

JAMNALAL AND ORS.

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v.

RADHESHYAM

APRIL 18, 2000

[SYED SHAH MOHAMMED QUADRI AND N. SANTOSH HEGDE, JJ.]

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Rent control and eviction:

M.P. Accommodation Control Act, 1961—Sections 13(1), 13(2) and 12(1)(a)—Default in—Arrears of rent and rate of rent—Operation of section 13(1)—Where dispute as to amount of rent payable has no nexus with rate of rent—Court need not hold a summary inquiry under Section 13(2) to fix provisional rent and section 13(1) remains operative—Tenant remains liable to deposit rent under section 13(1)—If he fails, court can pass order for eviction—But where both rate of rent and arrears of rent are disputed Section 13(1) becomes inoperative till court fixes provisional rent under section 13(2) of the Act.

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Tenant facing eviction proceedings under section 12(1) of the Act—Section 13(1) imposes twin obligations—One to pay or deposit rent within one month of the service of summons, for period for which arrears are due and also for the period for which it become due subsequent to the notice of demand—Other obligation is to deposit future rent, month by month—Held, the two obligations are independent of each other—Further, compliance of the second does not depend upon fulfilment of the first obligation.

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Application of section 13(1) of the Act—Section 13(1) of the Act applies to suits for eviction based on any of the grounds enumerated in section 12(1)(a) to (p) and not merely to arrears of rent under clause (a) - Therefore, tenants facing eviction proceedings on grounds other than non-payment of arrears of rent, have to deposit future rent, under section 13(1) of the Act.

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Words and Phrases:

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'Thereafter'—Meaning of.

Appellants filed suit for eviction of respondent on the ground of default in payment of rent under section 12(1)(a) of the M.P. Accommodation Control Act, 1961. Respondent admitted the rate of rent. He denied

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A being in arrears of rent and produced forged rent receipts. Suit was decreed and the appeal was dismissed. High Court allowing the respondent's second appeal held that since trial court had not fixed provisional rent under section 13(2) of the act, section 13(1) became inoperative and tenant could not have been evicted. Hence this appeal.

B Allowing the appeal, the Court

C HELD : 1.1. The tenant is relieved of the consequences of default in payment of rent on his paying/depositing the rent under S.13(1) M.P. Accommodation Control Act, at the rate last paid or at the rate fixed provisionally under section 13(2) of the Act but if the tenant takes a false or frivolous plea in regard to the amount of rent payable by him, which does not involved fixation of provisional rent under Section 13(2), he runs the risk of suffering an order of eviction either under Section 13(6) or after trial under section 12(1)(a) of the Act. [146-F-G]

D 2.1. Where rate of rent is admitted and the quantum of the arrears of rent is disputed, (on the plea that the rent for the period in question or part thereof has been paid or otherwise adjusted) section 13(2) of the Act is not attracted. The determination of such dispute in a summary inquiry is not contemplated under section 13(2) to fix provisional rent and section 13(1) of the Act remains operative. Such a dispute has to be resolved after trial of the case. The tenant has to take the consequence of non-payment/deposit of rents. If he fails in his plea that no arrears are due and the court finds that the arrears of rent for the period in question were not paid it has to pass an order of eviction against the tenant as no provision of Section 13 of the Act protects him. [145E-G]

F 2.2. It is only when the obligations imposed in Section 13(1) of the Act cannot be complied with without resolving the dispute under section 13(2), section 13(1) will become inoperative till such time the dispute is resolved by the court by fixing a reasonable provisional rent in relation to the accommodation. It follows that where the rate of rent and the quantum of arrears of rent are disputed the whole of Section 13(1) become inoperative till provisional fixation of monthly rent by the Court under section 13(2), which will govern compliance of Section 12(1) of the Act. [145-C-D]

G 3.1. Section 13(1) of the Act imposes twin obligations on the tenant
H against whom a suit or proceeding is instituted on any of the grounds

mentioned in Section 12(1). The first is that within one month of the service of the writ of summons on him the tenant shall deposit in the court or pay to the landlord an amount for the period for which arrears of rent are due and period for which rent became due subsequent to the notice of demand, the second is the period for which rent will become due in future. These obligations are independent of each other. Compliance of the second does not depend upon fulfilment of the first obligation. [142-G-H; 143-A-B; G]

