
(1977) 11 BOM CK 0037

In the Bombay High Court

Case No : Special Civil Application No. 1007 of 1977

Dhondo Bhimrao Deshchougule

APPELLANT

Vs

Popatbhai Chaturbhai Gujar

RESPONDENT

Date of Decision : 23-11-1977

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11, 12(1), 12(2), 12(3)

Citation : (1977) 11 BOM CK 0037

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Advocate : M.D. Angal, for the Appellant; S.P. Kurdukar, for the Respondent

Judgement

R.A. Jahagirdar, J.—The judgment of the learned District Judge of Sangli in Civil Appeal No. 163 of 1975 challenged by this petition was legally correct when it was delivered but is rendered incorrect in view of the recent Supreme Court judgment in Harbanslal v. Prabhudas 78 Bom.L.R. 213 (S.C.). The petitioner is the owner of a house bearing Municipal House No. 407 situate in Vita of Khanpur Taluka in Sangli District. A part of the suit house, hereinafter referred to as "the suit premises" was let out to the respondent on a monthly rent of Rs. 15/-. By a notice dated 9th May, 1973 the petitioner terminated the tenancy of the respondent in respect of the suit premises and called upon him to vacate the suit premises as well as to pay arrears of rent which were due from October 1972 to April, 1973. The arrears of rent were thus for a period of seven months. Within one month after the receipt of this notice the respondent did not file any application for fixation of the standard rent u/s 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act nor did he send the amount to the petitioner within one month. The petitioner, however, received the arrears of rent sent on 7th July, 1973 which was clearly outside the period of one month from the date of the notice issued u/s 12(2). The suit itself was filed on 4th September, 1973.

2. The respondent raised a contention in the written statement that the contractual rent of Rs. 15/- p.m. was excessive and prayed for fixation of the standard rent. The trial Court decreed the suit for possession by holding that the respondent was not ready and willing to pay rent within the meaning of section 12(1). However, the trial Court proceeded to fix the standard rent at Rs. 10/- which was less than the agreed rent of Rs. 15/- p.m.

3. Aggrieved by this order, the respondent preferred an appeal being Civil Appeal No. 163 of 1975 which was allowed by the learned District Judge by his judgment and order dated 5th April, 1976. In view of the view taken by the full bench of this Court that a dispute about standard rent could be raised for the first time in written statement the District Judge was persuaded to hold that the respondent was ready and willing to pay standard rent within the meaning of section 12(3) (b) of the Bombay Rent Act. With this view he had no difficulty in allowing the appeal of the respondent and dismissing the suit of the petitioner.

4. The decree passed by the learned District Judge is now challenged by this petition which has been supported before me by the learned Advocate Mr. A.D. Angal. Mr. Angal had no difficulty in demolishing the foundation of the decree passed by the learned District Judge in view of the judgment of the Supreme Court in Harbanslal's case. Mr. Kurdukar, the learned Advocate appearing in opposition to the petition, tried to support the decree passed by the learned District Judge on other grounds. In the first place, he contended that the notice terminating the tenancy and calling upon the respondent to pay the rent was bad inasmuch as that notice did not mention the standard rent which is now held to be Rs. 10/- p.m. I have no difficulty in rejecting this contention. The notice which was valid without determining the rent could not be vitiated by a finding given in proceedings which were held much later. If, however, at the time of the issuance of the notice itself the rent had been held to be Rs. 10/-, then the landlord's demand for payment at the rate of Rs. 15/- p.m. would have been illegal. In the instant case such was not the State of affairs. Mr. Kurdukar then proceeded to contend that the dispute regarding the standard rent should be held to have existed right from/or prior to the issuance of the notice because according to the finding of the trial Court it has been seen that the landlord failed to carry out the repairs subject to which alone the respondent had agreed to pay the rent of Rs. 15/- p.m. He also further contended that the fact that the petitioner has not challenged in the appeal before the District Judge the quantum of the standard rent fixed by the trial Court shows that the standard rent in the fact was Rs. 10/- p.m. and not Rs. 15/- p.m. It is impossible to subscribe to the proposition formulated by Mr. Kurdukar that because in proceedings held long after the notice was issued u/s 12(2) rent has been fixed at a particular rate that should be regarded as an indication of the fact that even prior to the issue of the notice there was a dispute about the standard rent. Harbanslal's case clearly lays down that in order to get the benefit of the provisions of section 12(3)(b), a tenant should raise a dispute about the standard rent on an application made within one month of the service of the notice u/s 12(2). It is true that there is an

observation in the judgment of the Supreme Court in this case that in order to exclude the operation of section 12(3)(a), the dispute must be in existence latest within one month after the service of the notice. In other words, it is not necessary that an application u/s 11 is the only way of pointing out the existence of a dispute. In the case before me there was not any assertion by the respondent challenging the correctness of the rent within one month after the notice to quit was given u/s 12(2). I do not see how the respondent can escape from the decree of eviction which much be passed in the view of the Supreme Court decision referred to above.

5. In the result the decreed passed by the learned District Judge in Civil Appeal No. 163 of 1975 is set aside. The decree passed by the learned Civil Judge, Junior Division, Vita in regular Civil Suit No. 89 of 1973 is restored. The rule is made absolute with no order as to costs.