the judgment and decree of the trial court was set aside. The High Court held that since the appellants herein did not take any steps to get the defence of the respondent struck out while the case was pending before the Supreme Court the appellants were precluded from getting a decree for default of the period when the case was pending before the Supreme Court. The appellants herein preferred a letters patent appeal before the Division Bench. LPA was dismissed as not maintainable and thus the

appellants are before us.

3. From the aforesaid facts, it is apparent that the respondent/tenant got benefit of Section 12(3) of the Act in the previous proceedings and thus no decree for ejectment was passed against him on the ground of arrears of rent under Section 12(1)(a) of the Act. The second proceeding of filing a suit for ejectment under Section 12(1)(a) of the Act was initiated by the appellants herein/landlord after service of notice demanding arrears of rent due during the pendency of the previous proceedings. It was contended by the respondent that non-deposit of rent in court in the previous proceedings or tendering rent to the landlord could not be considered as arrears of rent; and that at best his defence against eviction could have been struck out under Section 13(6) of the Act. Non-payment of rent during the pendency of the previous proceedings would not be treated as arrears of rent to give a cause of action to the landlord to file a suit on the ground of arrears of rent. The High Court upheld this contention and found that no ground under Section 12(1)(a) of the Act was available to the appellants herein/landlord for non-payment of rent by the respondent/tenant during the pendency of the previous proceedings before the Court.

4. It is contended by the learned counsel for the appellants that during the pendency of the proceedings in the court after taking benefit under Section 12(3) of the Act, a tenant is liable to deposit the rent or to tender it to the landlord to avoid any decree under Section 12(1)(a) of the Act on the ground of arrears of rent. A tenant having taken benefit under Section 12(3) of the Act, is bound to pay the rent to the landlord or deposit it in the court to avoid the decree for ejectment under Section 12(1)(a) of the Act. Since the respondent/tenant had committed default in payment of rent for three consecutive months, the High Court should have confirmed the decree passed by the trial court on the ground under Section 12(1)(a) of the Act, the tenant having failed to pay the rent to the landlord even on service of notice of demand on him. It is further urged that Section 13(6) of the Act does not give a protection to the tenant from the ejectment on non-payment of rent to the landlord for three consecutive months.

5. It is urged by the learned counsel for the respondent/tenant that since the matter was pending consideration before the court the appellants/landlord at best could have moved an application under Section 13(6) for striking out defence if the respondent/tenant had not deposited the rent as required under Section 13(1) of the Act, but the said default in payment of rent would not be treated as arrears of rent giving cause of action to the appellants/landlord to institute a suit for ejectment on the ground of arrears of rent.

6. To appreciate the submissions made by the learned counsel appearing for the respective parties, it will be necessary to refer the relevant provisions of the Act, which read as under:

"12. Restriction on eviction of tenants.- (1)
Notwithstanding anything to the contrary contained in any 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

(a) 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 prescribed manner;

(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 deposit 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.

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"13. When tenant can get benefit of protection against eviction. \026 (1) On a suit or any other proceeding being instituted by a landlord on any of the grounds referred to in Section 12 or in any appeal or any other proceeding by a tenant against any decree or order for his eviction, the tenant shall, within one month of the service of writ of summons or notice of appeal or of any other proceeding, or within one month of institution of appeal or any other proceeding by the tenant, as the case may be, or within such further time as the Court may on an application made to it allow in this behalf, deposit in the Court or pay to the landlord, an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made; and shall thereafter continue to deposit or pay, month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding, as the case may be.

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(5) If a tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no decree or order shall be made by the Court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the Court may allow such cost as it may deem fit to the landlord.

(6) If a tenant fails to deposit or pay any amount as required by this Section, the Court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit, appeal or proceeding, as the case may be."

7. A landlord can seek ejectment of his tenant from the premises let out to him only on the ground/s enumerated in Section 12 of the Act. Clause (a) of sub-section (1) of Section 12 of the Act authorises the landlord to seek ejectment of his tenant if he has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the service of notice demanding the arrears of rent. Sub-section (3) of Section 12 puts a caveat on the right of the landlord to get ejectment on the ground of arrears of rent if the tenant makes payment or deposit as required by Section 13. However, by virtue of the proviso to sub-section (3), the benefit given to the tenant, on compliance of the payment of rent as provided under Section 13, would be available to him only once in respect of that accommodation, but on default in the payment of rent in respect of

same accommodation for three consecutive months he would not be entitled for protection by depositing the rent as provided under Section 13 in the subsequent proceedings initiated by the landlord for ejectment of the tenant on the ground of arrears of rent.

