

(2009) 08 BOM CK 0088

In the Bombay High Court

Case No : Writ Petition No. 2626 of 2007

Girish Gangadhar Agrawal

APPELLANT

Vs

Jiteshkumar Hasmukha Vakhariya

RESPONDENT

Date of Decision : 21-08-2009

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12
Maharashtra Rent Control Act, 1999 — Section 11, 12, 12(3), 15, 15(3)

Citation : (2010) 3 BomCR 766 : (2009) 6 MhLj 875

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : A.S. Chandurkar, for the Appellant; M.G. Sarda, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Chavan, J.—This petition by tenant is directed against concurrent findings of the learned Civil Judge and the District Judge that the petitioner failed to pay arrears of rent, permitted increases, taxes and other service charges and thereby incurred ejectment u/s 15 of the Maharashtra Rent Control Act.

2. The litigation has chequered history. The petitioner is admittedly a tenant in respect of a godown situated at Municipal House No. 168 in Ward No. 64 at Akola, owned by the respondent. The petitioner had filed a suit for permanent injunction against the landlord, his brother and two others, namely Nitin Kumar and Jagdishchandra. This suit bearing No. 808/1997 was for an injunction to restrain the landlords from obstructing the tenant's way to the godown. It was decreed on 10.07.1998. On 3rd January, 1999, the landlord sent notice stating that the tenant was in arrears of rent, demanding payment of arrears for a period from Diwali of 1998 to Diwali of 1999 @ Rs. 296.25ps. p.m. (=Rs.3,555/p. a. ?) excluding taxes. The tenant disputed this by reply dated 21.11.1999 and stated that notice was issued only after receiving a summons in a suit filed by the tenant. The tenant filed Regular Civil Suit No. 662 of 1998 against the landlord for accounts of advance rent paid @ Rs. 700/per annum till 1984, @ Rs.

1,235/per annum since 1984 and @ Rs. 2,235/per annum since 1996.

3. Thereafter the landlord again served another notice on 14.04.2001 stating that the tenant was in arrears of rent and calling upon the tenant to clear the arrears of rent, taxes, service charges and repairing charges immediately without specifying the exact amounts. This notice was replied by the tenant on 28.04.2001 informing that the rent was Rs. 1,320/per annum and not Rs. 296.25ps. per month. It was also contended that the tenant had been paying advance rent to the landlord for a number of years, which had not been appropriated by the landlord towards future rent and therefore, the tenant had filed the suit for accounts and injunction in the month of August, 1998 where after the landlord issued notice in order to create false evidence of nonpayment. All the same, in order to avoid complications the tenant claimed to have sent cheque of Rs. 3,960/towards rent for Samwat years 2055, 2056 and 2057 and Rs. 1,740/towards taxes for three years. The landlord replied that he would be encashing those cheques under protest and without prejudice to his rights, which was objected to by the tenant by issuing notice dated 23.05.2001. It seems that eventually the cheques were not encashed.

4. The respondent/ landlord filed suit for petitioner's ejectment under Sections 15 and 16 of the Maharashtra Rent Control Act claiming that the petitioner/tenant was in arrears of rent @ Rs. 3,555/per annum, i.e. Rs. 11,257.50 for Samwat years 2055, 2056 and 2057 and Municipal taxes amounting to Rs. 4,953.30ps. for Samwat years 2055 to 2057. Rs. 1,924/towards remaining taxes for Samwat years 2053 and 2054, Rs. 237/towards permitted increases, Rs. 105/towards taxes on permitted increases, Rs. 6,200/towards service charges and Rs. 8,205/towards interest on arrears not paid.

5. The landlord also contended that the petitioner was not using the godowns and the landlord needed the same bonafide and reasonably for storing his own goods. The landlord, therefore, claimed possession of the premises under Sections 16(1)(g) and 16(1)(n) as also u/s 15 of the Maharashtra Rent Control Act.

6. The petitioner/ tenant filed written statement stating that the rent was only Rs. 1,320/per annum and denying the various amounts claimed by the landlord. He also denied that the premises were not used by him and that the landlord bonafide and reasonably needed the premises for his own use. He filed application Exhibit 18 for fixation of standard rent which was rejected.