3.2. Section 13(1) of the Act applies on institution of a suit on any of the grounds in clauses (a) to (p) of Section 12(1) and not merely to one under clause (a) default in payment of rent. Therefore, tenants facing eviction proceedings on other grounds than arrears of rent, has to deposit future rent under section 13(1) of the Act. [143-G-H; 144-A-B]

3.3. The word “thereafter” is merely indicative of sequence of the second obligation to deposit the future rents; it is certainly not suggestive of the fact that if the first obligation for any reason cannot be complied with then the occasion to comply with the second obligation does not arise or that it automatically comes to an end. [144-C]

Firm Ganeshram Harvilas & Anr. v. Ramchandra Rao, (1970) MPLJ 902; Jivambhai & Anr. v. Amarsingh, (1972) MPLJ 785; Chhogalal Jankilal v. Idol of Bhagwan Shri Satyanaraya through Kamaldas Guru, Pujari, (1975) MPLJ 657; Anandilal v. Shiv Dayal Pandey, (1977) MPLJ 822; Jhammanlal's case Second Appeal No. 179 of 1970, decided at Gwalior (M.P.) on 5.8.1976 and Dewabai's case 1977 MPLJ 446, disapproved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3340 of 1998.

From the Judgment and Order dated 16.12.97 of the Madhya Pradesh High Court in S.A. No. 183 of 1993.

A.K. Chitale, Niraj Sharma and Ms. Shilpa Chitale for the Appellants.

A.M. Khanwilkar, (A.C.) for the Respondent.

The Judgment of the Court was delivered by

SYED SHAH MOHAMMED QUADRI, J. The question that arises for consideration in this appeal is : can the court pass a decree for eviction of a tenant under Section 12(1)(a), without first determining provisionally the

A amount of rent payable under Section 13(2) of the M.P. Accommodation Control Act, 1961, when the tenant, having admitted the rate of rent, failed to establish that he had paid the arrears of rent?

B This appeal, by special leave, is preferred by the landlords challenging the validity of the judgment of a learned Single Judge of the High Court of Madhya Pradesh, Indore Bench, in Second Appeal No.183 of 1993 passed on December 16, 1997.

The relevant facts giving rise to this appeal need be noticed.

C One Bherulal was the owner of house No.1/796, Brahmin Gali, Ujjain, (Madhya Pradesh) in which he let out three rooms (hereinafter referred to as 'the suit accommodation') for residential purposes to the respondent (tenant) on a monthly rent of Rs. 60. A rent note was also executed on December 4, 1971. The said Bherulal passed away, leaving behind him the appellants (landlords) among other heirs, on April 19, 1972. It is stated that in the partition of his properties among his heirs the suit accommodation fell to the share of the landlords. On November 29, 1976, the landlords issued a notice to the tenant terminating his tenancy on two grounds - (i) default in payment of arrears of rent for the period commencing from 2.3.1976 to 2.4.1977 and (ii) creating nuisance. On the plea that despite service of the notice of demand the tenant did not pay the arrears of rent nor did he abate nuisance, the landlords filed Civil Suit No. 340-A of 1989 in the court of Civil Judge Class-II, Ujjain, M.P. for recovery of possession by ejection of the tenant under Section 12(1)(a) of the Madhya Pradesh Accommodation Control Act, 1961, (for short 'the Act'). The tenant contested the suit pleading that he had paid the arrears of rent and denying the ground of nuisance; however, he admitted that the rent was Rs. 60 per month. On the basis of the evidence produced by the parties before it, the trial court found that receipts produced by the tenant in proof of payment of rent for the period from March to July, 1976 (Exs.D1 to D4) were forged and that the tenant committed default in payment of rent for the said period; it ordered his prosecution also under Section 193 of the Indian Penal Code. The ground of nuisance was also accepted. On December 20, 1990, in view of these findings, the trial court decreed the suit for eviction of the tenant. Against that judgment the tenant filed appeal in the court of 1st Additional District Judge, Ujjain, M.P. On April 27, 1993, the Appellate Court confirmed the decree of the trial court and dismissed the appeal with costs. In the tenant's second appeal, the High Court framed the following substantial question of law under Section 100 of the Code of Civil Procedure :

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“Whether in the facts and circumstances of the case, the decree passed by the courts below under Section 12(1)(a) of the M.P. Accommodation Control Act, 1961, without fixing provisional rent in terms of Section 13(2) of the said Act, despite dispute about the quantum of arrears of rent, is sustainable in law?”

