
(1991) 12 BOM CK 0001
In the Bombay High Court
Case No : Writ Petition No. 502 of 1981

Gokuldas Jamnadas (Since deceased by his heirs)	APPELLANT
Vs	
Ahamed miya Sarole (Since deceased by his heirs)	RESPONDENT

Date of Decision : 05-12-1991

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11, 12
Constitution of India, 1950 — Article 227

Citation : (1992) 94 BOMLR 327

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.R. Dhanuka, J.—By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned decree for possession dated 27th June, 1979 passed by the learned Civil Judge, Senior Division Thane, in Regular Civil Suit No. 266 of 1975 as also the judgment and decree dated 23rd January 1981 passed by the learned IIInd Extra Assistant Judge, Thane, in Civil Appeal No. 152 of 1979.

2. The principal question which arises for consideration of the Court in this petition is as to whether Section 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Act), as it stood at the material time, was rightly invoked by the plaintiff-landlord.

3. The crucial facts which are required to be stated for disposal of this petition are as under:

(a) The suit premises consist of rooms Nos. 1 and 2 in a chawl/house bearing No. 270 situate at Ward No. 2 within, the limits of Kalwa Gram Panchayat, Thane. Shri Gokuldas Jamnadas was the tenant of the said premises. The contractual rent in respect of each of the said two rooms was Rs. 15/- per month. It was the contention of the original tenant Shri Gokuldas Jamnadas in the proceedings

before the Courts below that the landlord had promised to reduce the said contractual rent to Rs. 20/-. This contention was specifically denied by the landlord.

(b) On 10th August 1974, the original plaintiff-landlord served a notice of demand on Shri Gokuldas Jamnadas, the tenant, u/s 12(2) of the Act calling upon the tenant to pay arrears of rent for the period commencing from 1st May 1972 till end of July 1974 amounting to Rs. 810/-. On 30th August 1974, the defendant-tenant was served with the said notice of demand. The defendant-tenant sent a money order to the plaintiff-landlord for Rs. 540/- calculating the arrears of rent at the rate of Rs. 20/- per month instead of the rate of Rs. 30/- per month. The said money order was refused by the plaintiff-landlord as the said amount was not a tender for the full amount inasmuch as according to the plaintiff-landlord, the contractual rent of the said two rooms was Rs. 30/- per month in the aggregate and not Rs. 20/- per month. The tenant sent a reply to the said notice of demand dated 10th August 1974 on 27th August 1974.

(c) On 1st October 1974, the landlord served a fresh notice of demand on the tenant calling upon the tenant to pay arrears of rent computed at Rs. 900/- on the footing that the tenant was liable to pay the amount of rent for the period commencing from 1st May 1972 at the rate of Rs. 30/- per month. On 31st October 1974, the tenant forwarded a cheque to the landlord for Rs. 600/- once again calculating the amount of rent at the rate of Rs 20/- per month. The landlord refused the said tender also on the same ground. On 1st November 1974, the tenant sent a reply to the said notice of demand dated 31st October 1974 stating his contention in the matter.

(d) On 27th January 1975, the original landlord (plaintiff in Regular Civil Suit No. 266 of 1975) served one more notice of demand on the tenant calling upon him to pay the arrears of rent aggregating to Rs. 1060/- for the period 1st May 1972 till December 1974 at the rate of Rs. 30/- per month. The tenant Gokuldas Jamnadas, whose heirs are the writ petitioners in this petition, did not send any reply to the said notice. The tenant did not tender any amount to the landlord in response to this notice of demand. The tenant did not file any application for fixation of standard rent within period of one month from the date of service of the said notice of demand.

(e) On 17th April 1975, the landlord filed Regular Civil Suit No. 266 of 1975 against the tenant for eviction of the tenant invoking Section 12(3)(a) of the Act. Section 12(3)(a) of the Act, as it stood at the material time, reads as under:

12(3)(a). Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in Sub-section (2), the Court shall pass a decree for eviction in any such suit for recovery of possession.

Explanation I appended to the said provisions reads as under:

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.

