
(1998) 02 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No. 6044 of 1986

Gurappa Basappa Byakod and others

APPELLANT

Vs

Sunita Subhash Chandra Bubane

RESPONDENT

Date of Decision : 11-02-1998

Acts Referred:

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

Citation : (1998) 5 BomCR 895

Hon'ble Judges : D.K. Deshmukh, J

Bench : Single Bench

Advocate : P.M. Mengane, for the Appellant; A.A. Kumbhakoni, for the Respondent

Judgement

D.K. Deshmukh, J.—By this petition filed under Article 227 of the Constitution of India, the petitioners challenge the order dated 22-9-1986, passed by the 4th Addl. District Judge, Solapur in Civil Appeal No. 662/1984. That appeal was filed by the respondent, challenging the order dated 27-3-1984, passed by the 5th Joint Civil Judge, J.D., Solapur in Reg. Civil Suit No. 328/1979. That civil suit was filed by the respondent claiming that she is owner of the suit premises, Municipal House No. 13-B situated at Railway Lines at Sholapur and that the petitioner is tenant of one room in the suit house. The landlady sought decree of eviction against tenant on the ground that the tenant is not ready and willing to pay the rent. The suit was, however, dismissed by the trial Court. In the appeal filed by the landlady, the Appellate Court reversed the findings recorded by the trial Court and passed a decree of eviction against the tenant u/s 12(3)(b) of the Act. It is this decree passed by the Appellate Court, which is challenged by the tenant in the present petition.

2. The learned Counsel appearing for the petitioners urged before me that the Appellate Court has passed a decree u/s 12(3)(b) of the Act against the tenant after finding that the tenant had not complied with the requirement of section 12(3)(b) of the Act during the pendency of the suit. The Appellate Court has

passed a decree u/s 12(3)(b) of the Act because during the pendency of the appeal filed by the landlady, the tenant did not deposit the arrears of rent regularly. The learned Counsel for the petitioner relied on judgment of this Court in the case of Hasan Alam Beg Jamdar Vs. Sardari Bagum Usman Dabir and Another, , submitted that the question of tenant abiding with the conditions of section 12(3)(b) would not arise during the pendency of the appeal and therefore, the Appellate Court, was not justified in passing decree against the tenant. The learned Counsel appearing for the respondent, however, relying on the judgment of the Division Bench of this Court in the case of Venkatrao Anant Pai v. Narayanlal Bansilal 1971 BLR 609, submitted that even during the pendency of the appeal a tenant is liable to deposit the amount of standard rent and failure of the tenant to do so makes him liable for a decree of eviction u/s 12(3)(b) of the Act.

3. Now in the light of the rival submissions if the record is perused it appears that the Appellate Court has passed decree against the tenant for non compliance of the provisions of section 12(3)(b) of the Bombay Rent Act because the tenant has not complied with the requirement of section 12(3)(b) during the pendency of the suit. However, it appears that a finding is recorded that the tenant has deposited excess amount during the pendency of the suit. The decree is passed against the tenant for non-compliance of provisions u/s 12(3)(b) during the pendency of the appeal filed by the landlady. The same question has been considered by this Court in its judgment in Hasan Alam Beg's case, referred to above. This Court has held in paragraph 8 of that judgment that "when in such circumstances, the landlady prefers an appeal, there is no question of the tenant abiding by any conditions of section 12(3)(b) in as much as the tenant was already held not to be a default and the suit on that count was dismissed. If there is any further default during the pendency of the appeal, obviously, the landlady would get a fresh cause of action for which she ought to serve a notice of demand as contemplated and proceed against the tenant, according to law."

4. Thus it is clear that not complying with the requirement of section 12(3)(b) of the Act during the pendency of the appeal filed by the landlady, a decree cannot be passed against the tenant. In so far as the judgment of this Court in the case of Venkatrao Anant Pai, relied on by the learned Counsel for the respondent is concerned, perusal of that judgment shows that the Division Bench of this Court has ruled that in a standard rent application filed by the tenant if standard rent is fixed by the trial Court during the pendency of a challenge to that order in higher Court, then also a tenant continues to be under a liability to pay rent at the rate fixed by the trial Court in the standard application. However, this judgment of the Division Bench has no relevance for deciding the controversy raised in the present petition. Therefore, it is clear that the Appellate Court was justified in passing the decree of eviction against the tenant.

5. In the result, therefore, the petition succeeds as is allowed. Rule is made absolute in terms of prayer Clause (b) with no order as to costs.

6. Petition allowed.