The High Court took the view that as the tenant disputed being in arrears of rent and no provisional rent was determined by the trial court, the operation of the whole of sub-section (1) of Section 13 of the Act was arrested as such the tenant could not be met with the penal consequences of eviction decree denying him the benefit of sub-section (3) of Section 12 of the Act. It was also noted that the tenant had cleared all the arrears accruing due during the pendency of the suit and appeal so the landlords' claim for eviction on the sole ground under Section 12(1)(a) of the Act must fail and thus allowed the second appeal by the judgment impugned in this appeal.

Mr. A.K. Chitale, learned senior counsel appearing for the appellants, argued that having regard to the scheme of the Act the ground for seeking eviction of the tenant under Section 12(1)(a) of the Act cannot be defeated for the reason that the amount of rent payable by the tenant was not determined provisionally by the trial court. The learned counsel submitted that the tenant having taken the plea that he paid the rent, forged receipts and lost on that ground, so he could not invoke Section 13(2) of the Act meant for fixation of rate of rent provisionally by the trial court when the rate of rent was disputed. The question whether the tenant was in arrears of rent, submitted Mr. Chitale, could not be the subject-matter of summary inquiry under sub-section (2) of Section 13 of the Act which was only meant as interim arrangement for payment of monthly rent during the pendency of the case. The finding that the tenant committed default in payment of rent recorded by the trial court and confirmed by the Appellate Court ought to have been accepted by the High Court in Second Appeal.

Though notice of lodgment of the appeal was served on the respondent, he did not choose to enter appearance. Having regard to the importance of the question which involves interpretation and interplay of Sections 12 and 13 of the Act we requested Mr. A.M. Khanwilkar, Advocate, to assist the court.

Mr. Khanwilkar contended that under the scheme of the Act there could be no eviction of a tenant on the ground of default in payment of rent even though Section 12(1)(a) of the Act provided that eviction of a tenant would

A be permissible; the provisions of Section 12(3) and Section 13 of the Act gave protection to a tenant, in default in payment of rent, against eviction. Section 13(5), submitted the learned counsel, prohibited passing of decree or order for recovery of possession of accommodation on the ground of default in payment of rent by the tenant provided he had made deposit or payment as required in sub-section (1) or sub-section (2) of Section 13 of the Act. As the amount of rent payable by the tenant was not determined provisionally by the trial court under sub-section (2), the tenant had no opportunity to make deposit under sub-section (1) of Section 13 of the Act as such no order of eviction could be passed against him under Section 12(1)(a) of the Act; in such a case passing an order of eviction against a tenant, it was submitted, would result in the tenant suffering for non-determination of provisional amount of rent by the court.

D To examine the above contentions of the learned counsel, it is necessary to refer to clause (a) of sub-section (1), sub-section (3) of Section 12 and also Section 13 of the Act, as it stood at the material time, which are relevant for our purpose:

“12. Restriction on eviction of tenants.

E (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:

F (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;

G (b) to (p) *** ** *

(2) *** ** *

H (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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(4) to (11) *** **

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13. *When tenant can get benefit of protection against eviction. -*

(1). On a suit or proceeding being instituted by the landlord on any of the grounds referred to in Section 12, the tenant shall, within one month of the service of the writ of summons on him 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 upto 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 of equivalent to the rent at the rate.

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(2) If in any suit or proceeding referred to in sub-section (1), there is any dispute as to the amount of rent payable by the tenant, the Court shall fix a reasonable provisional rent in relation to the accommodation to be deposited or paid in accordance with the provisions of sub-section (1) till the decision of the suit or appeal.

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(3) If, in any proceeding referred to in sub-section (1), there is any dispute as to the person or persons to whom the rent is payable, the Court may direct the tenant to deposit with the Court the amount payable by him under sub-section (1) or sub-section (2), and in such a case, no person shall be entitled to withdraw the amount in deposit until the Court decides the dispute and makes an order for payment of the same.

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(4) If the Court is satisfied that any dispute referred to in sub-section (3) has been raised by a tenant for reasons which are false or frivolous, the court may order the defence against eviction to be struck out and proceed with the hearing of the

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A suit.

(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.

C A cursory reading of clause (a) of sub-section (1) of Section 12 of the Act makes it clear that non-payment of arrears of rent legally recoverable from a tenant 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, is one of the grounds for filing a suit in a Civil Court against a tenant for his eviction from the rented accommodation. But the legislative mandate contained in sub-section (3) of Section 12 is that no order of eviction of a tenant shall be made if he makes payment or deposit as required by Section 13 of the Act. The proviso appended to Section 12(3) restricts entitlement to the benefit available under that sub-section. It cannot be availed by a tenant who having obtained such benefit once in respect of any accommodation again makes a default in payment of rent of that accommodation for three consecutive months.

