

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 413 of 2017**

Surajdeen Gupta S/o Shri Jagmohan Lal Gupta, Aged About 63 (73) Years Cast Confectioner (Halwayee), Occupation Business, Proprietor Shriram Curd And Sweet Shop (Khowa Evam Mithayee Bhandar), Maya Lodge Premises, Near Old Bus Stand, Ambikapur, District Surguja Chhattisgarh

---- Petitioner

Versus

Mukhchand Jayaswal S/o Shri Ramjanam Jayaswal, Aged About 35 (45) Years Cast Jayaswal, Occupation Advocacy, R/o. Maya Lodge, Near Bus Stand, Ambikapur, District Surguja Chhattisgarh,

---- Respondent

For petitioner – Shri A.N. Bhakta, Advocate.
For respondent -Ms. Priyanka Mehta, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

05/02/2018

Heard.

1. Instant petition is against the order dated 18/11/2016 whereby the defence of the petitioner/tenant has been struck off in exercise of power under section 13 (6) of the C.G. Accommodation Control Act, 1961.
2. Learned counsel for the petitioner would submit that the petitioner has deposited the entire rent within time and when request was made before the court that report may be called from the Nazir same was not called for but instead at one go order has been passed. It is further contended that striking out of such defence in case like nature will take away right of the petitioner though rent has been deposited in compliance of Section 13(1) of the C.G. Accommodation Control Act, 1961. He further submits that the rent which is been deposited are available in the register of the Nazir of which the petitioner/tenant is not in possession. Learned counsel refers to **(1995) 1 SCC 356** in between **Kamla Devi (Smt.) Vs.**

Vasdev and would submit that powers to strike out defence cannot be exercised mechanically and delay in depositing rent can always be condoned.

3. Per contra, learned counsel for the respondent vehemently opposes the same and would submit that documents filed by the petitioner/defendant itself will demonstrate the fact that there was no compliance of Section 13(1) of the C.G. Accommodation Control Act, 1961 and also submit that as per Section 12 (3) of the C.G. Accommodation Control Act, 1961 documents will show that for three consecutive months default was made and thereby same cannot be condoned. Reference was made to **2003(2) C.G.L.J. 23** in between **Imdad Ali Vs. Keshav Chand & Others.**

4. Perused the order. Perusal of the order would show that on 12/07/2016 a direction was made to the petitioner/tenant to submit before the court that how much amount has been deposited and the copy of the CCD may be placed before the court. Subsequently same was not complied with and again on 5/11/2016 when application was filed under Section 13(6) of the C.G. Accommodation Control Act, 1961 another chance was given to place on record the documents showing deposit of rent.

5. Section 13(1) of the C.G. Accommodation Control Act, 1961 reads as under:-

“13. When tenant can get benefit of protection against eviction.

(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.”

6. Likewise Section 12(3) of the C.G. Accommodation Control Act, 1961 reads as under:-

“12(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.”

7. Admittedly as per the parties, the rent of the premises was Rs.1500/- per month. Receipt of the rent deposit which are been filed alongwith the petition shows that continuously for months and different period of time Rs.6000/-, Rs.9000/-, Rs.13000/-, Rs.18000/-, Rs.15000/- Rs.9000/- likewise was deposited. Section 13(1) of the C.G. Accommodation Control Act, 1961 mandates that when suit was instituted under Section 12 of the C.G. Accommodation Control Act, 1961 tenant shall be obliged to deposit the rent within one month of the service of summon. Subsequent thereto shall deposit rent month by month by the 15th of each succeeding month. Section 12(3) proviso clause mandates that no tenant shall be entitled to benefit of depositing rent if he makes

default for three consecutive months. Receipt which has been relied by the petitioner himself would prima facie show that in the admitted background of the fact that rent was Rs.1500/- per month whereas deposit were made in bulk of Rs.9000/-, Rs.18000/-, Rs.6000/- likewise it will cross the permissible time and will fall within default of not depositing rent within three consecutive months repeatedly. Moreover, the order dated 18/11/2016 though chance was given to the petitioner to show that he has deposited rent he could not demonstrate the fact that rent was deposited in compliance to Section 13(1) of the C.G. Accommodation Control Act, 1961. In the case of **Imdad Ali Vs. Keshav Chand & Ors.** (supra) Court has held that benefit of section 12(3) of the Accommodation Control Act, 1961 can be availed by the respondents only once by virtue of proviso thereto. Applying the aforesaid ratio and the section, it is categorically clear in the facts of this case if are applied it would show that the tenant/petitioner has not deposited the rent by each consecutive month, month by month before 15th. In view of this, order passed by the court below do not appear to be illegal or unjustified. Therefore, I am not inclined to interfere in such order. However, the petitioner shall be entitled to take his general defence as available to him under the law.

8. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE