

(1977) 02 BOM CK 0009

In the Bombay High Court

Case No : Civil Revision Application No's. 494 and 495 of 1976

Dhausubi Mohamed Pasha Saheb

APPELLANT

Vs

Shahjahan Mustaqe Dhole (Smt.)

RESPONDENT

Date of Decision : 04-02-1977

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11(4), 11(5), 29(1), 29(2), 29(3)
Civil Procedure Code, 1908 (CPC) — Section 115, 29

Citation : (1977) 02 BOM CK 0009

Hon'ble Judges : Deshmukh, J

Bench : Single Bench

Advocate : Keshavdas Dalpatrai, for the Appellant; N.D. Bhadkar, for H.A. Solkar, for the Respondent

Judgement

Deshmukh, J.—Both these application arise out of a common order. I have, therefore, heard them together and this common judgment will dispose of both the matters.

2. There is a house property in Bhiwandi owned by the respondent-landlady. The property is a Chawl. She terminated the tenancy of as many as 19 tenants and filed 19 suits for possession. In all these suits, the defendants-tenants were in arrears. They were not depositing any rent in the Court not were they paying the same to the landlady. The respondent landlady then made applications in all these suits for a direction u/s 11(4) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Bombay Rent Act"). In 17 suits out of these 19 the trial Judge gave directions for deposits of rent at a certain interim rate as contemplated by sub-section (4) of section 11 of the Bombay Rent Act. In two suits being Regular Suits Nos. 184 of 1975 and 185 of 1975 the trial Judge passed the following order :---

"In view of interim rent fixed in Misc. Application No. 19 of 1975, this application is rejected because the suit premises of this suit and the premises above

mentioned application are one and the same".

3. It must be explained that these two suits are against the present two Revisional Applicants who are ladies and who are alleged to be the defendants-tenants. The plea of each of these defendants is that not she but her son is a tenant. The landlady is not recognising this position, and has not filed suit against the sons but she insists upon calling the mothers as tenants and has instituted suits against the mothers for eviction on the ground of default of payment of rent.

4. However, the sons have taken up the matter to the Court u/s 11 by way of an independent application for fixation of standard rent. That is the Miscellaneous Application in relation to the same property to which the learned Judge refers. He has fixed an interim rent at Rs. 15/- per month in that matter and it is alleged that the sons are directed to deposit the amount at the rate in Court. Bearing that in mind the learned trial Judge passed the above order whereby he says that there is already a direction to deposit interim rent at the rate of Rs. 15/- in the other Miscellaneous Application and no order need be passed in Civil Suits Nos. 184 of 1975 and 185 of 1975.

5. Against such an order the landlady filed two revision Applications in the Court of the District Judge at Thana. Those purported to be Revision Applications under sub-section (3) of section 29 of the Bombay Rent Act. The learned District Judge entertained the applications. At the final hearing, it was argued before him that he had no jurisdiction to entertain and try those Revision Application as no such Revision Applications lay under the provisions of sub-section (3) of section 29 of the Bombay Rent Act. The learned District Judge in his discussion on this point does come to the conclusion that the Revision Applications he was entertaining did not appear to be the specific Revision Applications provided by sub-section (3) of the section 29 of the Bombay Rent Act. But somehow observed that he has the revisional powers under the Bombay Rent Act since he was constituted as an Appellate Court for certain proceedings under that Act. With these observations, he entertained the Revision Applications on merits.

6. Proceedings to discuss the merits, he says that the deposit by the sons in a separate proceeding where the sons called themselves as tenants is utterly irrelevant and may not be of any assistance to the landlady in the present suit. The landlady does not recognise the sons as tenants. She has served notices of termination of tenancy on the mothers and describing them as tenants, she has taken up these proceedings. Since the mothers admittedly have not paid any amount, the District Judge felt that he must cover up the plaintiff's losses by directing a deposit of rent by an interim order. However, while deciding the quantum, he has taken the basis of the other Miscellaneous Application and directed deposit at the same rate of Rs. 15/- per month which was the order passed in the applications filed by the sons for fixation of standard rent. Those Applications of the sons are yet to be heard and finally decided by the trial Court.

7. Being aggrieved by the above order of the District Judge, the two Defendants, who are being styled as tenant have filed these two Revision Applications. Mr. Dalpatrai, the learned Counsel for the Revision petitioners, raised two question for my consideration. The first is that the District Judge had no revisional jurisdiction under the Bombay Rent Act and the proceedings before him were unlawfully entertained by him. On that short ground his order deserves to be quashed. This is the first point urged by him. The second point urged by him is that the interest of the plaintiff-landlady is being sufficiently provided for by the direction to deposit Rs. 15/- p.m. to the sons in the other Misc. Application. To direct the mothers to pay the same amount over again is to direct double deposit form the tenant. He, therefore, urges that even otherwise the direction of the learned District Judge is unlawful and even if he had the right to entertain the Revision Application, the order being basically unjust should be quashed.