On 13th January 1976, the defendant filed his written statement in the said suit. In paragraph 2 of his said written statement, the defendant-tenant vaguely contended that the plaintiff had promised to reduce the amount of contractual rent from Rs. 30/- to Rs. 20/- per month without setting out any particulars in respect of the alleged date of the alleged promise and as to whether the alleged promise was in writing or oral or any other particulars. By the written statement, the defendant prayed that the standard rent of the suit premises be fixed by the Court as the amount of contractual rent claimed by the plaintiff was excessive. In the written statement, the defendant contended that the standard and reasonable rent of the suit premises would not exceed Rs. 20/- per month. By last paragraph of his written statement, the defendant prayed that interim rent be fixed by the Court in respect of the said premises in order to enable the defendant to deposit the amount of rent in Court in accordance with the order of the Court fixing interim rent. In the said written statement, the defendant reiterated that the defendant had always been ready and willing to pay the standard rent of the suit premises. It was also stated in the written statement that the defendant shall file separate application for fixation of interim rent duly supported by an affidavit.

(f) On 13th January 1976, the defendant filed an application for fixation of interim rent before the trial Court although the defendant had not filed any application for fixation of standard rent in respect of the said premises. By order dated 14th February 1976, the said application was rejected by the trial Court. I was informed by the learned Counsel for the petitioners during the course of his arguments that the said application was rejected by the Court in view of the defendant having not made an application for fixation of standard rent within one month from the date of the service of the notice of demand u/s 12(2) as contemplated under Explanation appended to the said section. Being aggrieved by the said order dated 14th February 1976, the tenant moved the revisional Court i.e. the District Court, Thane, for the same relief i.e. fixation of interim rent:- The said revision application was also rejected by the Court.

(g) After considering the evidence led before it, oral and documentary, the learned trial Judge passed a decree for eviction against the tenant holding that the statutory conditions prescribed by Section 12(3)(a) of the Act were satisfied by the landlord, that the tenant had committed requisite default and it was therefore obligatory on the Court to pass a decree for eviction. By the said

decree, the trial Court fixed the standard rent of the suit premises at Rs. 30/- per month simultaneously with the passing of decree for possession.

(h) By its decree dated 23rd January 1981, the learned IInd Extra Assistant Judge dismissed Civil Appeal No. 152 of 1979 preferred by the tenant and confirmed the decree for possession passed by the trial Court as aforesaid.

4. (i) Shri Jawhar J. Thakkar, the learned Counsel for the petitioners i.e. the heirs and legal representatives of the original tenant, has extensively argued this petition and has made various factual and legal submissions during the course of his arguments. It is appropriate to summarise the submissions of Shri Thakkar at this stage. Shri Thakkar submitted, in substance, on behalf of the petitioners as under:

(1) The plaintiff had promised to reduce the contractual rent from Rs. 30/- to Rs. 20/- per month as averred in paragraph 2 of the written statement filed in the suit.

(2) The contractual rent and the standard rent of the suit premises did not and could not exceed Rs. 20/- per month according to the bona fide belief of the petitioners.

(3) The original tenant had tendered arrears of rent in response to notice of demand dated 10th August 1974 and 1st October 1974 at the rate of Rs. 20/- per month which was the amount of reduced contractual rent payable by the tenant to the landlord in respect of the suit premises. The respondent landlord had wrongfully refused to accept each of the said tenders on the ground that the amount tendered was not in full, and the contractual rent of the suit premises was Rs. 30/- per month.

(4) The original tenant had raised the dispute about the standard rent of the suit premises in his reply letters dated 27th August 1974 and 1st November 1974. The original tenant had even applied to the trial Court for fixation of interim rent with a view to obtaining directions of the Court in that behalf and deposit the amount of interim rent during the pendency of the suit and had pursued the remedy by filing a revision application in that behalf. It should therefore be necessarily inferred from the above facts that the tenant was ready and willing to pay the standard rent and/or interim rent of the suit premises at all material times and the tenant had "not neglected" to pay the amount of rent in any sense of the term. It was not held by the Courts below that the dispute about the standard rent raised by the petitioners or their predecessor-in-title was not bona fide. It follows therefore that the dispute raised about quantum of standard rent was bona fide.

