

(2009) 04 BOM CK 0114
In the Bombay High Court
Case No : Writ Petition No. 22 of 2002

Hari Bhuraji Mahajan and Others

APPELLANT

Vs

Rajendra Shankar Dawknor and Others

RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

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

Citation : (2009) 4 BomCR 674 : (2009) 6 MhLj 483

Hon'ble Judges : Kingaonkar V.R., J

Bench : Single Bench

Advocate : A.S. Bayas, for the Appellant; A.H. Kasliwal, for Respondents No. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Kingaonkar V.R., J.—By this petition, petitioners seek to impugn Judgment rendered by the learned Additional District Judge, in Regular Civil Appeal No. 311/1986) whereby appeal preferred by the respondents came to be allowed and decree for dismissal of their suit for eviction (R.C.S. No. 448/1983) was reversed.

2. Indisputably, the petitioners are tenants in respect of a house property bearing City Survey No. 2286, to the extent of one (1) room as described in the claim clause, situated in ward No. 1 at Shrirampur. The respondents are the original plaintiffs and are landlords of the house property. The standard rent is Rs. 30/- p.m. The tenancy month commences from first day of each calendar month.

3. The respondents filed suit for eviction alleging that the petitioners had committed willful default in payment of the rent. They asserted further that they were in need of the suit premises for bona fide and personal use. They issued quit notice dated 30-8-1983 and called upon the petitioners to vacate the suit premises by end of the next calendar month. The petitioner No. 1 gave reply to the quit notice on 29-9-1983 and separately filed an application for fixation of

standard rent. The petitioners denied that the agreed rent was Rs. 40/- p.m. as alleged. They further denied that they were willful defaulters. They contended that they had paid the rent from 1-9-1981 till February, 1983, but the respondents did not issue rent receipts. They were not in the arrears of the rent, nor ground of bona fide requirement is legal and proper. Consequently, they sought dismissal of the suit.

4. The trial Court held that the standard rent was of Rs. 30/- p.m. and the petitioners were in arrears of rent w.e.f. 1-9-1998 as alleged. The trial Court further held that the respondents failed to establish bona fide requirement of the suit premises for personal use and occupation. The trial Court came to the conclusion that since the petitioners deposited the arrears of the amount of rent within period of one month of filing of the suit, they were protected in view of Section 12(3)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, "the Bombay Rent Act"). The suit was, therefore, dismissed.

5. Feeling aggrieved, the respondents preferred the appeal (R.C.A. No. 311/1986). The first Appellate Court reversed finding of the trial Court on the question of the default. The 1st Appellate Court held that the defendants/petitioners herein were ineligible to claim protection u/s 12(3)(b) of the Bombay Rent Act. The First Appellate Court held that the nonpayment of the standard rent fixed by the Court during pendency of the appeal could be considered as sufficient ground to evict the petitioner in as much as the appeal is continuation of the original suit. The First Appellate Court noticed the irregularity committed by the petitioners (tenants) while depositing the rent during the pendency of the appeal. It was found that they had not deposited the rent for period of 79 months. It was noticed that after 1994, the rent was not deposited regularly and that the petitioners committed significant defaults. Consequently, the appeal was allowed.

6. Heard learned Counsel for the parties.

7. The material question to be considered is whether finding of fact rendered by the First Appellate Court regarding nonpayment of the rent by the petitioners during the proceedings of the first appeal can be regarded as perverse and that the petitioners would be entitled to seek protection u/s 12(3)(b) of the Bombay Rent Act.

8. Mr. Bayas would strenuously argue that the irregularity in the payment of rent or nonpayment of the rent during pendency of the appeal could not be the ground for eviction. He would submit that such defaults may give rise to separate cause of action but the same could not have been taken into account by the First Appellate Court. He would further submit that the question of default is restricted to the averments in the complaint and the scope of the issues involved in the suit could not have been expanded by the First Appellate Court. He contended that there is substantial compliance of Section 12(3)(b) of the Bombay Rent Act. The learned Counsel, therefore, urged to allow the petition and quash the impugned

judgement. Per contra, learned Counsel for the respondents supports the impugned judgement. It is contended that the appeal is continuation of the suit and, therefore, the petitioners/defendants were required to continue to pay the standard rent in order to seek protection of the relevant provision.