7. After issues were framed both the parties tendered their evidence before the trial Court. The learned trial Judge decreed the suit by his judgment dated 2nd August, 2004 holding that the landlord had proved that the tenant as in arrears of rent and had incurred ejectment on failure to pay the same, and also that the landlord bonafide and reasonably needed the premises for his own use. He also ordered an enquiry into mesne profit.

8. The tenant preferred an appeal and the landlord also raised crossobjection

since there were certain observations by the learned trial Judge holding that the rent was Rs. 1,320/per annum in October, 1987. By his judgment dated 29th October, 2005, the learned Additional District Judge, Akola dismissed the appeal and allowed the crossobjection.

9. The petitioner filed Writ Petition No. 370 of 2006 before this Court where after hearing the parties the matter was remanded back to the appellate Court by judgment dated 18.06.2006 for further hearing by the appellate Court. The petitioner filed an application for considering subsequent events and consequential amendments to the written statement, which application was rejected by the learned appellate Judge by order dated 14th March, 2007. The appeal itself was dismissed by judgment dated 27th April, 2007 which is impugned in the present petition. The learned District Judge held that the landlord was entitled to a decree of ejectment on the ground of bonafide need as also default in payment of arrears of rent.

10. On 30th October, 2007 when the matter came up for admission, it was observed by this Court that the matter could be admitted on the question of bonafide need. However, upon instructions, the learned Counsel for the respondent landlord gave up the ground of bonafide need. It was then directed that this petition as also Petition No. 2628 of 2007 would be taken up for disposal at the admission stage itself on the ground of arrears of rent. Thus, the controversy is now restricted only to the question of ejectment on account of arrears of rent. On 4th March, 2008 the petition was admitted for final hearing. The respondent/ landlord has filed written submissions on 25th July, 2007, supporting judgment of the trial Court as well as two appellate judgments holding in his favour.

11. I have heard both, learned Counsel for the petitioner and the learned Counsel for the respondent. The learned Counsel for the petitioner submitted that the landlord's claim of rent @ Rs. 296.25 per month was not correct and even the receipts passed showed that rent was paid annually. They do not mention that a monthly rent was fixed or that it was only paid annually. He pointed out that the rent was in fact only Rs. 1,320/per annum and further sums of Rs. 2,235/per annum and Rs. 580/per annum were paid towards advance rent and municipal taxes respectively and receipts were passed accordingly as has been admitted by the landlord in his evidence. Therefore, he assailed the finding of Courts below that the rent was Rs. 296.25 per month.

12. The learned Counsel for the respondent submitted that the standard rent could be got fixed only by applying u/s 8 of the Maharashtra Rent Control Act and such application Exhibit 18 had been made by the tenant. It was rejected and, therefore, in a suit for ejectment that question could not be raised. In *Mistry Premjibhai Vithaldas Vs. Ganeshbhai Keshavji*, , on which the learned Counsel for the respondent relied, the Court held that when a tenant does not prosecute an application for fixation of standard rent and deliberately permits it to be dismissed for non7 prosecution, it could be reasonably inferred that the

application was not bona fide application at all and that there was no real dispute regarding the standard rent, and in such cases, if the provisions of Section 12(3) (a) of the Bombay Rent Act were not shown to have been complied with, the Court was bound to pass a decree for ejectment. In view of this, the learned Counsel for the respondent submitted that the finding that the standard rent was Rs. 296.25 p.m. Cannot be disturbed.

13. Relying on a judgment in Ramchandra Madhav Darunkar (died) by his LRs. Kalwati Darunkar and Others Vs. Abdul Sattar Ismail (deceased) through his LRs. Banubai Abdul Sattar and Others, , the learned Counsel for the landlord submitted that since both the Courts have concurrently held that the standard rent was Rs. 296.25 p.m., it would be impermissible for this Court in exercise of writ jurisdiction under Article 227 of the Constitution to reappraise the evidence and record a different finding of fact.

