(1969) 09 BOM CK 0004

In the Bombay High Court

Case No : Criminal Revision Application No. 227 of 1969

Aspendiar K. Irani APPELLANT

Vs

Jini Jehangir Ghamat and Another RESPONDENT

Date of Decision : 09-09-1969

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 26, 26(1), 26(2)
Bombay Rents, Hotel and Lodging House Rates Control Rules, 1948 — Rule 3

Citation : AIR 1971 Bom 213 : (1970) 72 BOMLR 626 : (1971) CriLJ 945 : (1971) ILR (Bom) 353

Hon'ble Judges : Chandrachud, J

Bench : Single Bench

Advocate : R.S. Daruwalla and R.M. Purandare, for the Appellant; R.G. Rege, Hon. Asstt. to Govt. Pleader and R.W. Adik, for the Respondent

Judgement

1. The petitioner who is a co-owner of a building called "Ghamat Terrace," Tulsi Pipe Road. Dadar, has been convicted on a complaint filed by her tenant u/s 26(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 hereinafter called "the Act." The learned Presidency Magistrate, 5th Court, Dadar has sentenced the petitioner to pay a fine of Rs. 25/-, in default to suffer simple imprisonment for four days.

2. Section 26 of the Act runs thus:--

"(1) Every landlord shall give a written receipt for any amount at the time when such amount is received by him in respect of any premises in such form and in such manner as may be prescribed.

(2) Any landlord or person who fails to give a written receipt for any amount received by him in respect of any premises shall, on conviction, be punishable with fine which may extend to one hundred rupees."

Now, it is not as if no written receipt at all was given by the landladies to the tenant for the rent paid by him. The allegation is that the receipts are not in the prescribed form. Section 26(1) makes it obligatory for every landlord to give written receipt for all amounts received by him in such form and in such manner as may be prescribed. Rule 3 of the Bombay Rents. Hotel and Lodging House Rates Control Rules, 1948 provides that the receipt given u/s 26 for the amount of rent received in respect of any premises shall be in Form I. Form I prescribed identical particulars for the rent receipts and the corresponding counterfoils. The following particulars are required to be mentioned therein;

"Form of Rent Receipt and Counter-foil.

Rent Receipt Serial No. Name of the landlord:--

Address of the landlord:--

Received with thanks from Mr./ Mrs./ Miss. a sum of Rs. (figures) (in words) only as payment of rent at Rs. per for the period for the premises this day the day of the month of in the year Signature or thumb impression of the landlord.

* The Rent charged includes:--

(1) Rates, cesses and taxes of the local authority.

(2) Electric Charges.

(3) Gas charges.

(4) .....

(5) .....

*It does not include:--

(1) Rates, cesses and taxes of the local authority.

(2) Electric charges.

(3) Gas charges.

(4) .....

(5) .....

*Strike out whatever is inapplicable.

State the exact charges if possible."

The form of the counterfoil is identical.

3. Now the receipts which the landladies Rave to the tenant indisputably contain the particulars prescribed in the form but the grievance of the tenant is that the receipts contain some additions and therefore, they cannot be said to be in the prescribed form. The receipt given by the landladies runs thus:--

"Ghamat Terrace, Dadar (West)

No.

Shri ..... Dr. .....

.....

.....

To Miss Jini Jehangir Ghamat, Mrs. Sheroo Keki Commissariat and Mrs. Tehmi Dara Dastur

For Statutory Rent or compensation for use and occupation without prejudice to the notice to quit the Shop Number..... occupied by you bearing Municipal Number ..... in "GHAMAT TERRACE" situate at the junction of Dr. D''Silva Rd., and Tulsi Pipe Road at Dadar for the month of 196 ..... at Rs. per month ..... Rs. Municipal General Additional Tax plus increase on account of Education Cess at 1 1/2% and Halalkhor Tax at 1/2% in all 2% plus inclusive of all other Additional Tax in force from 1st April 1959, 1st October 1962, 1st April 1963 and 1st Oct. 1967.