(5) The matter was governed by Section 12(3)(b) and not by Section 12(3)(a) of the Act. It was irrelevant that the dispute as to standard rent was not raised by the tenant within time limit of one month by filing application for fixation of standard rent. The tenant was at liberty to raise dispute about standard rent and

pray for fixation of standard rent even after expiry of one month from service of statutory notice of demand i.e. in a suit for possession coupled with a suit for recovery of rent. This submission was inter alia supported by the provisions contained in Section 11(4) of the Act.

(6) Readiness and willingness to pay standard rent could be proved by the tenant by-

(i) tendering the amount of rent within the period of one month from service of notice of demand; or

(ii) by filing an application for fixation of standard rent within one month from service of notice and by complying with order of deposit which may be passed by the Court u/s 11(3) of the Act; or

(iii) otherwise.

(7) In the instant case it could be shown that the tenant was ready and willing to pay amount of standard rent and permitted increases even though the tenant had not tendered the amount of arrears as claimed within one month from service of statutory notice and the tenant had not filed an application for fixation of standard rent within the prescribed period of one month. Lack of readiness and willingness could not be inferred merely from non-tender of the amount demanded by the landlord in full or merely from non-filing of application for fixation of standard rent within one month from date of service of notice of demand. It was the duty of the Court to fix interim rent when the tenant makes an application in that behalf and permit the tenant to deposit amount of interim rent as may be fixed. The petitioners could not be penalised for erroneous orders of the Court in this behalf refusing to fix the interim rent and issue necessary directions as sought for.

(8) Section 12(3)(b) of the Act obligated the Court to fix the date for deposit or payment of arrears of rent after the standard rent was fixed and the tenant could be evicted only if the tenant defaulted in complying with such an order of the Court which can be passed only after the standard rent or interim rent was first fixed by the Court. In the instant case, the Court had fixed the standard rent simultaneously with the passing of the decree for eviction and had committed a jurisdictional error by not fixing the standard rent of the suit premises earlier and then fixing the date for deposit of the differential amount by the tenant in accordance with the finding of the Court on the question of standard rent.

5. At the outset I must state my conclusions on the submissions made by Shri Thakkar. In the later part of this judgment, I would state the reasons for such conclusions and also refer to the relevant authorities cited at the Bar. In substance, my conclusions are as under:

(1) The pleading of the petitioner regarding alleged reduction of contractual rent by the respondent from Rs. 30/- to Rs. 20/- per month is totally vague and devoid of particulars. No particulars in respect of alleged promise of the landlord

to reduce the contractual rent can be spelt out from the written statement even by construing the pleading liberally. There is no evidence worth the name to support the above referred vague plea. It follows that the contractual rent was never reduced from Rs. 30/- to Rs. 20/- per month.

(2) The finding of the Courts below regarding fixation of standard rent at Rs. 30/ per month cannot be interfered with by this Court in exercise of writ jurisdiction as the said finding is not perverse. The said finding does not suffer from any error of law apparent on the face of the record. The tender of the amount by the petitioner in response to notice of demand dated 10th August 1974 and 1st October 1974 at the rate of Rs. 20/- per month was rightly rejected by the landlord as the said tender was not for the entire amount due and payable by the tenant. The petitioner did not tender any amount towards the arrears of rent in response to notice dated 27th January 1975. The petitioner did not send any reply to the said notice. The petitioner did not make any application for fixation of standard rent within one month from service of notice of demand. The petitioner did not comply with Explanation I to Section 12 of the said Act. The petitioner defaulted in respect of his, obligation prescribed u/s 12(3)(b) of the Act. Tendering of money order or cheque at the rate of Rs. 20/- per month cannot be considered as proof of readiness and willingness to pay the arrears of rent then due. Similarly making of application for fixation of interim rent at a late stage cannot be construed as proof of readiness and willingness. The petitioners "neglected" to pay the arrears of rent which were due at time of service of notice of demand within the notice period and even thereafter for quite some time.