9. Before I appreciate the rival contentions, let it be noted that the standard rent was fixed by the Court. The petitioners were, therefore, under obligation to pay the standard rent in order to show their bona fides. The rent at rate of Rs. 30/- p.m. ought to have been deposited for each month. The petitioners have failed to deposit the rent for period of 79 months during pendency of the appeal. The First Appellate Court observed that there was no dispute about the fact that the petitioners failed to deposit the standard rent for period of 79 months as per the chart submitted by the landlords/respondents vide Exh-40 dated 10-8-2000. The chart filed by the respondents indicated that no rent was deposited after end of 1994. The finding of the First Appellate Court that the petitioners have failed to pay the rent regularly as required, is, therefore, unassailable. It is amply clear, therefore, that the petitioners were irregular in making the payments and were found in arrears of rent for 79 months" period during pendency of the appeal. Mr. Kasliwal makes a statement that even in this Court, during pendency of the writ petition, the petitioners did not deposit the standard rent. Both the courts concurrently found that the ground of bona fide requirement was unavailable to the respondents. This ground is not agitated before this Court.

10. Mr. Bayas seeks to rely on certain observations in Hasan Alam Beg Jamdar Vs. Sardari Bagum Usman Dabir and Another, . A Single Bench of this Court observed that there was no question of tenant abiding by any condition of Section 12(3)(b) during pendency of the appeal in as much as the tenant was already held not to be a defaulter and the suit, on that count, was dismissed. In the given case, the landlady had issued demand notice on 18-4-1977, demanding arrears of rent from the tenant for period between 1-6-1976 till 31-3-1977. The tenant replied that notice on 16-5-1977 and immediately had filed Misc. Application for determination of the standard rent. The landlady had thereafter filed a suit-for recovery of possession on the ground that the tenant was in arrears of the rent. The trial Court dismissed the suit for recovery of possession though decreed the same with regard to arrears of rent. The learned Single Judge held that the tenant had demonstrated that he was not a defaulter till the passing of the decree by the trial Court and could not be held to be a defaulter merely by virtue of not depositing the rent thereafter in the Appellate Court. That was a case wherein the standard rent was not fixed. In the wake of fact situation of the said case, the learned Single Judge held that if there was any further default during the pendency of the appeal, the landlady would get a fresh cause of action for which she could serve a notice of demand as contemplated and proceed against the tenant according to law. It appears that the Judgment of the Apex Court in Kulkarni Patterns Pvt. Ltd. and others Vs. Vasant Baburao Ashtekar and others, was not brought to the notice of the learned Single Judge in the above mentioned case. The Apex Court in that case

noticed that the defendant-tenant did not deposit the entire arrears on the first date of hearing and did not deposit the further rent during the pendency of the appeal. Thus the defendant persistently committed defaults during the pendency of the suit and also the appeal in paying the rent. The Apex Court was pleased to confirm the decree for possession u/s 12(3)(b) of the Bombay Rent Act.

11. In *Bhaskar Bhagwant Shinde Vs. Sou. Vasudha Madhukar Kadam and Another*, , another Single Bench of this Court (Smt. Ranjana Desai, J.) held that it was not possible to accept interpretation that due to failure of the tenant to deposit the rent during course of the appeal, the landlord may have another cause of action to institute suit for eviction. It is held:

