

(1991) 07 BOM CK 0070
In the Bombay High Court
Case No : Writ Petition No. 3174 of 1989

Karamchand Deojee Sanghavi

APPELLANT

Vs

Tulsiram Kalu Kumawat

RESPONDENT

Date of Decision : 25-07-1991

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 12(3), 13

Transfer of Property Act, 1882 — Section 109

Citation : (1991) 4 BomCR 76

Hon'ble Judges : N.P. Chapalgaonkar, J

Bench : Single Bench

Advocate : A.S. Bajaj, for the Appellant; P.G. Deshmukh, for the Respondent

Final Decision : Allowed

Judgement

N.P. Chapalgaonkar, J.—Petitioner-landlord herein had filed Regular Civil Suit No. 87/1976 for the eviction of the tenant on the ground of default in the payment of the rent for a period of more than six months and for his bona fide reasonable need. He also prayed arrears of the rent for last three years and notice expenses. It was contended by the landlord that a room admeasuring 10 ft. x 8 ft. and open space admeasuring 15 ft. x 8 ft. which is part of the property known by City Survey No. 3912, 3915 and 3917 situated at Dattawadi in Chalisgaon town was let out by the original landlord tenant respondent for a monthly rent of Rs. 2/- and the tenant has not paid the rent from 1st of February, 1967 to 28th February, 1975. The property in dispute came to be purchased by the present petitioner on 20th March, 1971.

2. Plaintiff issued a notice purporting to be u/s 12 of the Bombay Rents, Hotel and Lodging house Rates Control Act, 1947, claiming that the tenant should pay a sum of Rs. 194/- as arrears of rent and Rs. 4/- as the rent for the two months of march & April, 1975. He also claimed Rs. 16.65 Ps. as expenses for the notice. This notice was replied on 22nd March, 1975 by the tenant- defendant. Firstly he

contended that he has paid the rent to the old landlord and he was not in know of the fact that the ownership of the disputed property is transferred. He further contended that since last one and half year he has not paid the rent which he could not pay since he was not knowing a to which are the heirs of the deceased landlord. He further contended that since petitioner has become the landlord on 20th March, 1971, he is remitting a sum of Rs. 97/- being the rent for the period from 20th March, 1971 to the end of March, 1975. It is not in dispute that the Money Order of Rs. 97/- was sent by the tenant which came to be refused by the landlord. It is also not in dispute that the sale-deed executed in favour of the present petitioner authorities him to collect the rent which has already become due in respect of the suit property.

3. Learned Civil Judge (J.D.), Chalisgaon, who tried and decided Regular Civil Suit No. 87 of 1976, was pleased to hold that the defendant tenant is in arrears from 1st February, 1967. Defendant has not proved that he has paid the rent till 1970. Landlord has failed to prove that he requires the suit premises for reasonable bona fide need but he is entitled to recover the possession on the ground of default for a period of more than six months. This judgment and decree by the learned Civil Judge (J.D.), Chalisgaon, dated 13th March, 1980, was challenged in an appeal bearing No. 94/1980. The learned district Judge, Jalgaon, was pleased to allow this appeal. He dismissed the suit so far as substantive prayer for possession was concerned and substituted the monetary decree by the trial Court by lesser figure of Rs. 88.85 Ps. This judgment and decree dated 5th February, 1982, is the subject matter of challenge in this writ petition.

4. It is necessary to note that though the tenant had tried to raise a dispute about the standard rent in paragraph 7 of his written statement, it was not raised within 30 days as is required by Explanation (1) to section 12 of the Act of 1947 and, therefore, the point of standard rent is not pursued by the parties before me.

5. Shri A.S. Bajaj, learned Counsel appearing for petitioner, submitted that the appellate Court mainly relied on a judgment of this Court in the case of Narendra Singh Viridi v. N.N. Engineer & others 1979 MLJ. 851, and reversed the decree passed by the trial Court holding that the arrears of rent which were to be paid to be earlier landlord, cannot be considered while examining the question of default since the nature of those arrears becomes that of the debt. Shri Bajaj invited my attention to a judgment of Division Bench of this Court in Radhabai bapurao shelar since deceased by heirs Madhav Hiralal & others v. Trimbak Madhavrao Shirole & others 1981 M.L.J. 967, which has in terms overruled the judgment of the learned single Judge in Narendra Singh Viridi's case (cited supra). Therefore, Shri Bajaj contended that an erroneous conclusion is reached by the District Court and it should be held that the tenant is defaulter for more than six months period.

