

(1974) 06 BOM CK 0004

In the Bombay High Court

Case No : Special Civil Application No. 1945 of 1968

Kartarsing Hukumsing Chog

APPELLANT

Vs

Muktabai Parashram Pansare and Another

RESPONDENT

Date of Decision : 18-06-1974

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(2), 12(3)

Citation : AIR 1975 Bom 201 : (1974) 76 BOMLR 706 : (1974) MhLj 881

Hon'ble Judges : Deshmukh, J;Aggarwal, J

Bench : Division Bench

Advocate : H.D. Gole, for the Appellant; Jaisingrao E. Shinde, for the Respondent

Judgement

Deshmukh, J.—This writ petition arising under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the "Rent Act") has been referred to a Division Bench by a learned Single Judge of this Court. The point involved is in a way simple but the reference became necessary because of two conflicting judgments of Single Judges both the which were reported. Hence the learned Single Judge thought that the point should be disposed of by a larger Bench.

2. The petitioner before us is a tenant of the property and present respondents Nos. 1 to 7 are the heirs and legal representatives of the original landlord, who was the plaintiff in the suit. There is no dispute that the petitioner tenant is a monthly tenant and pays an aggregate rent as there is no dispute about it in this litigation. Admittedly, it appears that the landlord served a notice on the tenant on April 15, 1965 , as per Ex. 24, and claimed arrears of Rs. 123.44 at the rate of Rs. 8 per month. This would be the arrears for more than 15 months. The tenant replied by his notice dated 24 April, 1965 and pointed out that since October, 1960 the landlord has not been issuing printed receipts. He, therefore, alleged a certain accounting of the payments made by him to the Municipality and also to the landlord by way of Money Orders. He also alleged certain repairs

amounting to Rs. 60 and the agreement to adjust that amount towards the rent. After giving his own accounting the tenant alleged that the arrears due were only Rs. 98.25 and they were remitted by Money Order within a period of one month from the date of receipt of notice. Ex. 24.

3. As the Money Order did not cover the entire rent due, the landlord filed a suit for possession on July 2, 1965. As many as five grounds were urged for claiming possession, which included as one of the grounds that non-payment of entire arrears of rent within a period of one month next after the service of notice. All other grounds on which possession was claimed were specifically given up in the Appellate Court. In the trial Court, the learned Civil Judge came to the conclusion that the arrears of rent were not as alleged by the landlord but a certain accounting may show that the tenant was not in arrears for more than six months. He therefore dismissed the suit for possession on the ground of non-payment of rent.

4. In the appeal carried by the landlord to the District Court. Second Extra Assistant Judge. Thana, came to the conclusion that the total arrears due as on the date of the notice were Rupees 115.90. The tenant was fully aware of this account as he knew all the details which were required to make up accounts. In spite of this fact the tenant remitted only Rs. 98.25 which did not cover all the arrears then due. Having come to this conclusion, the learned Appellate Judge followed the principle of the judgment in *Mrs. Manorama S. Masurekar Vs. Mrs. Dhanlaxmi G. Shah and Another*, and concluded that the tenant was not entitled to any protection in view of the fact that he had not paid the entire arrears within the period of one month after the date of the receipt of the notice. The plaintiff's suit was decreed. Being aggrieved the tenant has filed this writ petition in this Court.

5. The learned Single Judge who heard this petition and made the referenced order found that there is a conflict of judgments between the decisions of two learned Single Judges of this Court. He has dealt with the nature of the conflict and thereafter this petition to a larger Bench. While passing this order, the learned Single Judge confirmed the finding of the appellate Court that the tenant was fully aware of all the arrears he had to pay but failed and negated to make full payment within one month neglected to make full payment within one month in spite of the notice contemplated by sub-section (2) of Section 12 of the Rent Act.

6. The point now involved in this writ petition is already decided by the Division Bench of this Court. However, we will briefly indicate the nature of the conflict between the judgments of the two learned Single Judges. In *Hirachand Sonu Bhavsar Vs. Mahadeo Waman Upasani*, the factual position was almost similar to the one before us. The tenant there was a monthly tenant and the rent was payable by month. There was no dispute about the standard rent. The arrears of rent at the date of the notice were for a period of more than six months. Within one month from the receipt of the notice the tenant made certain payment which reduced the arrears to less than six months, though there were still arrears. In

the present case also the petitioner tenants is a monthly tenant and his rent is payable by month. The rent of Rs. 8 per month is admittedly the proper and standard rent is raised in the present petition. Undoubtedly there were arrears of rent for more than six months when the suit notice dated April 24, 1965 , was served on the tenant; but he did pay by Money Order Rs. 98.25 within one month from the receipt of the notice leaving a balance of arrears for less than six months.

7. The question of law that arises in the present litigation and which arose before the learned Judge in *Hirachand Sonu Bhavsar Vs. Mahadeo Waman Upasani*, was whether the case of a tenant of the present type falls u/s 12(3)(b) of the Rent Act and is taken away from the operation of Section 12(3)(b) of the Rent Act. What was urged then was that the tenant may be in arrears for more than six months at the date of the receipt of the notice. It may be that all the three other conditions are satisfied on the date of the receipt of the notice. What is required for the purpose of compelling the Court to pass a decree for possession is that at the expiry of one month from the date of the receipt of the notice u/s 12(2) , the tenant has failed and neglected to make payment of the arrears of rent. When a part payment is made reducing the arrears to less then six months, this last condition is not satisfied and the case falls u/s 12(3)(b) and is taken out form the provisions of Section 12(3)(a) . The argument was based upon a certain interpretation of wording of Section 12(3)(a), the relevant portion of which is as follows:

"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 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 months after notice referred to in sub-section (2) the Court shall pass a decree for eviction in any such suit for recovery of possession."

