
(1987) 02 BOM CK 0054

In the Bombay High Court

Case No : Writ Petition No. 5035 of 1985

Chase Bright Steel Ltd.

APPELLANT

Vs

Shantaram Shankar Sawant and Another

RESPONDENT

Date of Decision : 20-02-1987

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11(3), 12, 12(2), 12(3)

Citation : (1988) 4 BomCR 235 : (1987) 89 BOMLR 134 : (1987) MhLj 432

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : M.A. Rane and L.S. Krishnamoorthy, for the Appellant; R.V. Govilkar, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Agarwal, J.—This petition is filed by the original defendant-tenant seeking to challenge a decree for possession passed by both the lower courts under the Bombay Rent Act on the ground that the defendant was in default in payment of rent. The contractual rent in respect of the premises in occupation of the defendant was Rs. 358.29 p. The plaintiffs by their notice dated 27th of July, 1977 claimed arrears of permitted increase at the rate of Rs. 56.50 p. per month which had fallen in arrears with effect from the 1st February, 1976. The said notice was served upon the defendants on the 29th July, 1977. The defendants on the 29th of August, 1977 filed its standard rent application being Miscellaneous Application No. 256 of 1977 and on the same day obtained order of ad interim standard rent at Rs. 358/- per month. The defendant in the said standard rent application continued to deposit the aforesaid interim rent month to month. However, that standard rent application came to be dismissed for default on the 11th of September, 1981 in as much as the defendant had failed to serve the plaintiffs with the standard rent application as also the order fixing interim rent. The defendant, however, continued to deposit the interim rent in that standard rent application despite the aforesaid dismissal presumably

because it was unaware of the said dismissal.

2. The plaintiffs in the meanwhile on the 26th April, 1979 filed the present suit for possession on the ground that the defendant was in default in payment of permitted increases arrears being from February, 1976. By Judgment and decree dated the 14th September, 1983 the trial Court fixed the permitted increases at Rs. 56/- per month and held that the standard rent in respect of the said premises was Rs. 358/- plus permitted increase at Rs. 56/- per month. It was held that the defendant was in arrears of rent and permitted increases for more than six months and it was not ready and willing to pay rent or the permitted increases. Consequently, the suit of the plaintiffs for possession was decreed.

3. Aggrieved by the aforesaid Judgment and decree the defendant preferred in the District court, Pune, an appeal wherein the learned District Judge by his Judgment and decree dated the 7th October 1985 dismissed the appeal with costs. Aggrieved by the aforesaid Judgments and decrees, the defendant-tenant has preferred the present writ petition.

4. Pending the disposal of this petition, the record of the standard rent application being Miscellaneous Application No. 256 of 1977 was called for because both the lower courts had proceeded on the basis that no material had been placed on record to show that the said standard rent application had been filed and payments of interim rent had been made therein. The said proceedings of the standard rent application have been received and it is on the strength thereof that I have enumerated the progress of the said standard rent application hereinabove.

5. Shri Rane, the learned Counsel appearing in support of the petition has submitted that on the findings arrived at by lower Appellate Court this decree for possession cannot be sustained. Under Issue No. 1 the learned Judge has held that the defendant is liable to be evicted on the ground of arrears of rent and under Issue No. 2 it has been held that it is not liable to be evicted on the ground of non-payment of permitted increase for more six months. Shri Rane pointed out that the claim made in the notice as also on the plaint was restricted to permitted increases and there was no claim in respect of arrears of rent. That is indeed the position in this case and hence the finding of the lower Appellate court that the plaintiffs were entitled to a decree for possession on the ground of non-payment of rent is clearly erroneous. The plaintiffs not being held to be entitled to possession on the ground of arrears of permitted increase as reflected in Issue No. 2, contends Shri Rane, the decree for possession deserves to be set aside.

6. Shri Govilkar, however, submitted that the finding of the lower Appellate Court that the defendant-tenant is not liable to be evicted on the ground of non-payment of permitted increases is clearly erroneous. He pointed out that the standard rent application had been dismissed for default on the 11th September 1981. The trial Court in the present proceedings by its judgment and decree

dated the 14th September, 1983 had fixed the standard rent of the suit premises at Rs. 358/- per month and permitted increase at Rs. 56/- per month. While decreeing the suit for possession the plaintiffs were also awarded costs of the suit. The defendant had, however, not deposited the costs and had also not deposited the permitted increases awarded by the trial Court during the pendency of the appeal as also during the pendency of this writ petition. Therefore, the defendant was not entitled to be protected under the provisions of section 12(3)(b) of the Rent Act.

7. Thus the question that arises for determination where in a case there are arrears of permitted increases and the tenant within one month of the service of notice of demand issued u/s 12(2) makes an application for standard rent, obtains order of interim rent and accordingly deposits the interim rent, but fails to serve on the landlord a copy of that order as required u/s 11(3) and also fails to serve a copy of the standard rent application and permits the standard rent application to be dismissed for default, whether such a tenant is entitled to protection from eviction without paying or depositing in Court during the pendency of the appeal against the decree for eviction as also during the pendency of the writ petition in this Court the standard rent and permitted increases fixed by the trial Court in the suit for eviction. Is it enough for the tenant to show that he had within the prescribed time of one month filed the standard rent application and had deposited the interim rent during the pendency of the standard rent application to claim protection from eviction without complying with the provisions of section 12(3)(b) which requires the tenant to continue to pay or tender in Court regularly such rent and permitted increases still the suit is finally decided and also pay the costs of the suit as directed by the Court.

