
(1980) 01 BOM CK 0024
In the Bombay High Court
Case No : Spl. C.A. No. 1668 of 1975

Anant Purushottam Athavle	Vs	APPELLANT
Damodar Dattatraya Bedekar		RESPONDENT

Date of Decision : 07-01-1980

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11, 12
Constitution of India, 1950 — Article 227

Citation : (1980) 82 BOMLR 414

Hon'ble Judges : Kotwal, J; Chandurkar, J

Bench : Division Bench

Judgement

Chandurkar, J.—This petition which arises out of one of the usual suits between landlord and tenant for possession on the ground of arrears of rent has come before this Division Bench on a reference made by a learned single Judge. We have found extreme difficulty in ascertaining as to why this petition has been referred to a Division Bench and unfortunately neither of the two counsel appearing for the parties in this petition is able to enlighten us as to the point which, according to the learned single Judge, was required to be decided authoritatively by a Division Bench. It will not be out of place to observe that when a matter comes before a Division Bench on a reference by a single Judge, it will help the Division Bench to concentrate its attention on any particular aspect of the case if it knows as to what weighed with the learned single Judge in referring the matter if a short referring order is made. However, we have proceeded to hear the parties and we proceed to dispose of the petition.

2. The petitioner is admittedly a landlord of premises which are let out to respondent No. 1 who is a tenant and the petitioner had acquired these premises as a result of a family partition dated November 18, 1964, following his father's death. The petitioner served a notice on September 23, 1968, calling upon the tenant to deliver possession on the ground that he was in arrears of rent for more than six months, that the defendant's customers were causing a nuisance to the plaintiff and further that the plaintiff requires the suit premises reasonably

and bona fide for his own occupation for his residence and business. The arrears claimed by the plaintiff were for the period May 1, 1964 to September 22, 1968 at the monthly rent of Rs. 36/-, the premises having been leased out for running a hotel by the tenant. The notice was received by the tenant on September 29, 1968, and within one month thereafter he filed an application for determination of standard rent on October 18, 1968. The petitioner then filed a suit for eviction on January 8, 1969. His standard rent application and the suit have been decided by a common judgment.

3. It has to be pointed out at this stage that in the proceedings for determination of standard rent, the Small Cause Court, Poona, passed the following order:-

Interim rent is fixed at Rs. 24/- per month. The applicant to deposit arrears of rent at this rate within one month and go on paying each month's rent on or before 10th of each month as it becomes due. Notice of this be served on opponent.

It appears from the order that this was an ex parte order, but that does not now become relevant.

4. When the parties went to trial before the trial Court, the trial Court held that the notice served by the landlord was legal and valid, but the trial Court found that the defendant could not be called a defaulter as

the payment of interim rent is made by the defendant from time to time, at the intervals of 2 or 3 months up-till now;

and as the arrears of rent were paid by him up to date, any technical defect in failure to pay interim rent from month to month regularly deserves to be condoned. On the issue of nuisance and bona fide requirement, the trial Court held against the landlord. The nuisance alleged was that the customers of the tenant some times quarrelled and they caused nuisance by spitting or keeping cycles in front of the passage of the plaintiff. The trial Court held that having regard to the fact that the premises were let out for hotel purposes, such incidents could not be considered as a nuisance. With regard to the need for bona fide occupation for residence and business, the trial Court held that there was enough accommodation in the possession of the landlord and, therefore, the plaintiff had failed to prove that he required the suit premises reasonably and bona fide for his use. On the dispute with regard to standard rent, on appreciation of evidence to which we need not refer, the trial Court found that the standard rent of the premises should be fixed at Rs. 26/- per month. Consequently the trial Court ordered that the plaintiff was entitled to get Rs. 1705/-. In the view which the trial Court took, though the tenant was ordered to pay Rs. 1,705/- and costs of the suit, the suit in so far as the relief of possession was concerned was rejected.

5. The petitioner then filed an appeal against this judgment. He also filed a revision application challenging the determination of the standard rent. The

Appeal Court confirmed the findings of the trial Court with regard to nuisance and need for bona fide occupation. The Appeal Court, however, modified the standard rent to Rs. 26.69 and modified the amount which was found to be due to the plaintiff. With regard to the claim for possession on the ground of arrears, the Appeal Court no doubt rightly took the view that the relevant provision which was attracted was the one in Section 12(3)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, (hereinafter referred to as "the Bombay Rent Act"), but though the Appeal Court found that the payments were not regularly made by the defendant and the rent for each month was not deposited as it became due, it declined to interfere with the finding recorded by the trial Court negating the plaintiff's claim for possession on the ground that the entire rent was paid by the defendant before the decision of this suit. Consequently, the appeal filed by the petitioner came to be dismissed, but the revision application with regard to the determination of the standard rent was allowed and the standard rent was fixed at Rs. 26.69 besides Rs. 4/- per month as water charges which the defendant was held liable to pay up to March 1971.

6. The plaintiff landlord has now filed this petition challenging the dismissal of his suit. In view of the findings recorded by the trial Court and confirmed by the Appeal Court on the two issues, namely, the alleged nuisance caused by the defendant and the landlord's need for personal occupation, it was not possible for Mr. Abhyankar to challenge those findings which were clearly based on proper appreciation of evidence. Mr. Abhyankar however, contended that in so far as the claim for possession on the ground of arrears of rent was concerned, the tenant had clearly not complied with the provisions of Section 12(3)(b) of the Bombay Rent Act inasmuch as on the admitted position with regard to the payments made from time to time by the tenant in the trial Court as well as the finding recorded by the trial Court and the Appeal Court, the tenant cannot be said to have paid or tendered in Court regularly rent which should have been paid by him.