F The scheme of Section 13 of the Act suggests that the provisions thereof are intended for the benefit of both the tenant as well as the landlord. While Section 13 affords protection to a defaulting tenant, willing to abide by the obligation to pay the rent regularly, against eviction on the ground of default in payment of rent, it also ensures payment of rent to the landlord, which he is entitled to receive for both the pre-litigation period as well as during the pendency of the litigation. A perusal of Sub-section (1) of Section 13 discloses that it imposes twin obligations on the tenant against whom a suit or proceeding is instituted on any of the grounds mentioned in sub-section (1) of Section 12. The first is that within one month of the service of the writ of summons on him or within such further time as the Court may, on an application made to it, allow in this behalf, the tenant shall deposit in the Court or pay to the landlord an amount, representing (a) arrears of rent for the period for which the tenant may have made default and (b) rent for the period

subsequent thereto upto the end of the month previous to that in which the deposit or payment is made, duly calculating the same at the rate of rent at which it was paid. And the second is payment/deposit of rent for the period thereafter, that is, future rent which he shall continue to deposit or pay, month by month, by the 15th of each succeeding month, at that rate. For the purpose of depositing the amount of rent, sub-section (1) refers to three periods in chronological order, i.e.,

- (i) period for which arrears of rent are due, which is the subject matter of notice of demand served on the tenant;
- (ii) period for which rent became due subsequent to the notice of demand till the date of deposit of rent in Court; and
- (iii) period for which rent will become due in future, after the date of deposit as aforementioned, till the decision of suit or appeal.

The following illustration will help in elucidating the import of the provisions under consideration; if a tenant has last paid rent of tenanted premises, say, @ Rs.1000 for the month of January and did not pay for February, March and April and notice of demand claiming arrears of rent for those months was served on him in May; the Act permits him to pay the arrears of rent within two months of service of demand, i.e., till end of July. Assuming he has failed to do so and the landlord files the suit under Section 12(1)(a) of the Act of which writ of summons is served on the tenant on September 15, for his appearance in the Court, he has the second opportunity to pay arrears of rent in Court within one month of service of summons on him i.e., till October 14 or within such further time as the Court may allow; but at that stage along with arrears of rent for the said months he has also to pay/deposit rent for the months from May to the end of September. The second obligation of depositing the future rent continuously from month to month covers the period commencing from October and ending with the decision of suit or appeal. The arrears of rent and the future rent for each month, in the illustration, have to be calculated at the rate of Rs.1000.

The abovestated two obligations are independent of each other. Compliance of the second does not depend upon fulfilment of the first obligation. It is evident that Section 13(1) applies on institution of a suit on any of the grounds in clauses (a) to (p) of Section 12(1) and not merely to one under clause (a) - default in payment of rent. In cases under clauses other than (a),

A the tenants might have been paying the rent regularly and the question of payment/deposit of arrears of rent or rent for the period subsequent to service of summons, may not arise. Can then, based on the word “thereafter”, it be argued that there will be no liability to deposit future rent - the second obligation noted above. In our view such a contention will be defeating the object of the provision and will be impermissible. Having stated how the amount of rent payable by the tenant for the periods specified therein should be calculated and deposited, the provision imposes further obligation to deposit the rent month by month till the termination of the suit or proceedings. The word “thereafter” is merely indicative of sequence of the second obligation to deposit the future rents; it is certainly not suggestive of the fact that if the first obligation for any reason cannot be complied with then the occasion to comply with the second obligation does not arise or that it automatically comes to an end. It would be unthinkable that that could be the intention of the legislature.

D The tenant’s liability to deposit the rent for any of the periods, noted above, in the Court does not depend upon and has no relation to depositing the rent for any of the earlier periods. When the rate of rent payable each month and the quantum of arrears of rent are admitted, no problem arises in complying with Section 13(1) of the Act. Difficulty may, however, arise in complying with the two requirements of sub-section (1) of Section 13, noted above, when dispute is raised by the tenant with regard to either the amount of rent payable by him or with regard to the person who is entitled to receive the rent.