8. Shri Rane has strenuously submitted before me that once the tenant files an application for standard rent within the prescribed time and pays during the pendency of the said standard rent application the interim rent fixed by the Court, the tenant shall be deemed to be ready and willing to pay as is provided in Explanation I of section 12. The case of the tenant would fall u/s 12(1) and no cause of action to file a suit for eviction survives. Shri Rane has relied upon the decision of a Division Bench of this Court in the case of Narhar Damodar Wani v. Narmadabai T. Nave, reported in 1984 Mh.L.J. 313 as also the decision of a Single Judge of this Court in the case of Pannalal Khivraj Dugad Vs. Janardhan Gopal Deshpande and Others, , in support of the aforesaid contention. In the aforesaid cases the tenant had within one month of the service of notice of demand u/s 12(2) had paid the entire arrears of rent and permitted increases then due. On such facts it was held that no cause of action for filing the suit for eviction survives and no decree for possession could be passed taking resort to the provisions of section 12(3)(b) of the Rent Act. According to Shri Rane, the present case would stand in para materia to the facts of the aforesaid cases and no cause of action to file a suit for eviction would survive and consequently no decree for possession could be passed on the ground that the tenant had filed to

comply with the provisions of section 12(3)(b) of the Rent Act. I am afraid I am unable to persuade myself to accept the above proposition. In my view the facts of the present case cannot be equated with the facts contained in the aforesaid cases. If the tenant pays the entire arrears within one month from the date of the service of the notice, no cause of action would survive, however, in a case falling u/s 12(3)(b) on account of the tenant having filed an application for fixation of standard rent within one month from the date of the service of notice of demand, the tenant is bound to comply with the provisions of section 12(3)(b) before he can claim protection from eviction. It is true that Explanation I to section 12 provides that in case of a dispute as to the amount of the standard rent or permitted increases, 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 the notice 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. Whether the case of such a tenant is held to fall u/s 12(1) on account of his being deemed to be ready and willing to pay the standard rent or permitted increases or whether his case falls u/s 12(3)(b) on account of his paying or tendering in Court such rent or permitted increases then due and thereafter continues to pay in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs, the tenant in either case would be entitled to protection from eviction. A reference to the provisions of section 11(3) of the Rent Act would show that after the Court in an application for fixation of standard rent passed an order of interim rent, a duty is cast upon the tenant to serve a copy of the order upon the landlord. The said sub-section further provides that if the tenant fails to deposit such amount as directed, his application for fixation of standard rent shall be dismissed. In my judgment before a tenant whose case is found to fall u/s 12(3)(b) can claim protection from eviction he cannot rest content by merely filing an application for standard rent as contemplated under Explanation I of section 12 and deposit the interim rent fixed therein, such a tenant in order to claim protection is further required to serve a copy of the order of fixation of standard rent upon the landlord and diligently prosecute his standard rent application by serving on the landlord also the proceedings of the standard rent application. He cannot keep the landlord in dark of his standard rent proceedings as has been done in the present case, permit the said standard rent application to be dismissed for default and yet claim protection from eviction by merely pointing out that he had in accordance with the order fixing interim rent deposited the said interim rent not only during the pendency of the standard rent application, but even thereafter. It is not enough that such a tenant pays the standard rent and permitted increases during the pendency of the standard rent application, but he is further enjoined u/s 12(3)(b) to continue to deposit not only during the pendency of the suit filed for his eviction, but also during the pendency of the appeal and the writ petition in this Court. The action of the tenant in his standard rent application should be such as could lead to a reasonable inference that the dispute raised by him regarding standard rent or permitted increases is both

bona fide and reasonable. Giving any contrary construction to the aforesaid provisions would entitle a tenant to claim protection merely on his showing that he had within a period of one month of the service of the notice of demand u/s 12(2) filed an application for standard rent and had made two or three deposits in pursuance of the order of fixation of the standard rent and had thereafter suffered the dismissal of the standard rent application for default without serving either order fixing the interim rent or the proceedings in the standard rent application upon the landlord. This could never have been the intention behind the legislation .

9. In the present case as pointed out hereinabove the trial Court had on the 14th of September 1983 fixed the standard rent at Rs. 358/- per month and permitted increases at Rs. 56/- per month. The trial Court had also awarded costs to the plaintiffs. All that the tenant had done was to continue to deposit at the rate of Rs. 358/- per month being the standard rent fixed. He failed to deposit during the pendency of the appeal the arrears and future permitted increases as also costs awarded by the trial Court during the pendency of the appeal. It may be that after the admission of the present writ petition the tenant had on 17th of December, 1985 deposited in the trial Court an amount of Rs. 3857.15 p, towards the arrears of permitted increases then due and had continued to deposit an amount of Rs. 358/- per month during the pendency of this writ petition. The said deposits in my judgment would not relieve the tenant from the consequence of an order of eviction.

10. In the result, though on grounds entirely different from the ones adopted by both the lower courts, I am inclined to confirm the decrees of both the lower courts for possession.

11. In the result, the present petition is liable to be dismissed. Rule discharged. In the facts and circumstances of the case there shall be no order as to costs of the present petition.

12. Shri Rane prays for time to approach the Supreme Court of India. On the defendant filing in this Court within a period of two weeks the usual undertaking specifying that in the event of special leave not being granted by the Supreme Court, the defendant shall vacate and hand over vacant peaceful possession to the plaintiffs by the end of June 1987, the decree for possession not to be executed till the 1st July 1987. On failure to file the said undertaking within the time limit stipulated, the decree to become executable forthwith. Shri Govilkar applies for withdrawal of the amounts of rent and permitted increases deposited by the defendant in the trial Court. The learned Advocate appearing for the defendant has no objection. The plaintiffs shall be entitled to withdraw the said amounts deposited.