14. There can be no doubt that a writ Court may not enter into area of appreciation of evidence. However, it seems that in spite of consistent evidence of rent being paid annually and receipts failing to mention rate of rent being Rs. 296.25 p.m., the learned Judges seem to have come to a contrary conclusion solely on the basis of one receipt at Exhibit 42 for Rs. 300/, which is said to pertain to 13th month in Hindu almanac. It may be recalled that two rent receipts are issued for each Hindu year - one for Rs. 1,320/and other for Rs. 2,235/and none refers to monthly rate of rent. In view of this, it has to be held that the finding of both the Trial and Appellate Courts on this count is perverse. Therefore, the finding may be corrected in this petition.

15. Even if the rent is taken to Rs. 296.25 per month, it was decidedly not payable by the month and was always paid/received annually. Monthly payment was never demanded or insisted and so the finding does not really affect the fortunes of parties.

16. As to the quantum, i.e. whether it was Rs. 1,320/per annum or Rs. 1,320/ plus Rs. 2,235/, i.e. Rs. 3,555/per annum, the claim of tenant that Rs. 2,235/ was towards advance rent is not fortified by any evidence. It appears from the landlord's cross-examination on 19122003 that the landlord was asked as to what was the rent in 1987 and he replied that it was Rs. 3,100/for 12 months (pages 123 and 147 of the petition). This was possibly to rebut the claim that it was Rs. 3,555/per annum. But no suggestion was made to the landlord that the rent in 1987 was not Rs. 3,100/deposed to by him. Secondly, since the taxes have been received separately @ Rs. 580/per annum, it cannot be contended that Rs. 2,235/ related to taxes or other dues. Therefore, as far as quantum is concerned, the findings of the Courts below would have to be upheld.

16A. Receipts for Rs. 580/show that the amount pertained to taxes. The learned Counsel for the petitioner submitted that the evidence of municipal servant Dhore at Exhibit 102 shows that the taxes were actually paid on the basis of rent of Rs. 1,320/per annum only @ Rs. 481.14 per annum as against Rs. 580/per

annum recovered. There would be no question of recovering any service charges, as the premises hired were a godown and there was no question of providing any services. He submitted that if an adjustment of amounts recovered in excess is made, the tenant would not be found liable to pay the amounts claimed.

17. The learned Counsel for the petitioner relied on a judgment of this Court in *Madhavsingh Tulsidas since deceased through LRs. Vs. Bhaktiben Narandas Paleja since deceased through L.Rs.*, where the question was of inclusion of education cess in the rent. The Court had quoted from an earlier judgment of this Court in *Vaman v. Rajaram* (Special Civil Application No. 2418 of 1971 decided on 26/2/1976) as under:

In a suit where the landlord wants to claim possession on the ground that the tenant is a defaulter because he has not paid the amount of education cess, which are permitted increases, it will be therefore obligatory on the plaintiff landlord as specifically plead and prove the fact of such payment of education cess to the municipal authorities. Indeed from the provisions of Section 13(1) it is clear that there is no cause of action for claiming reimbursement from the tenant until the lessor has paid the amount of education cess in respect of which he wants to make a claim against the defendant.

18. In *Dr. Rajesh s/o Niranjan Singhania v. Surajmal s/o Karnidanji Dhadiwal* (since deceased thr. LRs.) reported at 2009(3) ALL MR 696, on which the learned Counsel for the respondent relied, a learned Single Judge of this Court had held that rent for the purpose of Section 15 of the Maharashtra Rent Control Act would include not only the rent, but also payments, which are meant for amenities provided by the landlord under the agreement between the landlord and tenant. In that case, the rent of Rs. 8,000/per month was broken up into three components - Rs. 3,000/for use and occupation of the premises; Rs. 2,500/for the facility of well and Corporation water; and Rs. 2,500/as service charges for fittings and fixtures. Therefore, according to the learned Counsel for the respondent, unless not only Rs. 800/per annum, but also Rs. 550/per annum is paid regularly, the tenant would be liable to be evicted.