(3) Section 12(3)(b) of the Act was not applicable to a case where application for fixation of standard rent is not made by the tenant within one month from service of the notice of demand and arrears of rent on the date of notice were for a period of six months or more. Section 11(3) of the Act cannot be invoked in a case where application for fixation of standard rent is not made within one month from the service of notice of demand u/s 12(2) of the Act. Readiness and willingness of the tenant to pay the amount of arrears of rent is liable to be judged by the Court by addressing itself to the question as to whether the tenant tendered the amount of rent which was lawfully due within notice period and as to whether the tenant made an application for fixation of standard rent within one month from the service of the notice and deposited the amount of arrears and recurring rent in accordance with the orders which may be passed on such an application within the contemplation of later part of Explanation I to Section 12 of the Act. Section 12(1) of the Act has no application to a case where the matter squarely falls u/s 12(3)(a) of the Act.

(4) Section 12(3)(a) of the Act is a special provision. If the said provision is attracted, the tenant cannot avoid the consequence of liability to be evicted by referring to general provision like the provision contained in Section 12(1) of the Act. If each of the conditions prescribed by Section 12(3)(a) read with the Explanation I to the said section is satisfied, decree for eviction must follow.

Question of readiness and willingness or neglect must be decided in light of answer to the question as to whether the tenant has complied with his obligations within the statutory period and as provided under the Act.

6. The learned Counsel for the petitioners has cited large number of authorities in support of his submissions. I have gone through each of the authorities with the assistance of the learned Counsel. To my mind, the matter is covered against the petitioners by the judgments of the Honourable Supreme Court and by Division Bench judgments of our Court. It appears to be unnecessary to refer to each of the authorities cited at the bar in view of my conclusions referred to hereinabove.

7. In Harbanslal Jagmohandas and Another Vs. Prabhudas Shivilal, , Ray, C.J. speaking for the Bench of the Supreme Court held that in order to avoid operation of Section 12(3) of the Act, the dispute in regard to standard rent or permitted increases must be raised at the latest before the expiry of one month from the date of service of notice u/s 12(2) of the Act and it was not enough to raise a dispute for the first time in the written statement. In this case it was further held by the Apex Court overruling the Full Bench judgment of our High Court in the case of Dattu Subhana Panhalkar Vs. Gajanan Vithoba Bobhate and Another, , that the Bombay view to the effect that filing of the application for fixation of standard rent within one month from service of the notice of demand was merely one mode of raising the dispute and the dispute could be raised by the tenant at any stage of the suit in the written statement or otherwise nullified the provisions contained in Section 12 and Explanation I thereto. The Honourable Supreme Court was fully conscious of the observations made by the Supreme Court in its earlier decision in the case of Vora Abbasbhai Alimahomed Vs. Haji Gulamnabi Haji Safibhai, . The said case has been discussed in detail in paragraph 20 of the judgment of the Supreme Court in Harbanslal's case. In paragraph 25 of its judgment in Harbanslal's case, the Supreme Court inter alia observed that Sections 11(3) and 11(4) of the Act could be invoked only when an application disputing the standard rent was made within the time contemplated by Explanation I to Section 12 of the Act.

8. In Shah Dhansukhlal Chhaganlal Vs. Dalichand Virchand Shroff and Others, , Mitter, J. speaking for the Bench observed in paragraph 10 of his judgment as under:

Section 12(1) must be read with the Explanation and so read it means that a tenant can only be considered, "to be ready and willing to pay" 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 by the Court.