8. I will first consider the technical objection regarding the jurisdiction of the learned District Judge to entertain the revision application against the impugned order u/s 11(4) which is obviously and admittedly an interlocutory order passed by the trial Court. The application of the landlady requesting the Court to direct the defendants-tenants to deposit the amount in Court as the tenants are in arrears for a long time is obviously one under sub-section (4) of section 11 of the Bombay Rent Act. This section says that where at any stage of a suit for recovery of rent, whether with or without a claim for possession of the premises. The Court is satisfied that the tenant is withholding the rent on the ground that the rent is excessive and standard rent should be fixed, the Court shall, and in any other case it is appears to the Court that it is just and proper to make such an order the Court may make an order directing the tenant to deposit in Court forthwith such amount of the rent as the Court considers to be reasonably due to the landlord or at the option of the tenant an order directing him to pay to the landlord such amount thereof as the Court may specify.

9. There are therefore, two contingencies under which the Court is authorised to pass an order under the above sub-section. The conditions required for the exercise of this power are that there must be a suit for recovery of rent which may or may not be combined with the prayer for possession of the premises. The primary requirement, therefore, is that there must be a suit for recovery of rent. The second requirement is that the tenant must be withholding payment of rent on the ground that the rent that is claimed or the contractual rent is an excessive rent and that standard rent ought to be fixed before any payment is demanded from him. Withholding of payment on the ground that the rent demanded is not standard rent is another requirement. If this exists, then the Court has no choice but to pass an order immediately for the deposit of some portion of rent as it considers reasonable under the circumstances of the case. In any other case, the Court is merely enabled to pass such an order. The present case might fall under this provision. The two defendants in these suits do not admit that they are tenants at all. Their refusal to pay rent is a not, therefore, a result of the stand ken by them that the demand of rent is excessive and above standard rent. The

earlier part of this section may not apply. However, this being a landlady's suit for recovery of rent against the defendant who will be described as tenant where among other things arrears of rent are claimed, the Court undoubtedly has jurisdiction provided it thinks under the latter part of the sub-section that it is just and proper to pass such an order. It is under this part of the provision of sub-section (4) of section 11 that the trial Court has refused to pass the order but the District Court has passed an order directing payment. The trial Court was also inclined to pass order in favour of the landlady as he did in the 17 other cases, but for the peculiar circumstances that the sons had already filed separate applications for fixation of standard rent under which an order is already made. The trial Judge has refused to pass an order in these two suits. If that circumstance did not exist, there is no doubt that he would have passed the same order of directing deposit of Rs. 15/- per month to those defendants also.

10. The above discussion will clearly show that the order to be passed u/s 11(4) is interlocutory and not a final order in the sense it does not decide any rights of the parties finally. It is open to the plaintiff to prove in spite of such order that the contractual rent is the only standard rent or proper rent to be recovered and it is equally open to the defendants to point out that the real standard rent could be even less than the order of deposit. In other words, the issue of standard rent is still at large between the parties in the suit and the direction to deposit a certain amount which is described by the statute as a portion of the rent does not decide any right of the plaintiff or the defendant in any manner. Against such an interlocutory order, sub-section (5) of section 11 says that no appeal shall lie. The provision is clear enough which says that no appeal shall lie from any order of the Court under sub-section (3) or (4). Sub-section (4) of section 11 enables the Court to preclude the defendant from defending the suit except upon payment as directed by the Court within such time as may be permitted by it. In short, the total claim under the Rent Act seems to be this. If a notice u/s 12 is served for terminating the tenancy on the ground of arrears of default of payment of rent and the defendant wants to raise a dispute about the standard rent, he can run to the Court within a month and file his application for a fixation of standard Rent. If he obtains a direction for the deposit of certain amount pending the fixation of standard rent, payment or deposit at that rate would make him a tenant who is ready and willing to pay even if ultimately a decree for a much larger amount is passed. After the standard rent is finally determined, he has to pay the money decreed and no payment till fixation of standard rent would not entail the consequent of being a defaulter. If, however, even this interim order is not obeyed and the tenant is recalcitrant his defence would be withheld by the Court and a decree could be passed upon the pleadings of the plaintiff. The entire idea in the rent legislation is that the landlord must always get his reasonable rent of the premises and the tenant must always pay. So long as this condition exists, the landlord has no right to take back possession except by proving some of the grounds mentioned in section 13 of the Bombay Rent Act.