19. There can be no doubt that the landlord cannot enrich himself by recovering monies in the guise of municipal taxes. He can only reimburse himself. And, if no services are offered, service charges would not be recoverable. Both the Courts below seem to have over looked this aspect. Yet as the discussion that follows would show it does not materially affect the conclusions drawn.

20. The learned Counsel for the petitioner submitted that the tenant's having tendered Rs. 3,960/towards rent for three years and Rs. 1,740/towards taxes for three years by cheques with reply to the demand notice, would show that he was ready and willing to pay the rent. Therefore, cause of action to file the suit would come to an end. His learned adversary contested this proposition, submitting that what had to be paid is "standard rent".

21. Sub-section (14) of Section 7 of the Maharashtra Rent Control Act defines

"standard rent" as under:

"standard rent", in relation to any premises means,

(a) where the standard rent is fixed by the Court or, as the case may be, the Controller under the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 or the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, or the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 issued under the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946, or the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, such rent plus an increase of 5 per cent, in the rent so fixed; or

(b) where the standard rent or fair rent is not so fixed, then subject to the provisions of Sections 6 and 8.

(i) the rent at which the premises were let on the 1st day of October 1987; or

(ii) where the premises were not let on the 1st day of October 1987, or the rent at which they were last let before that day, plus an increase of 5 per cent, in the rent of the premises let before the 1st day of October, 1987, or

(c) in any of the cases specified in Section 8, the rent fixed by the court.

The learned Counsel for the petitioner submitted this would show that the standard rent would be the rent at which the premises had been let before 1st of October, 1987, which was Rs. 1,320/per annum.

22. The learned Counsel for the respondent submitted that in view of this definition, there would be no occasion for fixation of standard rent and amounts paid as on 1101987 must be taken to be standard rent. There can be no doubt that amounts paid as "rent" on 1101987 would be standard rent, but as already discussed, this would include sum of Rs. 1,320/plus Rs. 2,235/per annum.

23. The learned Counsel for the respondent landlord submitted that the provisions of Section 15 of the Maharashtra Rent Control Act, 1999 are very clear and the only way whereby a tenant can avoid his ejectment is to deposit the rent or permitted increases due within a period of ninety days from service of a notice of demand by the landlord or within a like period within service of suit summons. The learned Counsel for the petitioner does not dispute that the entire amount in arrears was not cleared within 90 days of service of suit summons. Rs. 14,220/ was deposited on 2012002 and Rs. 3,555/each on 31122002 and 10112003 (i.e. delayed by a month or two), Rs. 7,135/on 2082004, Rs. 30,000/on 2892004, Rs. 3,000/each on 19122005 and 1012006, and Rs. 15,000/on 16122008 in this petition.

24. The learned Counsel for the petitioner, however, submitted that the question of having recourse to Sub-section (3) of Section 15 of the Maharashtra Rent Control Act would arise only if the landlord is able to show that the tenant was not ready or willing to pay the amount of standard rent and permitted increases

and to perform the other conditions of tenancy. He further submitted that even a suit could not have been filed unless the landlord could show that there was nonpayment of standard rent or permitted increases due.

25. Both the learned Counsel placed reliance on a number of judgments in support of their respective contentions.

26. In *Ujwalabai @ Meena Shantaram Apte since married now Ujwalabai @ Meena Shantaram Apte since married now Mrs. Swati Rahul Datay and Others Vs. Namdeo Dnyanoba Shingare, ,* on which the learned Counsel for the respondent relied, the Court considered the applicability of Section 12(3)(a) and 12(3)(b) of the Bombay Rent Act and held that the provisions of Section 12(3)(a) of the Act would be attracted, if the tenant neither offered the demanded rent nor raised any dispute within one month from the date of receipt of suit notice. In *Shri Ramesh Ramgopal Daga Vs. Shri Vasant Baburao Khandare, ,* a similar view has been taken.