7. Mr. Khare appearing on behalf of the tenant, however, has contended that the tenant's case really fell within the first Explanation in Section 12 and since the word "regularly" is absent from the Explanation, if both the lower Courts have taken the view that the payments made from time to time by the tenant in Court sufficiently met the requirements of the first Explanation and if the Courts have thus exercised their discretion in favour of the tenant, this Court under Article 227 of the Constitution of India should not interfere with the exercise of discretion by the lower Courts.

8. Section 12(1) of the Rent Act provides that a landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready or willing to pay the amount of the standard rent and permitted increases, if any, and observes other conditions of tenancy in, so far as they are consistent with the provisions of the Act. Section 12(1) has to be read along with the other provisions in Sub-sections (2), (3)(a), (3)(b) and the two Explanations therein. It

is not seriously in dispute that since the tenant had applied for determination of standard rent within a period of one month from the receipt of the notice u/s 12(2) the landlord was not entitled to claim the benefit of Section 12(3)(a) and he was, therefore, not entitled to a decree for eviction straightway on the ground that the tenant was in arrears of rent for a period of six months or more. If the case does not fall u/s 12(3)(a), then the rights of the parties have to be determined in the light of the provisions of Section 12(3)(b). u/s 12(3)(b) it is provided that no decree for eviction shall be passed in any such suit if on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court. However, in a case where the tenant has applied for determination of standard rent within a period of one month after the notice given by the landlord u/s 12(2), the first Explanation becomes relevant and the question whether a decree for possession should be passed or not and whether a tenant must be deemed to be ready and willing to pay the amount of standard rent will have to be decided with reference to the provisions of the Explanation and the conditions laid down therein. Explanation I reads as follows: -

In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in Sub-section (2), he makes an application to the Court under Sub-section (3) of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court.

The Explanation, therefore, provides for a case where there is a dispute as to the amount of standard rent or permitted increases and in such a case, the legislature has provided for a fiction for determining whether the tenant is ready or willing to pay the amount of standard rent or permitted increases. Two conditions have to be satisfied by the tenant if he wants to get a finding in his favour that he must be deemed to be ready and willing to pay the standard rent. The first condition is that he has to make an application to the Court u/s 11(3) of the Bombay Rent Act. The second condition is that he has to pay or tender the amount of rent or permitted increases specified in the order made by the Court. If the first condition is not satisfied, namely, that within one month of the notice u/s 12(2) the tenant does not apply for fixation of standard rent, the Explanation will not become applicable at all and it is obvious that the case will have to be decided with reference either to Section 12(3)(a) or Section 12(3)(b) depending upon which requirements are satisfied. If, however, the tenant makes the application, then he has further to go on paying or depositing the amount of rent specified in the order made by the Court. If the provisions of Section 12(3)(b) and the first Explanation are properly read, they evince a clear intention on the part of the legislature that if the tenant wants to prevent a decree for possession being passed against him on the ground of arrears of rent in a case which does

not fall within Section 12(3)(a), he has either to go on depositing in Court regularly the standard rent or permitted increases or where the dispute is with reference to standard rent, he has to go on depositing the amount as ordered by the Court. The mere absence of the word "regularly" in the Explanation cannot be construed as giving a liberty to the tenant to withhold rent and still claim the benefit of the bar u/s 12(1) on the footing that he must be treated as being ready and willing to pay rent. The fiction in the Explanation must be given its full effect and the conditions for its operation must be strictly complied with. If any one of the two conditions is not complied with, the tenant must be said to have asked for a finding that he was not ready or willing to pay the standard rent.

9. The view we have taken does not seem to be open to any dispute. But we may point out that while construing Section 12(3)(b), the Supreme Court in *Ganpat Ladha Vs. Sashikant Vishnu Shinde*, has clearly pointed out that in a case where the conditions of Section 12(3)(a) are not satisfied, there is a further opportunity to the tenant to protect himself against eviction and he can comply with the conditions set out in Section 12(3)(b) and defeat the landlord's claim for eviction. The Supreme Court then pointed out (at p. 960 para 11): -

If, however, he does not fulfil those conditions, he cannot claim the protection of Section 12(3)(b) and in that event, there being no other protection available to him, a decree for eviction would have to go against him. Section 12(3)(b) does not create any discretionary jurisdiction in the Court.

The Supreme Court has thus clearly held that once it is found that the tenant has not complied with the conditions prescribed in Section 12(3)(b), there is no discretion in the Court not to pass a decree for possession.

10. So far as the present case is concerned, on the findings recorded by the trial Court and the Appeal Court, it is obvious that the tenant has not deposited the interim rent as ordered by the Court. The Court had ordered interim rent to be deposited every month by the 10th of each month. The essential condition set out in the Explanation was, therefore, not satisfied. Consequently, the tenant was clearly not entitled to the benefit of Section 12(3)(b) of the Bombay Rent Act. We may point out that apart from the findings recorded by both the Courts that the tenant had not deposited the amount regularly as directed by the Court, we have seen on record a schedule filed by the tenant himself (Ex. 58) which clearly shows that the interim rent has not been paid as ordered by the trial Court. It is obvious, therefore, that both the trial Court and the Appeal Court had failed to exercise their jurisdiction when they declined to decree the plaintiff's claim for possession.

11. In the result, the judgment and decree of the trial Court and the Appeal Court in so far as they dismissed the plaintiff's suit for possession are quashed. Instead, it is held that the plaintiff is entitled to a decree for possession and accordingly his suit shall stand decreed with costs throughout. The tenant to pay the costs of this petition.