It is not possible to accept this interpretation because that will lead to absurdity. It will make the pending appeal redundant and make the Appellate Court powerless. It will rob the Appellate Court of its authority to deal with a callous tenant. It is true that the proviso seeks to offer relief against forfeiture to tenants. But the rent legislation is not intended to merely offer protection to tenants. It also seeks to protect landlords from unscrupulous tenants. It attempts to strike a balance. If the landlord is made to rush to file a second suit during the pendency of the appeal for the tenants' failure to pay arrears during the pendency of the appeal that would make mockery of this provision. It would lead to multiplicity of suits. Where appeal is filed, it would necessarily be extension of the suit for the purpose of Section 12(3). It is not possible to hold that now there is a drastic change in the law to the extent that the earlier view of the Supreme Court in *Mranalini B. Shah and Anr. v. Bapalal Mohanlal Shah* AIR 1980 S.C. 353, case (supra) no longer holds the field. To canvass this submission, reliance is placed on the Supreme Court's Judgment in *Vasant Ganesh Damle Vs. Shrikant Trimbak Datar and Another*, . In my opinion, this reliance is misplaced.

12. The Apex Court in *Mranalini B. Shah and Anr. v. Bapalal Mohanlal Shah* AIR 1980 S.C. 353, considered the expression "regularly" as used in Section 12(3)(b) of the Bombay Rent Act. The Apex Court held 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 Apex Court further observed that if the tenant persistently defaults during the pendency of the suit or appeal in paying the rent, the Court has no discretion to treat what were manifestly irregular payments as substantial compliance.

13. In *Lalchand Jematmal v. Ramchhodbhai Shankerbhai Patel and Ors.* AIR 1968 Guj 172, the Full Bench of the Gujarat High Court interpreted Section 12(3)(b) of the Bombay Rent Act. The Full Bench of the Gujarat High Court observed as under:

In the light of the above discussion we hold that Section 12(3)(b) of the Rent Act) applies even at the appellate stage and the words "till the suit is finally

decided" occurring in Section 12(3)(b) refer also the decision of the suit in appeal by the Appellate Court when an appeal is preferred by the landlord against a decree passed by the trial Court dismissing his suit and the question arises before the Appellate Court whether the tenant is entitled to the protection of Section 12(3)(b), the Appellate Court would have to consider whether the tenant has, after paying or tendering in Court the arrears of standard rent and permitted increases on the first day of hearing of the suit or, op. or before such other date as might have been fixed by the Court, continued to pay or tender in Court regularly the standard rent and permitted increases till the decision of the appeal.

There cannot be duality of opinion that the appeal is continuation of the suit. It is imperative, therefore, that cause of action for the suit would continue even during pendency of the appeal. The Appellate Court is entitled to take cognizance of the subsequent developments. It is difficult to countenance the argument, therefore, that nonpayment of the standard rent during pendency of the appeal would give rise to separate cause of action and such an event cannot be taken into account so as to pass decree u/s 12(3)(b) of the Bombay Rent Act.

14. Mr. Bayas invited my attentat to Narhar Damodar Wani v. Narmadabai T, Nave deceased through L.Rs. 1984 B.C.I. 26 : 1984 Mh.L.J. 313 and Shivlingappa Virappa Alange since deceased by his heirs and legal representatives Vs. Malappa Chanmallappa Shetti since deceased by his heirs and others, . In case of Shivlingappa Alange Virappa Alange (supra), the question was regarding habitual defaults of the tenant wherein the learned Single Judge of this Court held that the case was governed by Section 12(3)(a) of the Bombay Rent Act. In Narhar Damodar Wani (supra), the legal position prior to the amendment of the Rent Act was taken into account by the Division Bench. In the given case, provisions of Section 12(3)(b) of the Rent Act was held to be inapplicable because the landlord was disabled from filing of the suit due to immediate compliance of the demand notice. The present case, however, stands on different footing. The landlord duly established that the petitioners were irregular in payment of the rent during pendency of the appeal. They did not deposit rent and the interest amount for 79 months" period. Needless to say, the tenancy could be forfeited in view of Section 12(3)(b) of the Bombay Rent Act. The Appellate Court was right, therefore, in decreeing the suit by allowing the appeal.

15. In the result, the petition is without merit and as such, is dismissed. No costs.