F Sub-section (2) of Section 13 of the Act takes care of the situation when there is dispute as to the amount of rent payable by the tenant and directs fixation of a reasonable provisional rent in relation to the accommodation, which will be a summary inquiry, by the Court. The dispute may arise in any of the following circumstances:

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- (i) rate of rent and the quantum of arrears of the rent are in dispute though not the period for which arrears of rent are due;
 - (ii) rate of rent and the quantum of arrears of the rent are in dispute and also the period for which it is due;
 - (iii) rate of rent is admitted but the quantum of arrears of rents or/ and the period for which it is due are disputed.
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A careful reading of the sub-section shows that the Court is enjoined to fix a reasonable provisional rent, in relation to the accommodation, to be deposited or paid in accordance with the provision of sub-section (1) if there is a dispute as to the amount of rent payable by the tenant. The clause 'the court shall' fix a reasonable provisional rent in relation to the accommodation clearly indicates that 'any dispute as to the amount of rent' is confined to a dispute which depends on the rate of rent of the accommodation either because no rate of rent is fixed between the parties or because each of them pleads a different sum. Where the dispute as to the amount of rent payable by the tenant has no nexus with the rate of rent, the determination of such dispute in a summary inquiry is not contemplated under sub-section (2) of Section 13. Such a dispute has to be resolved after trial of the case. Consequently, it is only when the obligations imposed in Section 13(1) cannot be complied with without resolving the dispute under sub-section (2) of that Section, that Section 13(1) will become inoperative till such time the dispute is resolved by the Court by fixing a reasonable provisional rent in relation to the accommodation. It follows that where the rate of rent and the quantum of arrears of rent are disputed the whole of Section 13(1) becomes inoperative till provisional fixation of monthly rent by the Court under sub-section (2) of Section 13, which will govern compliance of Section 13(1) of the Act. But where rate of rent is admitted and the quantum of the arrears of rent is disputed, (on the plea that the rent for the period in question or part thereof has been paid or otherwise adjusted), sub-section (2) of Section 13 is not attracted as determination of such a dispute is not postulated thereunder. Therefore, the obligation to pay/deposit the rent for the second and the third period aforementioned, referred to in Section 13(1), namely, to deposit rent for the period subsequent to the notice of demand and for the period in which the suit/proceedings will be pending that is (future rent) does not become inoperative for the simple reason that Section 13(2) does not contemplate provisional determination of amount of rent payable by the tenant. As resolution of that category of dispute does not fall under Section 13(2) the tenant has to take the consequence of non payment/deposit of rents for the said periods. If he fails in his plea that no arrears are due and the Court finds that the arrears of rent for the period in question were not paid, it has to pass an order of eviction against the tenant as no provision of Section 13 of the Act protects him.

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Sub-section (3) of Section 13 of the Act deals with a case where the dispute is as to the person or persons to whom the rent is payable. If the court is satisfied that the dispute raised by the tenant in regard to the person or

A persons to whom the rent is payable is false or frivolous, sub-section (4) says, the court in its discretion may order striking out the defence against the eviction instead and proceed with the hearing of the case. So also sub-section (6), in the case of non-compliance in depositing or payment of rent of any amount as required by Section 13(1) of the Act, enables the court to order striking out the defence against the tenant instead and proceed with the hearing of the suit. Sub-section (5) directs that if the tenant makes deposit or payment as required under sub-section (1) or sub-section (2) of Section 13 of the Act, the Court is barred from making a decree or order for the recovery of the possession of the accommodation on the ground of default in payment of rent by the tenant but the court may allow such cost as it may deem fit to the landlord.

D Where the rate of rent payable by the tenant for the accommodation is not in dispute and the quantum of arrears of rent is not paid/deposited either because the tenant pleads that he has paid the arrears of rent or adjusted the same towards the amounts payable by the landlord or in the discharge of his liability, the tenant succeeds or fails on his plea being accepted or rejected in that behalf by the court. In such a case sub-section (2) is not attracted because the plea taken by the tenant has to be adjudicated by full fledged trial and not in a summary inquiry postulated for fixing a reasonable provisional rent in relation to the accommodation in question. This being the position a tenant takes the risk of suffering an order of eviction by raising a dispute in regard to the amount of rent payable by him while admitting the rate of rent and not making payment or deposit under sub-section (1) because where the dispute raised by the tenant is outside the ambit of sub-section (2), sub-section (1) of Section 13 of the Act does not become inoperative.