27. In *Chhaganlal Mulchand Jain v. Narayan Jagannath Bangh* reported at 1983 Mh.L.J. 254, cited by the learned Counsel for the respondent, it was held that in a suit filed by the landlord for possession, the tenant was not entitled to seek fixation of standard rent and that such fixation of standard rent could be sought only by making an application u/s 11 of the Bombay Rent Act. The observations of the Court in para 6 of the judgment may be usefully reproduced as under:

6. This Court in the case of *Jaypal Bandu Adake and Anr. v. Basavali Gurulingappa Mhalank and Anr.,* has also considered this question and the following Head Note makes the position clear:

The only way to prevent a decree for eviction being passed under the provisions of Section 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act is that the tenant must make an application raising a dispute regarding rent and must ask for fixation of standard rent u/s 11(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act as required by Explanation I to Section 12. There is no other mode permissible for raising a dispute as to standard rent for the purposes of Section 12 of the Bombay Rent Act. By raising a dispute with regard to standard rent by the tenant in a reply to the demand notice before the expiry of one month without making an application u/s 11(3) read with Explanation I to Section 12, the Court will not be prevented from passing a decree for eviction under the provisions of Section 12(3)(a)...

It is thus clear that whenever a Court has to consider a case u/s 12(3)(a) of the Rent Act, the question of standard rent cannot be gone into unless the tenant has made an application for that purpose within one month from the receipt of the notice.

Again in para 12, the Court held that the tenant was not entitled to raise any dispute in respect of standard rent in the suit for recovery of possession and, therefore, there could not have been any issue before the Trial Court or the

District Court about fixation of standard rent.

28. In *Suka v. Ranchhoddas* reported at 1972 Mh.L.J. 477, while considering the provisions of Section 12 of the Bombay Rents, Hotels and Lodging Houses Rates Control Act, 1947 (for short, "the Bombay Rent Act"), a learned Single Judge of this Court held in para 6 of the judgment as under:

6. ...In my view the landlord cannot take advantage of his conduct in not accepting rent sent by the tenant and then give a notice saying that the tenant is in arrears of rent for more than six months. The intention of the Legislature when enacting the Rent Act could not have been to protect the landlord who refused to accept rent and after six months turn round to say that the tenant is in arrears of rent for a period of six months or more. In my view, therefore, the facts and circumstances of the instant case show that the petitioner tenant was ready and willing to pay rent. The facts also show that the tenant was not in arrears of rent voluntarily.

29. In *Marutrao Bhaurao Shelke v. Akbarali Noorbhai Bohori and Ors.* reported at 1974 Mh.L.J. 239, on which the learned Counsel for the petitioner placed reliance, this Court had considered what constitutes readiness and willingness to pay the rent. In paras 13 and 14 of the judgment, the Court held as under:

13. Turning to the facts of the present case, there can be no doubt that when the tenant sent the cheque and letter, he had not neglected to pay as stated in the provisions of Section 12(3) (a). He made an effort to pay and avoid the application of that provision to the suit which may be instituted by the landlord. It can never be said, in the facts and circumstances of the present case, that notwithstanding the sending of the cheque which covered the entire dues and which was accompanied by a letter explaining why the cheque was being sent, that the tenant had neglected to make payment within the meaning of Section 12(3) (a). Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

14. In the present case, the tenant cannot be said to have neglected to pay the arrears of rent to the landlord, when, within one month, he sent by registered post a cover containing the cheque to the landlord. He did what a reasonable and prudent man with a Bank account in these days would do. The landlord could have accepted the cheque and after he had accepted the same he could have cashed it by presenting to the bank. There is nothing to show that he could not have cashed the cheque by presenting it to the bank. Just because the landlord did not do what an ordinary reasonable and prudent landlord who wanted to recover rent would do, it cannot be said that the tenant neglected to make the payment of arrears of rent within the meaning of Section 12(3)(a). The only inference that can be really drawn is that the landlord refused it only with a view to contend that Section 12(3)(a) applied though the tenant was ready and willing

to accept rent, it cannot be inferred that the tenant was not ready and willing to pay rent or neglected to pay arrears of rent. The two Courts below, therefore, were patently in error in applying the provisions of Section 12(3)(a) to the present suit, even though Section 12(1) applied to the suit.