In this case also the Supreme Court discussed the ratio of the judgment in the case of Vora Abbasbhai Alimahomed Vs. Haji Gulamnabi Haji Safibhai, and

interpreted and applied the ratio of the said judgment before arriving at its conclusions. The observations made by the Supreme Court in paragraph 11 of this judgment are of significance. It was one of the contentions of the tenant before the Supreme Court that Section 12(1) of the Act was liable to be taken into consideration before passing of any decree for eviction even u/s 12(3)(a) of the Act. Repelling this contention, the Supreme Court relied on its earlier judgment in the case of Mrs. Manorama S. Masurekar Vs. Mrs. Dhanlaxmi G. Shah and Another, . In Manorama Masurekar's case, Bachhawat, J. speaking for the Bench overruled several judgments of the Gujarat High Court and held as under:

It is immaterial whether the tender was made before or after the institution of the suit. In a case falling within Sub-section (3)(a), the tenant must be dealt with under the special provisions of Sub-section (3)(a) and he cannot claim any protection from eviction under the general provisions of Sub-section (1).

9. The ratio of the above two judgments holds the field. In the instant case, no application was made for fixation of standard rent within period of one month from service of the notice u/s 12(2) of the Act. In this case also the amount of rent due was not tendered in full by the tenant within the notice period. The application made by the tenant for fixation of interim rent during the pendency of the civil suit for possession was not maintainable in law as such, an application could be made by the tenant only if an application for fixation for standard rent was made within period of one month from the date of notice of demand. In any event, for purpose of applicability of Section 12(3)(a) of the Act, it is sufficient to prove that the tenant was in arrears of rent for six months or more and the tenant had defaulted in making payment of the said amount and that the dispute about the standard rent was not raised within one month from the date of service of notice. Even in a case where application for fixation of standard rent was made in time, the tenant could escape liability from being evicted only if the tenant complied with the orders which may be passed by the Court u/s 11(3) of the Act within the contemplation of later part of Section 11(3) of the Act.

10. Shri Thakkar has invited my attention to the Judgment of the Apex Court in the case of Vora Abbasbhai (supra) in detail and has formulated two propositions on the basis of the observations made in the said case. In paragraph 12 of the said judgment, Shah, J. speaking for the Bench observed that the readiness and willingness to pay standard rent and permitted increases could be proved by the tenant by obtaining an order of the Court fixing the rate of the standard rent and complying therewith or by complying with the Explanation to Section 12 or otherwise. Relying on paragraph 12 of the said judgment, the learned Counsel submitted that the petitioners were not precluded in law from showing that they were always ready and willing to pay the amount of standard rent even though the petitioners had not complied with the Explanation to Section 12 of the Act as such. I am afraid, it is not open to me to accept this interpretation of the learned Counsel in respect of this judgment. The ratio of this judgment has been

interpreted and applied in the subsequent judgments of the Supreme Court cited in the earlier portion of this judgment and I am bound by the subsequent judgments of the Supreme Court including in respect of the interpretation of this judgment by the latest judgments. In any event, on an overall view of the matter I am not satisfied that the tenant was ready and willing to pay the amount of arrears of rent due on the relevant date at the material time. In paragraph 14 of the above referred judgment in Vora Abbasbhai's case, it was observed by the Court that whenever a case was covered u/s 12(3)(b) of the Act, the Court must fix the date for deposit or payment of the amount of arrears of rent or differential amount after the standard rent was determined. Paragraph 14 of this judgment, with respect, has no application to this case as according to the judgments of the Supreme Court and the Division Bench judgments of our Court, to which I would refer little later, Section 12(3)(b) of the Act has no application to a situation as in this case and only Section 12(3)(a) of the Act shall apply. The amount of arrears of rent on the date of issue of the notice of demand was for more than six months. Dispute about standard rent was not raised within one month of service of notice of demand by filing an application within the contemplation of Explanation I to Section 12 of the Act. If in a given case a dispute as to the amount of standard rent is raised by filing an application for fixation of standard rent within one month from the date of service of notice of demand, perhaps Section 12(3)(b) of the Act shall be applicable. In all such cases where Section 12(3)(b) of the Act applies the principles of law laid down in paragraph 14 of the said judgment will undoubtedly govern. In this case, however, the observations made in paragraph 14 of the judgment in Vora Abbasbhai's case are of no assistance to the learned Counsel in view of the fact that Section 12(3)(a) of the Act is clearly attracted to the facts of this case in view of dispute as to standard rent having not been raised within the notice period in the manner set out in the Explanation I to Section 12 of the Act.