Receiver''s Signature .....

Total Rs. .....

E. E. & C. Received For self and Co-owners"

4. The additions complained of are that the word "statutory rent" instead of the word "rent" is used in the receipt and the receipt says that "statutory rent or compensation for use and occupation" was received "without prejudice to the notice to quit" the particular premises. In my opinion, these additions cannot justify the conclusion that the receipt does not comply with the prescribed form. The particular form of the receipt is adopted by the landladies to cover all possible cases. If a notice to quit is given to a tenant in any particular case, the landladies would be entitled to say in the receipt that the rent was received without prejudice to the notice to quit. That right of the landladies cannot be taken away by prescribing a form.

5. The learned Magistrate says that the receipt given by the landladies to the tenant is not "exactly according to the prescribed form." I do not think that a conviction u/s 26(2) of the Act can be had for the reason that the rent receipt does not correspond exactly to the prescribed form. If the material particulars mentioned in the prescribed form are contained in the rent receipt, the requirements of law must be held to have been satisfied. There is a column in the prescribed form for mentioning the "Name of the landlord" but the receipt given by the landladies in the present case has no column thus entitled. The receipt, however, contains the names of the landladies prominently and says that the amount was being paid by the tenant to the landladies and the receipt was being passed in token thereof. In my opinion, it would be a sufficient compliance with Section 26 and Rule 3 if the material requirements of the prescribed form are complied with.

6. The question whether a statutory provision is directory or mandatory has been considered by the Supreme Court in many cases and it has laid down certain broad tests by the application of which the question should in a given case be decided. The use of the word "shall" was held in The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others, . to be inconclusive. Further, that whether a requirement is directory or mandatory is to be decided not merely on the basis of any specific provision setting out the consequences of the omission to observe the requirement but also having regard to the purpose for which the requirement has been enacted, particularly in the context of the other provisions and the scheme of the Act. If the object with which the provision was inserted would be wholly defeated and the protection afforded thereby would be nullified, the provision would be mandatory.

7. The reason of the rule contained in Section 26(1) of the Act is that landlords must not recover excessive rent from their tenants on any other consideration, under some pretext or the other. Section 18 makes it penal for a landlord to receive any fine, premium or like sum of any consideration other than the standard rent and the permitted increases in respect of the grant, renewal, continuance or transfer of the lease. To ensure that landlords do not recover unlawful charges on the sly. Section 26(1) provides (i) that every landlord shall give a written receipt for "any amount" received by him (ii) that the receipt shall be given at the time when the amount is received and (iii) that the receipt must be given in such form and manner as may be prescribed. Rule 3 says that rent receipts shall be in Form I.

8. In view of these provisions and the requirements of Form I, it seems to me clear that it is not necessary that the rent receipt given by the landlord must not deviate from the prescribed form. What is imperative or mandatory is that the landlord must give a written receipt mentioning therein the amount received by him and the purpose for which it was received. So long as this part of the requirement is complied with it is immaterial that the other particulars are not mentioned in the receipt. That may perhaps explain why what is made penal by Section 26(2) is the failure to give "a written receipt" and not the failure to give a receipt in the prescribed form.

9. That leads to a consideration of the terms of Section 26(2). Though Section 26(1) makes it obligatory on every landlord to give a written receipt in the prescribed form, Sub-section (2) which is a penal provision and which must therefore be construed strictly, provides that the landlord "who fails to give a written receipt for any amount received by him in respect of any premises" shall be liable to be punished. It does not say that the landlord who fails to give a "written receipt in the prescribed form" shall be liable to be punished. All that is required by Sub-section (2) is that a written receipt must be given and as a written receipt has been given in the instant case, the petitioner is not liable to be punished.

10. Accordingly, I set aside the order of conviction and sentence passed by the

learned Magistrate and acquit the petitioner. Fine, if paid, shall be refunded.

11. Order accordingly.