30. The learned Counsel for the petitioner submitted that recourse to the provisions of Section 15(3) of the Maharashtra Rent Control Act was thus not permissible.

31. The learned Counsel for the petitioner submitted that the requirement of Section 15 of the Maharashtra Rent Control Act that the tenant should continue to pay or tender in Court regularly such standard rent and permitted increased till the suit is finally decided corresponds to a similar provision in Section 12(3) (b) of the Bombay Rent Act, which had been interpreted by the Apex Court in *Mohan Laxman Hede Vs. Noormohamed Adam Shaikh*, . In that case, the tenant had deposited the rent, but not exactly on the due dates. The Court quoted from an earlier judgment in *Mranalini B. Shah and Another Vs. Bapalal Mohanlal Shah*, , where it was held as under:

13. The above enunciation, clarifies beyond doubt that the provisions of Clause (b) of Section 12(3) are mandatory, and must be strictly complied with by the tenant during the pendency of the suit or appeal if the landlord's claim for eviction on the ground of default in payment of rent is to be defeated. The word "regularly" in Clause (b) of Section 12(3) has a significance of its own. It enjoins a payment or tender characterised by reasonable punctuality, that is to say, one made at regular times or intervals. The regularity contemplated may not be a punctuality, of clocklike precision and exactitude, but it must reasonably conform with substantial proximity to the sequence of times or intervals at which the rent falls due. Thus, where the rent is payable by the month, the tenant must, if he wants to avail of the benefit of the latter part of Clause (b), tender or pay it every month as it falls due, or at his discretion in advance. If he persistently defaults during the pendency of the suit or appeal in paying the rent, such as where he pays it at irregular intervals of 2 or 3 or 4 months - as is the case before us - the court has no discretion to treat what were manifestly irregular payments, as substantial compliance with the mandate of this clause, irrespective of the fact that by the time the judgment was pronounced all the arrears had been cleared by the tenant.

The learned Counsel for the petitioner submitted that since in the present case the rent was payable annually and since willingness of the tenant to pay the rent was already manifest, the tenant would not incur ejectment u/s 15(3) of the Maharashtra Rent Act.

32. In *Chase Bright Steel Limited v. Shantaram Shankar Sawant and Anr.* reported at 1995(1) Bom.C.R. 561, the Supreme Court held that the tenant was under an obligation to deposit even the permitted increases not only during the pendency of application for fixation of standard rent, but also during the

pendency of suit for eviction.

33. In *Indubai Sidram Mundewade and others Vs. Sidramappa Baslingappa Kalyanshetti*, since deceased by his heirs and legal representatives and others, , the question of irregularity in payment of rent during the pendency of the lis had been raised and after referring to the judgment of the Supreme Court in *Mranalini B. Shah and Another Vs. Bapalal Mohanlal Shah*, , *Mohan Laxman Hede Vs. Noormohamed Adam Shaikh*, , and *Shantabai Vishnumal v. Ganpat Ladha* reported at 1976 Mh.L.J. 332, the Court observed in para 4 as under:

4. ...It has been held that in cases falling u/s 12(3)(b) of the Act the first injunction is that the tenant is required to pay or tender in Court on the first day of the hearing of the suit the standard rent and the permitted increased then due. What is required to be paid is standard rent and not contractual rent. Thereafter it is held that if the standard rent is not fixed then it is necessary for the tenant to adopt appropriate proceedings and get the standard rent fixed either as interim or final. Thus it is held that tenant cannot be heard to say that he is entitled to claim protection u/s 12(3)(b) of the Rent Act without showing that he had taken diligent steps to get the standard rent or interim standard rent fixed. Thereafter it is to be determined as to whether the tenant has continued to pay or tender in Court regularly such rent and permitted increased till the suit is finally decided....