11. It is now time to refer to some of the Division Bench Judgments of our High Court on the subject.

12. In the case of Jaypal Bandu Adake v. Basavali Gurulingappa 1982 M.L.J. 512, the Hon'ble Division Bench consisting of M.N. Chandurkar, J. (as His Lordship then was) and M.L. Pendse, J. held in paragraph 32 of the judgment as under:

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 take an application raising a dispute regarding standard rent and must ask for fixation of standard rent u/s 11(3) of the 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 purpose of Section 12 of the Bombay Rent Act.

It was held by the Division Bench of our High Court in this case that "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)." In other words, the Division Bench of our High Court held that existence of a dispute as to standard rent prior to service of notice u/s 12(2) of the Act or raising of such a dispute in reply to a notice of demand by itself was not enough to prevent applicability of Section 12(3)(a) of the Act. It was held by the Division Bench that if no application was made for fixation of standard rent as contemplated u/s 12 of the Act read with the Explanation I thereto or if such an application was made and the directions of the Court in making of deposits as prescribed by the order of the Court were not complied with, the cause of action for evicting the tenant u/s 12(3)(a) of the Act was complete. By this judgment, the Division Bench of our High Court overruled the earlier judgment in the case of Gulabchand Ramchand Jain Vs. Noorbeg Umarbeg Mirza, . It must be stated in the passing that the Division Bench of our High Court extensively relied for the view which it had taken upon the passages from the judgment of the Supreme Court in Harbanslal's case and Dhansukhlal's case already referred to hereinabove.

13. In the above referred case, the learned Counsel for the tenant had relied upon the Full Bench decision of the High Court of Gujarat in Ramniklal Dwarkadas Modi Vs. Mohanlal Laximichand and Others, before the Division Bench of our High Court in Jaypal Bandu Adake's case (supra). The Division Bench of our High Court did not accept the interpretation of ratio of Dhansukhlal's case as rendered by the Full Bench decision of High Court of Gujarat in Ramniklal's case. I am bound by the Division Bench judgment of our High Court which has, after taking into consideration all the relevant case law, taken the view that Section 12(3)(a) of the Act shall apply in a situation like ours. I am also in respectful agreement with the view taken by our High Court as aforesaid.

14. It is possible that the dispute about fixation of standard rent may be raised in a given situation even in a suit for the purposes other than Section 12(3)(a) read with the Explanation appended to the Section. Section 11(4) of the Act contemplates fixation of standard rent by the Court in a suit for recovery of rent with or without the claim for possession. Section 11(4) of the Act is irrelevant for the purpose of considering the question as to whether Section 12(3)(a) of the Act is attracted or not and as to whether the tenant has incurred liability to be evicted from the suit premises for committing default by not complying with the said specific provision and the Explanation appended thereto. If all the conditions prescribed by Section 12(3)(a) of the Act are duly satisfied by the landlord, the tenant incurs liability to be evicted from the suit premises and the Court is bound to pass a decree for eviction. It may be possible for the Court to fix the amount of standard rent when such dispute is raised in the context of monetary claim made by the landlord for recovery of rent for the purpose of passing of money decree in the suit or even in the case which is covered u/s 12(3)(b) of the Act as contrasted with a case covered u/s 12(3)(a) of the Act. In a given case, the arrears of rent due on the date of notice may be for less than six months. In all such cases Section 12(3)(a) of the Act shall be inapplicable and Section 12(3)(b)

of the Act shall apply. In my judgment, Section 12(3)(a) of the Act shall have to be construed on its own terms as a special specific provision along with Explanation I appended to Section 12 of the Act as an integral part thereof.