F There can no debate on the proposition that the tenant is relieved of the consequences of default in payment of rent on his paying/depositing the rent under sub-section (1) at the rate last paid or at the rate fixed provisionally under sub-section (2) of Section 13 of the Act but if the tenant takes a false or frivolous plea in regard to the amount of rent payable by him, which does not involve fixation of provisional rent under Section 13(2), he runs the risk of suffering an order of eviction either under sub-section (6) of Section 13 or after trial under Section 12(1)(a) of the Act. We are not persuaded to accept the contention of the learned *Amicus* that the legislature, having provided a ground for eviction of a tenant under Section 12(1)(a) of the Act, nor merely diluted but has nullified its effect by enacting Section 12(3) and sub-sections

(2) and (5) of Section 13 of the Act. A liberal but harmonious construction of clause (a) of sub-section (1), sub-section (3) of Section 12 and sub-sections (1), (2), (5) and (6) of Section 13 does not lead us to the conclusion that clause (a) of sub-section (1) of Section 12 has in effect been rendered illusory.

Now, we shall advert to the cases cited at the bar which are decided by the High Court of Madhya Pradesh on the interpretation of the above-said provisions.

In *Firm Ganeshram Harvilas and Another v. Ramachandra Rao* (1970) MPLJ 902 a Division Bench of the Madhya Pradesh High Court had to consider the effect of Section 12(3) and Section 13(2) of the Act. The Division Bench has held, *inter alia*, that every kind of dispute as to the amount of rent payable by the tenant is within the scope of Section 13(2) of the Act. This, in our view, is too broad a proposition to merit acceptance. With regard to the word "thereafter" in second part of sub-section (1) of Section 13, the Division Bench rightly concluded that it meant "after one month of the service of the writ of summons on the tenant", or, where time is extended, "after the time so extended" under the first part of sub-section (1).

In *Jivrambhai and Another v. Amarsingh*, (1972) MPLJ 785 the observation of the Division Bench of the Madhya Pradesh High Court that as soon as the dispute under Section 13(2) of the Act is raised and it is brought to the notice of the Court the operation of Section 13(1) of the Act gets arrested so far as the amount to be deposited in Court is concerned and it remains in suspense until provisional rent is fixed, is also too wide a statement to be correct.

In *Chhogalal Jankilal v. Idol of Bhagwan Shri Satyanaraya through Kamaldas Guru, Pujari*, (1975) MPLJ 657 the landlord claimed that the defendant-appellant was the tenant on a monthly rent of Rs. 5 and that he failed to pay the arrears of rent within two months from the service of the demand notice. In the written statement the tenant pleaded that the monthly rent was initially Rs. 2 which was first enhanced to Rs. 2-8-0 per month and then to Rs. 3 per month. He alleged that there was never any agreement to pay the rent of Rs. 5 per month and pleaded that on receiving notice of demand he sent all the arrears at the rate of Rs. 3 per month and deposited subsequent rent of Rs. 132 calculated at the rate of Rs. 3 per month in the Court of the Rent Controller on the date of his filing the written statement. The trial court, however, did not fix any reasonable provisional rent as required by sub-section

A (2) of Section 13 of the Act and the tenant continued to deposit in the court rent at the rate of Rs. 3 per month. After trial the court found that the rent of the house was Rs. 5 per month, as pleaded by the landlord, and not Rs. 3 per month as alleged by the tenant and ordered eviction of the tenant under Section 12(1)(a) of the Act. The Appellate Court held that in depositing rent at the rate of Rs. 3 per month, during the pendency of the suit, there was compliance of Section 13(1) of the Act by the tenant but not during the pendency of the appeal as the trial court had found that the rate of rent was Rs. 5 per month; therefore, he was not entitled to the protection of Section 12(3) and Section 13(5) of the Act and, therefore, he was liable to be evicted. In second appeal, a learned Single Judge of the High Court proceeded on the assumption that on a dispute being raised by the tenant under sub-section (2) of Section 13 of the Act, the obligation to deposit the rent under Section 13(1) remained suspended until the court fixes the provisional rent; the tenant will not be in default if no provisional rent is fixed by the court as the operation of sub-section (1) of Section 13 of the Act was arrested and that assumption was endorsed by the Full Bench of the Madhya Pradesh High Court. On a difference of opinion between two Division Benches of that High Court, the question referred to the Full Bench was, "whether it is sufficient for the tenant to raise the dispute in his written statement or whether he must make an application inviting the attention of the Court to the specific dispute and ask the Court to fix the provisional rent." It, however, answered that question as follows: "The operation of sub-section (1) of Section 13 of the Madhya Pradesh Accommodation Control Act, 1961, is arrested when a dispute as is referred to in sub-section (2) is raised by the defendant-tenant in his written statement and it is not necessary that he should make an application inviting the attention of the Court to the specific dispute and asking the Court to fix provisional rent." Apart from the fact that the decision of the Full Bench that when a dispute is raised under Section 13(2) of the Act, the operation of Section 13(1) is arrested, is *obiter dicta*, for the aforementioned reasons we cannot approve the same.