34. The learned Counsel for the petitioner submitted that these judgments could not be applied, as they are, to the facts of the present case, as there is a difference in the provisions pertaining to fixation of standard rent as also ejectment under Sections 8 and 15 of the Maharashtra Rent Act and the provisions of Sections 11 and 12 of the Bombay Rent Act. He submitted that Explanation (I) to Section 12 of the Bombay Rent Act (extracted below) is conspicuously missing in Section 15 of the Maharashtra Rent Control Act.

Explanation (I).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.

Absence of this "deeming" explanation in the Maharashtra Rent Control Act would not help the tenant. Rather it would make it imperative for him to pay the rent demanded without demur in order to secure protection of Section 15. However, since when a tenant raises a dispute by filing appropriate proceedings for fixation of standard rent, the mutual obligations would be governed by orders of the Court and the payment as per such orders would be enough.

35. What emerges from the several authorities on which the learned Counsel for the parties have placed reliance, is as under:

(i) The landlord is entitled to receive the rent, which the tenant was paying on or before 1101987 without demur.

(ii) If this amount is demanded, the tenant cannot give any excuses, like his always being ready and willing to pay. He has to comply with the demand.

(iii) If there is a dispute about the amount which was being paid as rent on 1101987, the tenant would have to raise the dispute by appropriate proceedings for fixation of standard rent. But he would have to pay at least the amount which in his computation is due in order to show that he has paid or was ready and willing to pay the rent as required under Clause (1) of Section 15 of the Maharashtra Rent Control Act.

(iv) If such demand is not complied and proceedings for fixation of standard rent are not initiated, and the landlord files a suit for ejectment, in order to seek the protection of Section 15 of the Maharashtra Rent Control Act, the tenant would have to comply with the demand made in the plaint and would have to continue to deposit and not just the amount, which, according to the tenant, is due, but the rent due as per the landlord's demand from time to time awaiting adjudication of the exact amount due. Since the protection provided by the Rent Control Act places curbs on the right of the landlord to recover possession under the ordinary law of landlord and tenant, the tenant must comply with all these requirements in order to avoid a decree for ejectment.

36. The facts unfolded in this case may now be examined in the light of the foregoing discussion. The rent, which the tenant was paying till 1996, was Rs. 3,555/per annum and not Rs. 1,320/per annum, as is claimed by the tenant. He had tendered the arrears of rent along with the reply to the notice of demand at the rate of Rs. 1,320/per annum only. The municipal taxes were being recovered at the rate of Rs. 580/per annum against Rs. 481/per annum, which was the amount which could have been claimed. Against municipal taxes, the tenant had tendered a sum of Rs. 1,740/, which was slightly in excess. After the suit was filed, the tenant made an application for fixation of standard rent, which was rejected and no challenge has been raised to such rejection separately. The tenant had not deposited the amount in arrears within 90 days of receipt of suit summons. He did not deposit the rent due during the pendency of the lis from time to time regularly as per the chart made available by the petitioner. Initially, the deposits were delayed by a month or two, but thereafter the deposits were not regular. The learned Counsel for the petitioner submitted that since the rent was payable by the year, these deviations by a month or two do not matter. Yet the fact remains that the tenant had neglected and failed to pay the amount of rent as on 1101987 within 90 days of notice of demand and even within 90 days of service of suit summons. He has also not been regular in depositing the rent and taxes during the pendency of the lis. The contention of the tenant that since the suit itself could not have been filed because of his readiness and willingness, and so he was not required to comply with the provisions of Sub-section (3) of Section 15 of the Maharashtra Rent Control Act and, therefore, does not incur

ejectment, has to be rejected. At the cost of repetition, it has to be stated that mere desire to pay the rent is not enough. It must be translated into action. The tenant was under an obligation to comply with the demand and in any case to explain as to how, in his view, nothing was due or a lesser amount was due, and to have paid that amount. Not having done so, he loses the protection of the Rent Act and, therefore, would be liable to be evicted on account of failure to comply with the requirement of Sub-section (3) of Section 15 of the Maharashtra Rent Control Act. In this view of the matter, the decree of ejectment passed by the Trial Court and confirmed on appeal by the learned District Judge cannot be disturbed.

37. In view of the foregoing, the petition is dismissed. Parties to bear their own costs.