6. In reply to these submissions, Shri P.C. Deshmukh, learned Counsel appearing

for respondent, submitted that a default made by the tenant should be coupled with the element of negligence and unless it is shown that the tenant was negligent in making payments of the rent, no right is accrued to the landlord to evict such a tenant. He further submitted that since it was pleaded specifically by the tenant that he has paid all the rent to the old landlord, it was for the new landlord petitioner to disprove this claim by submitting evidence including that of the old landlord. Shri Deshmukh wanted to distinguish the judgment of the Division Bench in Radhabai's case (cited supra) on the ground that this speaks about the breach of the condition during the tenure of the earlier landlord and the question whether the new landlord can base his claim of eviction on such breach of condition, but it is not a case wherein the question whether the new landlord is entitled to recover the rent which was due to his transferee, is considered. Shri Deshmukh also submitted that there is no direct agreement of any lease between the tenant and the new landlord and, therefore, the tenant cannot be said to be bound to pay regular monthly rent to the new landlord. Lastly, he also submitted that the tenant had paid the sum which was recoverable in the light of the provisions of the Limitation Act and he had paid sum for more than three years rent within 30 days of the receipt of the notice. Therefore, though he has not paid the rent for the previous period, which is barred by law of limitation, he cannot be adjudged as defaulter. According to him, what is to be paid by the tenant within 30 days is the rent recoverable by the landlord.

7. Section 109 of the Transfer of Property Act, 1882, provides for the rights of lessor's transferee. It has been provided that unless there is a specific contract with the transferrer, the transferee is not entitled to the arrears of rent due before the transfer. In the instant case, transferee has been granted the right to recover the rent which is specifically stated to be due. Therefore, this recital in the sale-deed in favour of the petitioner is one piece of evidence which goes to show that there were some arrears of rent when the transfer was effected. If the tenant wants to prove that he has complied with the requirement of section 12 and has paid all the sum which was due, the onus would always be on such tenant to prove that he is not in arrears of rent to be paid. Mere statement in the written statement that he has paid the rent to the landlord will not shift the onus from tenant to the landlord. Neither any details about such payment have been deposed by the tenant in his oral testimony nor any document to fortify this allegation is submitted. The remittance of Rs. 97/- by the tenant to the landlord is said to be for the period from 20th March, 1971 i.e. the date on which the sale-deed on which the sale-deed came to be executed in favour of the petitioner. Remittance of the rent before this period has not been proved by the tenant and as such, finding of the fact recorded by the trial Court and which has not been in effect disturbed by the lower appellate Court, that the rent from 1st of February, 1967 has not been paid by the landlord, need not be disturbed in this writ petition. If this finding is taken into account, then the tenant will have to be held to be defaulter for a period of more than six months and it also will have to be

held that he is not entitled for the protection which the statute afforded to him by virtue of sub-section (2) of section 12 of the Bombay Rent Act of 1947 as it then was.

8. This takes us to the second submission of Shri Deshmukh that the Division Bench judgment of this Court in Radhabai's case 1981 M.L.J. 967, (cited supra), does not specifically deal with the question of entitlement of the new landlord to recovery the rent which was due to his transferee. The Division Bench was considering a broad question as to the rights inter se between the tenant and transferee landlord in respect of whatever breaches of terms of the lease were committed by the tenant before the transfer. It held thus :

"In our judgment, it is clear that no transfer of estate whether by Act of parties or by operation of law, the right to recover possession u/s 13(1) of the Act can be exercised by the transferee and on such transfer the right to recover possession would not be retained with the transferor, nor would it stand extinguished."

The Division Bench was pleased to consider the view taken by the learned Single Judge that the breaches contemplated by Clause (a) and (b) of section 13(1) of the Act are those committed by the tenant during the subsistence of the tenancy qua the landlord who wants to invoke the provisions of Clause (a) or Clause (b) of section 13(1) of the Act and on the strength of that finding, the decree passed by the two Courts below was reserved. Disapproving the foundation of the reasoning of the learned Single Judge that the landlord who can claim such a right is the landlord who "for the time being" is entitled to recover the rent, the Division Bench was pleased to observe thus :---

"The cause of action is not limited to the person who was a landlord on the date of the breach but it is available to the successor-in-interest of such landlord also. We wish to make it clear that in case it is found that the original landlord has waived the right, then the question of transferee exercising the right would not arise. With respect to the learned Judge, we are not inclined to accept the conclusion recorded in Shantinath's case and we overrule the same."

Therefore, if the transferee-landlord has been given a right to recover the rent which was due to the transferor and such transferee-landlord gives a notice to the tenant u/s 12, if the tenant wants to avail the concession given by sub-section (3), then the tenant must pay all the rent due not only to the transferee-landlord but the original transfer-landlord also. Therefore, in the instant case, tenant was bound to pay the arrears from 1967 and not from the day when the present landlord had acquired the title of the property in question.

9. Next submission of Shri Deshmukh is that the suit was filed on 26th April, 1976 and the plaintiff was entitled to recover rent for the period of three years immediately preceding filing of the suit as provided by Article 52 of the Schedule to the Limitation Act of 1963. According to Shri Deshmukh, if the tenant pays the rent which is recoverable in the light of the Limitation Act, then he cannot be said

to have neglected to comply with the requirement of section 12(3) of the Act of 1947.