8. Section 13 of the Act requires that the tenant shall within one month of the service of writ of summons or notice of appeal or of any other proceeding deposit the rent when the proceedings are initiated by the landlord on any of the grounds referred to in Section 12 or within one month of institution of appeal or any other proceeding when taken by the tenant against any decree or order for his eviction. The period of one month given to the tenant for depositing the rent from the date of the summons or the notice of appeal or of any other proceeding could be extended by the court on an application made to it. The rent which is required to be deposited under the Section can be in the court or it may be made over to the landlord. The Section further requires that after the deposit of the arrears of rent the tenant shall continue to make deposit or pay month by month by 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding, as the case may be. Sub-section (5) of Section 13 provides that if the tenant makes deposit or payment as required by sub-section (1) or sub-section (2) no decree or order shall be made by the court for recovery of possession on the ground of default in the payment of rent by the tenant. Sub-section (6) gives an option to the landlord if the tenant does not deposit the rent or pay it to the landlord as required under Section 13 to move an application for the defence against eviction to be struck out. Sub-section (5) of Section 13 has no application in a case when the ejectment is not sought by the landlord on the ground of arrears of rent, but the suit is instituted by the landlord on any other ground/s of Section 12 of the Act. Striking out of the defence of the tenant on an application moved by the landlord, is a 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 instituted for ejectment on the ground of arrears of rent under Section 12(1)(a) of the Act.

9. From the aforesaid, it is clear that Section 12(3) of the Act provides for an exception to the general rule contained in Section 12(1)(a) that in the event tenant becomes a defaulter, he is liable to be evicted. From the proviso to Section 12(3) of the Act, it is clear that the protection given to the tenant is only one time protection. Proviso appended to Section 12(3) controls the main provisions. The exemption contained in Section 12(3), thus, is not extended to the tenant who becomes a defaulter for more than once. In view of the aforesaid, we are of the opinion that once the tenant had availed the benefit of the proviso to Section 12(3) of the Act, the said benefit was not available to the tenant in committing a further default in payment of rent for three consecutive months.

10. The tenant can only be protected against ejectment on the ground of arrears of rent in the subsequent proceedings if he deposits the rent in the court or pay it to the landlord during the pendency of the proceedings in the court or pay it to the landlord after the suit is decided by the court. If there is a default for three consecutive months in the payment of rent and the rent has not been tendered within two months of the service of notice by the landlord for payment of arrears, a cause of action accrued in favour of the landlord to initiate proceedings for ejectment of the tenant by filing a suit under Section 12(1)(a) of the Act and thereafter Section 12(3) or Section 13(5) would not be attracted.

11. The High Court has committed an error in applying the provisions of sub-section (6) of Section 13 to the second suit initiated by the landlord under Section 12(1)(a) on the ground of arrears of rent. That provision is only for the purpose of striking out of the defence of a tenant if the rent is not deposited as required under

Section 13 which has nothing to do with the provisions of sub-section (3) of Section 12 or sub-section (5) of Section 13.

12. In the present case, the trial court gave benefit to the tenant of Section 12(3) of the Act in the previous proceedings. The tenant by not depositing the rent either in the court or paying it to the landlord, has committed a default and there being three consecutive defaults in the payment of rent as referred in proviso to sub-section (3) of Section 12 of the Act and on non-payment of arrears of rent within two months of the service of notice of demand, the landlord would be entitled to file a second suit for ejectment on the ground of arrears of rent and the court has to pass a decree for ejectment under Section 12(1)(a) of the Act.

13. For the aforesaid reasons, Civil Appeal No. 1839/2004 is allowed. The impugned judgment dated 21.12.2000 passed by the High Court in F.A. No. 86/2000 is set aside. Plaintiffs' (appellants herein) suit is decreed for ejectment under Section 12(1)(a) of the Act and trial court's judgment and decree is confirmed. Since the matter is pending consideration for ejectment of the tenant since 1992, we direct the executing court to execute the decree within the period of three months from the date of filing of the execution application by the landlord.

14. In view of our order in Civil Appeal No. 1839/2004, no orders are required to be passed in Civil Appeal No. 1840/2004. Civil Appeal No. 1840/2004 stands disposed of accordingly.