11. That being the scheme, an interim order of the present type u/s 11(4) is

declared as non-appealable by sub-section (5) of the same section. Having noticed this proposition, I would now go to section 29 of the Bombay Rent Act, which generally speaks of appeals from decrees and orders. Sub-section (1) of that section opens with a non-abstain clause which says "Notwithstanding anything contained in any law, an appeal shall lie ..." Before I proceed further, it would be proper to understand what precisely this opening clause means. The non-abstain clause undoubtedly requires us to ignore any other law for finding out the right of appeal under this section. The only question that requires some attention are the words "in any law", and whether the words "in any law" in this clause would include this very law, viz. the Bombay Rent Act. They would undoubtedly refer to all other laws is understandable. I do not think, however, in the context in which the section is drafted that it wants us to forget the other provisions of the Bombay Rent Act itself. I am saying this because Clauses (a) and (b) of sub-section (1) of section 29, which speak of the appellate forums as a Division Bench of the Court of Small Causes in Bombay and the District Court elsewhere, refer to right of appeal "from a decree or order made by the Court." The Court itself has been described in the same section as either a Court of Small Causes in Bombay or a Court of Small Causes under the Provincial Small Cause Courts Act established outside Bombay or a Civil Judge exercising the powers of a Court of Small Causes. In other words, every decree and order of a Rent Act Court, if I may use that expression, is declared appealable. The word "order" is used in an unqualified manner and appears to be capable of including final orders as well as interim orders. I am not expressly deciding this question at this stage as it is not necessary for me to do so. However, I find that these observations are to be found in some of the cases of this Court as well as the Gujarat High Court where the same Rent Act is in operation. I may assume for the time being that an order may include an interim order and it may not necessarily be a final order. Even on that footing can we forget the provisions of section 11, sub-sections (3) and (4) which make certain interlocutory orders not appealable by an express provision contained in that very section. If the provisions of sub-section (5) of section 11 of the Bombay Rent Act are to be borne in mind, which section occur earlier than section 29, prima facie in my view the right of appeal contemplated by section 29 against orders would cover orders other than those which are expressly excluded u/s 11, sub-section (5). The point that I am driving at is that so far as the present order before me is concerned, which is obviously one u/s 11(4) of the Bombay Rent Act, is one against which no appeal is provided by section 29. This conclusion will be very relevant for deciding the ambit of the revisional powers of the District Court of the Division Bench of the Court of Small Causes, Bombay, as contemplated by sub-section (3) of section 29 of the Bombay Rent Act.

12. With this background, I may now refer to the proviso to sub-section (1) of section 29 of the Bombay Rent Act. Clauses (A) and (B) of sub-section (1) of section 29 have provided right of appeal against decrees and orders of the Rent Act Court. However, in respect of some matters which may otherwise fall in sub-

section (1) of section 29, the legislature has denied the right of appeal by its amendment in 1953 when the proviso was added. However, while adding this proviso, the legislature also added sub-section (3) to the same section. The real meaning and implication of the proviso could be understood if only the proviso is read alongwith sub-section (3). So read, it would appear that Clauses (I) to (IV) of the proviso describe the matters in respect of which there shall be no right of appeal even though otherwise those matter could have been covered by sub-section (1). In other words, the right of appeals now is confined to all matters which would fall u/s 29(1) minus those which might be covered by Clauses (I) to (IV) of the proviso to that sub-section. What would happen to these matters which are so carved out by the Legislature. Is there no remedy except the general remedy of power of superintendence. The Legislature has provided some remedy in respect of these matters which are contains in the added sub-section (3) of section 29. That sub-section, therefore open with the clause "where no appeal lies under this section from a decree or order in any suit or proceedings". Having described those matters which fall under the proviso as matters against which no appeal lies, the forum is then described to which a revision application may lie. The powers of revision are vested in a Division Bench of the Court of Small Causes in Bombay and in the District Judge else where for the purpose of satisfying itself that the decree or order made was according to law and after calling for the record and examining the same pass such order with respect there to as it or he thinks fit. The right of revision contemplated by section (3) of section 29 is thus contained to those matters which fall under the proviso to sub-section (1) of the same section. I find that this question was raised before a learned Single Judge of this Court in the case of *The Society of Servants of God v. Major Hanmantrao Narayanrao Jagtap*, 67 Bombay Law Reporter 210. In that case a sub-tenant of the premises was a plaintiff in a declaratory suit filed in the Court of Small Causes Poona. Sub-tenant alleged that the landlord having terminated the tenancy of the tenant in law he now becomes the direct tenant of the landlord. A declaration to that effect was asked for in that suit with a further injunction restraining the defendant-landlord from taking a particular type of action etc. Defendant-landlord raised the question regarding Court fees. Accepting the landlord's plea the learned Judge of the Court of Small Causes passed a certain order regarding payment of ad valorem Court fees. The plaintiff aggrieved by that order filed a revision before this Court u/s 115 of the Code of Civil Procedure.

