

## Krishna Devi Santar Vs Atul Lalwani

**Court:** Madhya Pradesh High Court (Jabalpur Bench)

**Date of Decision:** Jan. 21, 2025

**Acts Referred:** Constitution of India 1950 " Article 227

Madhya Pradesh Accommodation Control Act, 1961 " Section 12(1)(a) and 12(1)(f), 12(3), 13, 13(2), 13(6)

**Hon'ble Judges:** Sanjay Dwivedi, J

**Bench:** Single Bench

**Advocate:** Ajay Gupta, Suyash Shrivastava, Shobhitaditya

**Final Decision:** Disposed Off

### Judgement

#### JUDGMENTTAG-JUDGMENT

Sanjay Dwivedi, J

With the consent of learned counsel for the parties, the matter was finally heard on 26.11.2024 and today the order is being pronounced.

2. This petition is filed under Article 227 of the Constitution of India challenging the impugned order dated 11.11.2024 (Annexure-P/11) passed in a

pending civil suit by the Civil Judge, Junior Division, Bhopal. By this order, the trial court rejected an application submitted by the petitioner-defendant

in a pending civil suit filed for seeking a decree of eviction on the ground of Section 12(1)(a) and 12(1)(f) of the M.P. Accommodation Control Act,

1961 (for brevity "Act, 1961"). The trial court in the pending civil suit had passed an order under Section 13(6) of Act, 1961 and closed the right

of the defendant-petitioner as he did not comply with the order of the trial court by depositing the rent as was provisionally fixed by the court. Such

order was assailed by the petitioner before the High Court but the High Court affirmed the order of the court below by dismissing the petition i.e.

M.P.No.2481/2024. Thereafter, the defendant-petitioner filed the application on 26.02.2024 for leading evidence on the issue of arrears of rent, but

that application has been rejected by the trial court by the impugned order, which has given rise to filing of present petition.

3. Learned senior counsel for the petitioner sanguinely submitted that the order passed by the court below declining opportunity to the defendant-

petitioner to lead evidence in respect of the issue related to decree of arrears of rent is precarious and does not stand the test of settled legal position.

He accentuated that striking out of defence was confined to the decree of eviction and not otherwise. He further submitted that earlier order passed

by the court below exercising power provided under Section 13(6) of Act, 1961 did not actually debar the defendant-tenant to contest the issue as to

arrears of rent, but the court without heeding to that aspect, erroneously did not allow the defendant to lead evidence or to defend herself, in respect of

the decree of arrears of rent. To reinforce his assertion, he placed reliance on the decision of a Division Bench of this court in the case of Kewal

Kumar v. Satish Chandra and another passed in M.P.No.4866/1989 saying that the Division Bench has clarified this situation and relying upon the

decision of the Supreme Court has very categorically held that the striking of defence for not depositing the rent by the tenant would not debar the

tenant to contest the issue as to arrears of rent.

4. In contrast, Shri Shobhitaditya, learned counsel appearing for the respondent submitted that the case is at the verge of final decision and the

petitioner failed to deposit the rent and therefore eviction on the ground of Section 12(1)(a) and 12(1)(f) can be claimed and the petitioner-defendant

has no right to lead any evidence. He relied upon a decision of this court in the case of Manorama Devi Wd/o Parmanand and Others v. Suresh

S/o. Kailash Narain and Others rendered in S.A.No.285/1998 on 28.11.1998 and reported in 1999(1) MPLJ 436.

5. I have heard the submissions of learned counsel for the rival parties and also perused the documents available on record.

6. Indeed, it is a case of seeking decree of eviction on the ground of Section 12(1)(a) and 12(1)(f) of Act, 1961 filed by the landlord-plaintiff

(respondent) against the tenant-defendant (petitioner). In addition, a decree of arrears of rent has also been claimed amounting to Rs.2,73,544/-. The

trial court vide order dated 12.02.2024 exercising the power provided under Section 13(6) of Act, 1961 had struck off the defence of the petitioner-

tenant. Such order was assailed by the petitioner before the High Court but the High Court affirmed the order of the court below by dismissing the

petition i.e. M.P.No.2481/2024. Thereafter, the defendant-petitioner filed the application on 26.02.2024 for leading evidence on the issue of arrears of

rent, but that application has been rejected by the trial court by the impugned order, which resulted into filing of present petition. At this juncture, it is

imperative to go-through the observations made by the Division Bench in Kewal Kumar (supra) wherein dealing with akin issue, it has been observed

as under:-

Recently, the Supreme Court, in Modula India v. Kamkshya Singh Deo, AIR 1989 SC 162, had occasion to review the decisions of the various High