G In *Anandilal v. Shiv Dayal Pandey* (1977) MPLJ 822, for non-payment of rent within two months from the service of notice of demand, the landlord terminated the tenancy. The tenant disputed that he was in arrears of rent. The trial court found that the tenant had committed default in payment of rent and decreed the suit. However, the Appellate Court reversed the decree holding that the landlord failed to prove that the tenant was in arrears of rent. In view of the difference of opinion between Vyas, J., in *Jhammanlal's* case [Second

Appeal No.179 of 1970 decided at Gwalior (M.P.) on 5-8-1976] who, relying on the Full Bench decision (supra), held that on raising of dispute by the tenant the operation of the whole of Section 13(1) of the Act was arrested and Oza, J., in *Dewabai's* case (1977) MPLJ 446 opining that only that part of Section 13 (1) of the Act which is subject matter of dispute raised under Section 13(2) of the Act, will be arrested and that compliance of the remaining part of the provision by the tenant is mandatory, two questions were referred to Division Bench. The Division Bench answered the questions referred to it as follows:-

“(1) Even when there is no dispute with regard to the rate of rent and the dispute is only with regard to the arrears of rent, on such a dispute, till the Court passes an order under sub-section (2) of Section 13 of the Act is arrested. To be more specific, the liability of the tenant to deposit monthly rent for the preceding month under the second part of Section 13(1) does not commence until an order under sub-section (2) of Section 13 is made.

(2) The order contemplated under sub-section (2) of Section 13 of the Act is the one with regard to that part of deposit under Section 13(1), for which there is a dispute.”

From what is stated above, it is evident that answer to question No.1, recorded by the Division Bench of the High Court, does not lay down correct law. The Division Bench is also not correct in holding, ‘The key to the problem is found in the word “thereafter” (i.e. after that) necessarily refers to the tenants’ liability becoming operative under the first part of Section 13(1). If that liability is arrested, the liability under the second part does not commence, because the liability under the second part commences only “thereafter” which means when the liability of the tenant under the first part is ripe for performance’.

In the instant case, the findings of the courts below are : that the tenant did not pay the rent for the period from March to July 1976; indeed, the finding of the trial Court which was confirmed by the Appellate Court is that the tenant forged receipts (Exs.:D1 to D4) for the said months and that he had committed default in payment of rent. It appears that on the application of the landlord the trial court fixed provisional rent @ Rs. 60 per month and left the question of arrears of rent to be decided on trial. Consequently, non-determination of provisional rent by the trial Court under sub-section (2) of Section 13 of the Act becomes inconsequential. There is thus non-compliance

A of Section 13(1) of the Act and the tenant is not entitled to the benefit of Section 13(5) read with Section 12(3) of the Act.

B Inasmuch as the order impugned in this appeal is passed by following the judgment of the High Court in *Anandilal's* case which we have not approved, the impugned order of the High Court passed on December 16, 1997, cannot be sustained. Accordingly, the appeal is allowed and the impugned order is set aside. In the result, the eviction petition, filed by the appellants, stands allowed.

C The respondent-tenant is directed to handover vacant possession of the suit accommodation to the landlords on or before October 31, 2000, on his giving a usual undertaking within four weeks from today. He shall pay to the landlords or deposit in the trial court the arrears of rent, if any due, within four weeks from today and continue to pay/deposit the monthly rent on or before 15th of each month, in advance, during the said period. In default of compliance of any of the aforesaid conditions, the landlords will be at liberty D to have the decree of eviction executed in accordance with law. There shall be no order as to costs.

E Before parting with the case, we must record our appreciation for the tremendous work done by Mr.A.M. Khanwilkar. He studied the case thoroughly, searched the case law on the subject exhaustively and presented the case of the respondent effectively. We acknowledge his assistance with thanks.

N.J.

Appeal allowed.