13. On behalf of the respondent-landlady a primary question as to the maintainability of the Revision Application itself was raised. It was argued that there could be either an appeal or a revision u/s 29 before the District Judge and as such the Revision Application in this Court should not be entertained. The learned Judge after analysing the provisions of section 29, with a view to find out what matters are appealable or revisable under that section , first points out that under sub-section (1) prima facie appeals lie against all decrees and orders. However, the proviso takes away the right of appeal in respect of certain

matters. His further observation, which is relevant for my purpose, is as follows on page 212 :---

"It is, therefore, arguable that power of revision given to the courts of appeal under the Rent Act is only in respect of such decrees or orders in suits or proceedings where the right of appeal is taken away by the provisions of section 29 itself and not in respect those from which no appeal lies under the Civil Procedure Code."

The learned Judge thereafter observed that there was no necessity to continue this discussion and come to a final conclusion as it was open to him u/s 115 of the CPC to dispose of the matter under the High Court's power of superintendence.

14. The discussion which I have made above as supported by the earlier observations of a Single Judge of this Court, do lead to the conclusion that the order u/s 11(4) is not an order in respect of which an appeal has been provided by sub-section (1) of section 29 nor is it an order in respect of which the right of appeal has been withdrawn or taken away by the proviso to section 29. It is an independent order in respect of which the right of appeal has been taken away by the Legislature by a provision contained within section 11 itself. If this is so, the provisions of sub-section (3) of section 29 are not attracted to the order in question passed by the trial Judge. No Revision Application, therefore, lay to the District Court and the learned District Judge was clearly in error in entertaining the Revision Application.

15. So far as this part of the legal submission is concerned. Mr. Dalpatrai was clearly in the right and I have accepted his arguments. I do not however, agree with him that the consequence of this conclusion should at once be that the order passed by the learned District Judge should be vacated. The respondent is not recognising the sons of the present petitioners as the tenants. She has made no claim against them nor has she asked for arrears from them. She insists on describing the present petitioners only as tenants. If the plaintiff succeeds in establishing that they are tenants, there is no doubt that they prima facie appear to be in arrears for a long time . If they are so held tenants, it is necessary that the claim of the landlady is provided for at least partially as can be done under the enabling provisions contained in sub-section (4) of section 11 of the Bombay Rent Act. The trial Court has chosen to act under that provision but has denied that order to the plaintiffs in the present suits, in view of the fact that the sons have filed separate proceedings in which similar order has been passed. If the present plaintiff-respondent succeeds in his plea, it will be difficult to the Court to give the defendants revision petitioners any advantage of the deposit by their sons in a different proceedings. These defendants, if held tenants, would still be in arrears and may not have any defence. At the same time, the deposits made by the sons being the sons' money may not be even attachable by the landlady because it is not the money belonging to his own tenants. It is, therefore, just and proper to give a direction of depositing Rs. 15/- per month to these Revision

Petitioners as has been done by the learned District Judge. Even though he wrongly entertained the revision applications the order passed by him appears to be just. The powers u/s 115 of the CPC of this Court enables it to pass appropriate order suo motu when the same proceeding is brought to its notice. This proceeding has now come to the High Court may be at the instance of the tenants as Revision Applications but while hearing these proceedings if I find that the order passed by the learned District Judge is a correct order, it does not prevent me from passing the same order in these Revision Applications or otherwise confirming the same order. I, therefore, Confirm that order.

16. However, I am also impressed by Mr. Dalpatrai's submission that the sons and the mothers are staying together and the same family is under double taxation in making two payment in two different places. He makes an offer that the sons will appear before the Court and file an undertaking that the amount deposited by them may be treated as deposits towards these suits of the landlady. In case the landlady succeeds ultimately in proving that the mothers were the tenant and not the sons, the sons will under take not to take back the money from the Court but would make available to the landlady as if they were deposited by the mothers in their respective suits. If that is done and on the strength of that undertaking the deposits made by the sons are permitted to be the deposits as if made by the mothers, I think justice will be done between the parties and double payment will be avoided. I, therefore, accept the suggestion of Mr. Dalpatrai and direct that the petitioners should produce the respective sons before the learned trial Court on or before the 28th February, 1977 and file appropriate affidavits in these suits containing the undertaking described above. If, however, the present petitioners are unable to do so, they will have to deposit amount as directed by the District Judge and for that purpose I extend the time upto 15th of March, 1977. With these directions and the modification of the learned District Judges order, I discharge the rule in both the Revision Application in the circumstances of the case, these will be no order as to costs.