Courts and of the Supreme Court, as to the consequences of defence against eviction being struck out in terms of the rent legislations as also under

the provisions of the Code of Civil Procedure. It held that the provision of striking out the defence is one in terrorem. It was observed that under the

Rent Acts such provisions are not mandatory and it is not obligatory on the Court, merely because there is a default, to strike out the defence. It is a

matter for exercise of great judicial restraint. The Court held that it does not necessarily follow that merely because the defence against eviction

stands struck out, the defendant is completely helpless and that his conduct of the case should be so crippled as to render a decree against him

inevitable. Further observations are that the provisions of this type should be construed strictly and that the disabilities of a person in default should be

limited to the minimum extent consistent with the requirements of justice. In ultimate analysis, the Court held as follows :-

We, therefore, think that the defendant should be allowed his right of cross-examination and arguments. But we are equally clear that this right should

be subject to certain important safeguards. The first of these is that the defendant cannot be allowed to lead his evidence. None of the observations or

decisions cited have gone to the extent of suggesting that in spite of the fact that the defence has been struck off, the defendant can adduce evidence

of his own or try to substantiate his own case.

From the above decision it can now safely be held that the defendant, whose defence against eviction is struck out in a suit for eviction on grounds

under the Rent Act, can cross-examine the plaintiff and his witnesses and address the Court on the basis of the plaintiff's case only with a view to

point out the falsity of the weaknesses of the plaintiffs case. Another thing which is clear is that the defendant-tenant can still contest the issues which

are not based upon any of the grounds of eviction mentioned in the Rent Act and in our case, under the various clauses of Section 12(1) of the M. P.

Accommodation Control Act. We have noted above that one of the grounds mentioned in Section 12(1)(a) of the Act is non-payment of arrears of

rent despite notice of demand in that behalf. We have also noted that the Act, by enacting Section 13 and Section 12(3), has permitted further latitude

to the tenant to avoid a decree of eviction on such a ground. The scheme of Section 13 has also been noted. It permits the tenant to contest arrears as

also the rate of rent and if that is done, the operation of Section 13(1) is arrested and the Court is bound to fix provisional rent and also allow time to

the defendant to deposit the same. In *Shyamcharan Sharma v. Dharamdas*, AIR 1980 SC 587 a case under the M. P. Accommodation Control Act,

the Supreme Court held that the Court has further discretion to condone the default and extend time for payment or deposit. It is also noteworthy that

if the Court fixes provisional rent to be paid by the tenant during the pendency of the eviction suit based on the grounds Under Section 12(1) of the

Act, the issue as to the amount of arrears of rent due or as to the rate is not tried at that stage in the sense in which an issue is tried by giving the

parties opportunities to lead evidence. What is contemplated at that stage is just a summary enquiry as the Court may deem fit in order to fix a

'reasonable provisional rent' in relation to the accommodation, to be paid or deposited in accordance with the provisions of Sub-section (1) of Section

13. Sub-section (2) of Section 13 further provides that save for reasons to be recorded in writing, no Court shall entertain any plea on this count at any

subsequent stage. This expression would only mean a prohibition against raising a plea against fixation of reasonable provisional rent. In our judgment,

the provisions of Section 13 and particularly that contained in Sub-section (2) thereof do not contemplate a trial on any issue or an elaborate enquiry as

to the arrears of rent or as to the rate of rent, if the tenant were to join issues with the plaintiff in that regard. The provision is only meant for the

benefit of the tenant to avoid a decree for his eviction based on the ground Under Section 12(I)(a) of the Act, which is as follows : -

12(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.