10. Provisions of section 12 of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947, are special provisions which can be treated to be exceptions to the general law of the rights of lessee and lessor as are defined and regulated under the Transfer of Property Act, 1882. An agreement of lease between landlord and tenant specifying a monthly rent would create a liability in favour of the tenant to pay the rent per month and regularly. Section 12(3) of the Bombay Rent Act merely gives a concession to the tenant that though he has not paid the rent regularly, he can pay all the arrears within the period stipulated therein after the receipt of the notice. If all the amount due as arrears of rent is not paid to the landlord, the default is complete. Neither the law of limitation nor the fact in given case that the tenant has subsequently paid the rent would undo the effect of such default. A statutory right is created in favour of the landlord that if the tenant fails to pay all the arrears within the said period, the Court shall pass a decree for eviction of such tenant. It is now well settled that no discretion is also left with the Court if it is proved that the requirements of sub-section (2) or (3) have not been complied with and the Court had to pass a decree. Submission of Shri Deshmukh is not well-founded for the reason that the law of limitation is prescribing limitation for availment of the remedy. If a suit by the landlord is barred for the recovery of certain amount, it does not follow that his entitlement is extinguished. Entitlement of a landlord to get the rent is a right created in his favour by a contract of lease and the obligations under a lease will have to be discharged in the manner prescribed by the terms of the lease. The Law of Limitation does not give a valid discharge to any amount for which a person is entitled. It merely bars a remedy. As was observed by the Supreme Court in *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, :

"When a debt becomes time-barred, it does not become extinguished but only unenforceable in a Court of law. If then a debt subsists even after it is barred by limitation, the employer does not get, in law, a discharge therefrom. The modes in which an obligation under a contract becomes discharged are well-defined and the bar of limitation is not one of them."

The learned Judges of the Supreme Court then proceeded to rely on a passage in Anson's Law of Contract as follows :---

"At common Law lapse of time does not affect contractual rights. Such a right is of a permanent and indestructible character, unless either from the nature of the contract, or from its terms, it be limited in point of duration."

But though the right possesses this permanent character, the remedies arising from its violation are withdrawn after a certain lapse of time; *interest reipublicae ut si finis litium*. The remedies are barred, though the right is not extinguished."

11. The maxim "*Interest reipublicae ut si litium*" means that in the interest of the

republic, litigation must have a limit. Limitation Act was enacted to limit the scope of the litigation before the State. He does not extinguish the right which a party has. There can be statutes which would protect those rights. The concession given to the tenant under sub-section (3) of section 12 of the Bombay Rent Act is one of such instances. Even if the rent due to the landlord is time barred, the tenant must pay the rent if he wants to avail the concession given by the law otherwise the tenancy would have been terminable if he has not paid the rent regularly each month. That default can be condoned on certain conditions by the statute and, therefore, the tenant will to comply with the conditions strictly. Nowhere in section 12, the entitlement of the landlord in the light of the law of limitation has been prescribed as a condition qualifying the quantum of amount which is to be paid by the tenant. Therefore, the simple meaning of sub-section (3) of section 12 would want the tenant to pay all the arrears of standard rent and permitted increases irrespective of the fact whether they are within limitation or not.

12. Shri Deshmukh further contended that the Rent Control Act is a beneficial legislation enacted to protect the interest of the tenant and, therefore, it will have to be interpreted to be the largest benefit possible to the tenant. Though it is true that the rent legislation like Rent Control Act or the Tenancy Laws have been enacted for the benefits of the tenants, they do not take away all the rights which the landlord as a class may have. Such an interpretation would take the laws into the arenas of unreasonableness which in fact is not there. Lastly, Shri Deshmukh submitted that his client was not in know of the fact of transfer in favour of the present petitioner and, therefore, he could not pay the rent regularly to the new landlord. Had there been any new agreement with the new landlord he would have paid the rent regularly. This argument cannot be accepted for the reason that the new landlord had given a notice which is duly received by the tenant and the finding that the tenant is defaulter is not based on the fact that he had not paid the rent before the notice but it is based on the fact that despite notice he had not paid rent within the period of 30 days.

13. In the result, writ petition is allowed. The judgment and decree passed by the District Judge, Jalgaon, on 5th February, 1982 in Civil Appeal No. 94 of 1980 is hereby quashed so far as it rejects the claims of possession. The suit of the plaintiff is decreed and the defendant is directed to put the plaintiff in possession. However, the substitution by the District Court of the figure Rs. 88.65 Ps. to the decree granted by the trial Court, is hereby maintained. In view of the fact that since long time the tenant is living in the suit premises which is used for residential purpose and looking to the fact that it is now-a-days quite difficult to find an alternate accommodation particularly in a town like Chalisgaon, time of one year from today is granted to the defendant-tenant to vacate the premises on condition that he filed an undertaking in the trial Court in the form of an affidavit within a period of four weeks from today that he will not part with the possession to any third party, will not induct and third party, shall keep the premises in the present condition, shall continue to pay the rent

regularly either to the landlord and obtain receipt thereof or deposit that in the trial Court on or before 10th day of each English calendar month.

14. Rule is made absolute in the above terms. In the circumstances of the case, parties should bear their own cost of this writ petition.