15. In the case of *Chhaganlal v. Narayan Jagannath* 1983 M.L.J. 254. Gadgil, J. speaking for the Division Bench of our High Court took the same view after relying upon the earlier Division Bench judgment of our High Court in the case of *Jaypal v. Basavali Gurulingappa* 1982 M.L.J. 512. In this case, it was held by the Division Bench of our Court that readiness and willingness to pay the amount of standard rent and permitted increases was liable to be determined in the context of explanation I to Section 12 of the Act. In paragraph 12 of his judgment, Gadgil, J. further observed that the Court had no jurisdiction to fix amount of standard rent in certain situations. If the suit is for recovery of rent with or without a claim for possession, the Court is entitled to fix standard rent u/s 11(4) of the Act. Fixation of standard rent by the Court in such a situation does not and cannot affect the liability for eviction if already incurred by the tenant by reason of the default committed by the tenant and by reason of non-compliance with statutory obligation to do various acts and things within the notice period.

16. The learned Counsel for the petitioner has invited my attention to the Full Bench judgment of our High Court in the case of *Jamnadas Vanwari v. Ishwaribai Alwani* 1981 M.L.J. 701: 1981 Bom RC 309. In this case, the question which arose before the Court was as to whether the Court had jurisdiction to fix interim rent u/s 11(4) of the Act in a suit filed merely for recovery of possession without claiming any money decree for arrears of rent. The Full Bench of our High Court held that, the language of Section 11(4) of the Act was plain and simple and the said section was applicable only where the suit was for recovery of rent with or without claim for possession. Since in that suit there was no claim for recovery of rent, it was held by the Full Bench of our Court that no order for fixation of interim rent could be passed by the Court u/s 11(4) of the Act. In paragraph 11 of the above referred judgment, reference was made by Deshpande, C.J. speaking for the Full Bench to the ratio of the judgment of the Supreme Court in *Harbanslal's* case overruling the earlier Full Bench judgment of our High Court in *Dattu Subhana's* case 1971 M.L.J. 834 : 73 BLR 371. It was held by the Full Bench that *Harbanslal's* case undoubtedly operated within the sphere of applicability or non-applicability of Section 12(3)(a) of the Act.

17. The learned Counsel for the petitioners submits that the judgment of the Division Bench of our High Court in the case of *Chhaganlal v. Narayan Jagannath* (supra) is in conflict with the ratio of the Full Bench judgment in the case of *Jamnadas Vanwari* (supra). I respectfully disagree. Both the judgments operate in different fields. In the present case Section 11(4) of the Act has no application for purpose of deciding the principal question as to whether the tenant has incurred liability to be evicted for noncompliance with Section 12(3)(a) of the Act read with the Explanation appended thereto. In my judgment, the judgment of *Bachawat, J* in the case of *Manorama Masurekar* (supra) clinches the issue

against the petitioners in so far as it holds that Section 12(3)(a) alone shall have to be applied in a case where it is applicable as, it is a special provision made by the Legislature to deal with a situation where the tenant was in arrears of rent for a period of six months or more and general provisions of the Act like Section 12(1) shall have no application to such a case.

18. Before I wind up the discussion on the subject, I must observe that the learned Counsel for the petitioners has invited my attention to large number of judgments of Gujarat High Court and Single Judges of our High Court in support of his submissions. I am not referring to any of these judgments as I am bound by the ratio of the judgments of the Supreme Court and the Division Bench of our Court relied on by me in support of any conclusions. It appears to me, with respect, that no useful purpose shall be served by referring to each and every citation.

19. The learned Counsel for the respondent has submitted that in any event the case is not a fit one for exercise of power of superintendence i.e. power of judicial intervention under Article 227 of the Constitution of India. The learned Counsel submits that two Courts below have merely followed the latest judgments of the Supreme Court and our High Court and it cannot be any error of law apparent on face of the record. I am in respectful agreement with this submission made. No error apparent is proved.

20. In the result, the petition fails. Rule is discharged. There shall be no order as to costs in this petition.

21. The learned Counsel for the petitioners applies for continuation of stay granted by this Court in order to enable the petitioners to approach the Supreme Court of India. I accept the request. Decree for possession shall not be executed till 31st March 1992.

22. Issue of certified copy of this judgment is expedited.