In Premdas's case (supra), the Division Bench of this Court has in quite unequivocal terms stated that the issues other than those relating to eviction

based on the grounds. Under Section 12(1) of the Act can all be tried and even if the defence against eviction is struck out, the tenant shall have a

right to contest all other issues. Therefore, in a suit, where apart from the relief of ejectment, although based on the ground Under Section 12(I)(a) of

the Act, a decree for arrears of rent is also claimed and if the tenant denies the arrears of rent or claims adjustment, an issue shall have to be struck

down relating to arrears of rent. The tenant can well demonstrate that the arrears, as claimed, are not due. When the issues in the suit are tried in

those proceedings in the suit, the defendant-tenant shall get a right to properly contest those issues. If this is not permitted, the tenant shall have to

suffer a decree for ejectment, because his defence against' eviction has been struck out and, at the same time, shall also have to suffer a decree for

certain amount allegedly due as arrears of rent, but without any opportunity to him to contest that fact in issue. This, in our opinion, shall condemn the

defendant without due opportunity. We are, therefore, of the opinion that even where the defence against eviction in a suit, also based on the ground

Under Section 12(1)(a) of the Act, is struck out in terms of Section 13(6), for non-payment of reasonable provisional rent, as fixed Under Section

13(2) of the Act, the tenant shall still be entitled to content the issue as regards the quantum of rent, which, in our opinion, is different from the ground

upon which eviction may be sought Under Section 12(1) of the Act. Even otherwise, we find that the defendant shall be entitled, in terms of the

decision of the Supreme Court in Modula India's case (supra), to cross-examine the plaintiff to show that his Claim of arrears of rent is false or untrue

and also to address the Court in that regard.

We may refer to a decision of a Single Bench of this Court in Gurmukhdas v. Shaliram Grover, C. Re. No. 541 of 1975 decided on 20-2-1975. We

have gone through the full text of that decision. After quoting from Premdas's case (supra), the learned Single Judge rightly concluded that the

'defence against eviction', as used in Section 13(6) of the Act, is restricted only to the defence available to the tenant Under Section 12 of the Act.

The learned Judge, however, went on to observe, ""it appears to me clear that the defendant could not do indirectly what he was precluded to do

directly. The question of arrears of rent is a ground on which the tenant could be evicted, which occurs in Section 12 of the Act. Now; if the

defendant was permitted to lead evidence on the question of quantum of arrears of rent, he was certainly permitted to agitate the question of arrears

itself, which if his defence was struck out, was precluded from raising. The defendant was, therefore, precluded from leading any evidence as regards

arrears of rent, even though it was for the limited purpose of establishing quantum."" With due respect to the learned Single Judge, who decided that

case, we find ourselves unable to agree with the conclusion so reached. In reaching that conclusion, the learned Single Judge missed the true import of

the provisions of Section 13(2) and Section 13(6) of the Act. A tenant is entitled to contest the arrears of rent which may be claimed in a suit for

ejectment based on grounds Under Section 12(1), including the ground under clause (a) thereof. If he does not contest that issue, he shall suffer two

decrees, one for ejectment and the other for arrears of rent. This shall be, of course, when the plaintiff proves his case. If, however, the defence

against eviction is struck out, the defendant is precluded from leading evidence on those issues. Even so, he is entitled to cross-examine the plaintiff to

demolish his case and to address arguments. That is the effect of striking out the defence. He can contest any other issue in the suit and can get the

suit dismissed for any other relief, which may include the claim as to the arrears of rent. Although, at first sight, it appears incongruous that a tenant

may suffer a decree for non-payment of arrears of rent because the defence against eviction is struck out, still he may get the relief against the actual

amount of arrears of rent claimed. But a little deeper probe into the matter would demonstrate that the tenant suffers a decree not because the issue

as to quantum of rent is tried, but because of the special provision of the Act, namely, Section 13 and its various sub-sections, including Sub-section

(6), which vests a discretion in the Court to strike out the defence against eviction. We, therefore, hold that the case in Gurmukhdas's case (supra)

was not correctly decided and is hereby over-ruled.

(emphasis supplied)

7. Furthermore, in the case of Sabiha Masood v. Tahabbur Ali Khan, 1998(2) MPLJ 610, this court has also considered the aspect that striking

out of defence in the case of eviction is confined to the plea of eviction and tenant would not be permitted to disapprove the availability of grounds

under Section 12(1)(f) of Act, 1961, but for other issues, he can be permitted to lead evidence. It has been observed as under:-

3. In the suit for eviction based on a ground Under Section 12(1), the defendant has two types of defences (1) which are known as common law

defence and (2) which are available to the tenant under the Accommodation Control Act itself. The Common Law defence are like the liability to pay

the rent, the arrears of rent, the relationship of landlord and tenant and the ownership of the property. But under the Accommodation Control Act, the

defences which are available to the tenant are to disprove the case of the landlord and show to the Court by leading cogent evidence that availability

of a ground Under Section 12(1) is not made out. When a tenant challenges the ownership or the relationship of landlord and tenant, this may probably

be a dispute Under Section 13(3) of the Act. A Court before striking out the defence is required to decide the said dispute. If despite direction the

tenant does not deposit the rent then his defence available to him under the Accommodation Control Act can certainly be struck out but this striking

out the defence available to a tenant under the Accommodation Control Act would not have the effect of striking out the defences of the tenant which

are available to him under the Common/General Law. If a tenant wants to take advantage of the defences which are available to him under the

Accommodation Control Act, then he should deposit the rent but if he does not deposit, then such defence would not be available to him. If such a

tenant proves his common law defence by leading cogent evidence that there does not exist relationship of landlord and tenant or the plaintiff is not the

owner or even by cross-examining the plaintiff's defences that a ground is not available to the landlord to evict the defendant, then this right is not

hampered by striking out the defence. The effect is only that the defendant would not be permitted to lead evidence to disprove the availability of the

ground Under Section 12(1) of M. P. Accommodation Control Act.

5. The Court below had given the time to the defendant to deposit the rent by 12-9-1997. The period had already expired. Considering the totality of

the circumstances, it is however directed that if the tenant deposits the rent as claimed by the landlord or which has accrued in favour of the landlord

latest by 3-11-1997, the deposit shall be treated to be a proper one. Not only this, the tenant is required to comply with the provisions of Section 13(1)

to have his defences available to him under the Rent Control Act. If the tenant does not deposit the rent then his defences against eviction available to

him under M. P. Accommodation Control Act shall stand struck out.

(emphasis supplied)

8. In the case at hand, a decree of eviction has been claimed by the respondent-plaintiff under Section 12(1)(a) and 12(1)(f) of Act, 1961 and also

claimed a decree of arrears of rent. As regards decree of eviction, the plaintiff cannot be permitted to lead evidence in pursuance to the order of

striking out of his defence passed by the court exercising power under Section 13(6) of Act, 1961 and that order was also affirmed by this Court.

However, so far as issue of arrears of rent and decree thereof is concerned, the defendant-tenant can disapprove this claim by leading cogent

evidence because the legal position as has been involved in this case has already been considered by the court and also observed that striking out of

defence is confined to the decree of eviction claimed under Section 12(1) of Act, 1961 but decree of arrears of rent is not included therein and as such

the order of striking out of defence does not debar the tenant to disapprove the stand of the plaintiff. Ergo, if he is not permitted to lead evidence to

that effect, would not only tantamount to illegality in the eyes of law, but would also amount to depriving the tenant from defending other issues

available to him/her under the common law. Adverting to the case of Manoram Devi (supra), as relied upon by learned counsel for the respondent, I

find that this decision does not answer the issue in hand. Albeit, in that case, it has been observed that once defence is struck of, the defendant cannot

be permitted to lead evidence on the plea/ground which is not part of written-statement. Thus, such a law has no applicability in the fact-situation at

hand.

9. In view of the above discourse, based on underlying factual and legal assimilation, I am of the unwavering opinion that the impugned order passed

by the trial court precluding the defendant-petitioner to lead evidence to disapprove the decree of arrears of rent, is vulnerable. The defendant has

denied the arrears of rent in her written-statement and has taken a stand that certain amount has already been deposited by her with the plaintiff,

which is required to be adjusted and such a stand has to be proved by her before the court. Accordingly, the impugned order dated 11.11.2024 is set

aside. The trial Court is directed to permit the defendant confining her to lead evidence with respect to the issue of arrears of rent only.

10. Quite apart, looking to the present stage in praesenti of the case, the trial Court is directed to decide the suit within a period of three months from

the date of receipt of copy of this order. Needless to emphasise that if on the given date, the defendant-petitioner fails to produce evidence, the trial

court may consider closing her right to lead evidence.

11. The petition is allowed and disposed of.