8. On a plain reading of the above provisions, it would appear that when the notice under sub-section (2) of Section 12 is being served, the payment ought to be in arrears for more than six months or more and the tenant must neglect to make payment "thereof" within a period of one month after the notice of payment. What exactly is meant by the word "thereof? What payment must be made so that he fulfils the condition of making payment "thereof" within a period of one month. Now, the earlier portion of the section refers to arrears to "rent or increases". If the rent or increases are in arrears for more than six months and payments thereof are to be made, that means of all the rent and increases which are due and which are obviously for a period of six months or more.

9. The learned Single Judge in *Hirachand Sonu Bhavsar Vs. Mahadeo Waman Upasani*, points out that it must be held that the payment contemplated by this sub-section is the full payment of all the arrears which are claimed in the notice and shall not be partial payment so as to bring down the arrears to less tan six

months. In fact sub-section (1) of Section 12 grants absolute protection against eviction if the tenant either pays or is ready and willing to pay the amount of the standard rent and permitted increases and observes the other conditions of the tenancy. This protection may appear absolute in a sense but it also qualifies or is dependent upon actual payment readiness or willingness to pay. The actual payment can at once be known where arrears are claimed by the landlord and defence is taken up that this amount of arrears is paid. Normally actual payment is contemplated. However, there may arise a conflict, and a legitimate conflict, between a landlord and tenant as to what constitutes the standard rent or permitted increases. When such a conflict develops there is a provision to approach the Court for determination of that conflict either before or after the termination notice is received from the landlord. Under the provisions of the Act certain steps are to be taken by the tenant and when he does that in the eventualities provided by the Act he may be deemed to be ready and willing to pay.

10. When no such conflict exists, and there is hardly any dispute about the amount due, the protection of Section 12(3)(b) is available to the tenant only if he pays and not otherwise. Having given this protection in a case where the arrears of rent are more than six months and there is no dispute about the standard rent or permitted increases and the landlord has served a notice u/s 12(2) the legislature contemplates full payment of entire arrears within one month, if the tenant wants the protection of the Rent Act. If he neglects to make payment within one month as contemplated by sub-section 12(2)(a), the consequences of eviction must follow. The words used in this section formerly were "the Court may pass a decree". However, the word "may" was interpreted by the Division Bench of this Court to mean "shall". That interpretation was accepted by the Legislature and Section 12(3)(a) was suitably amended by Act No. 14 of 1963 to include the expression "the Court shall pass a decree". There is, therefore, no doubt that where all the four conditions of Section 12(3)(a) are satisfied the Legislature desires to take away the protection to the tenant and wants the Court to pass a decree for possession. By pointing out the general intention of the Legislature and the scheme of Section 12, the argument of the learned counsel that partial payment bringing down the arrears to less than six months will protect the tenant from eviction, was negated by the learned Single Judge deciding the question in *Hirachand Sonu Bhavsar Vs. Mahadeo Waman Upasani*, .

11. However, a contrary view has been taken by another learned Single Judge of this Court in *Isabel M. Rebello Vs. Kasarchand Anandram Bantia and Others*, . Even in this case the facts are similar to the case before us, as also before the earlier Judge in *Hirachand Sonu Bhavsar Vs. Mahadeo Waman Upasani*, The rent was payable by month. There were arrears accumulated beyond six months and there was no dispute of standard rent. A notice terminating the tenancy, if the arrears are not paid within one month was sent to the tenant who made a partial payment leaving a balance which was less than the arrears of six months. The

tenant's counsel raised the same argument which was heard and decided by this Court in Hirachand's case. However, it appears that the learned counsel appearing for the respondent did not bring to the notice of the learned Judge the earlier decided judgment of this Court in Hirachand Sonu Bhavsar Vs. Mahadeo Waman Upasani, . He did, however, argue that the payment which should protect the tenant must be the full payment of arrears and not partial payments. It was emphatically pointed out that the language of sub-section (3) (a) of Section 12 refers to the arrears of rent and permitted increases for a period of six months or more and contemplates payment "thereof". To say that partial payment is enough, is to almost rewrite the section or to read in the section much more than intended by the Legislature. However, this argument of the learned counsel for the respondent was rejected by the learned Judge. He thought that a partial payment leaving the balance of arrears which would be less than six months of arrears is enough and that is all that is contemplated by Section 12(3)(a). In such an eventuality the case is taken out from the provisions of that section and it must fall u/s 12(3)(b).

12. However, we note that the Judgment of the Supreme Court confirming the view taken by this Court in Mrs. Manorama S. Masurekar Vs. Mrs. Dhanlaxmi G. Shah and Another, was brought to the notice of the learned Single Judge. In Mrs. Manorama S. Masurekar Vs. Mrs. Dhanlaxmi G. Shah and Another, the facts were that there was no dispute about the standard rent and the arrears were due for more than six months. A notice of termination and demanding the arrears of rent was served but no payment was made within one month after service of the notice. After one month, but before the suit was filed the entire amount was remitted. Having done so, the tenant sought protection by trying to bring his case within the provisions of Section 12(3)(b). The Supreme Court in terms rejected this approach and confirmed the view of this court, that belated payment after one months though of the entire amount, will not assist the tenant because the eventuality contemplated by the legislature by the provision of Section 12(3)(a) has already arisen and the clock could not be set back by mere payment. This case was distinguished by the learned Single Judge on the ground that the tenant had made payment in that case after the period of one month and having so paid after the period of one month, was not entitled to protection under the Act. In our view, so far as the general interpretation of the provisions of Section 12 and the concept behind the drafting of Section 12 as pointed out by the Supreme Court is concerned really govern the approach in that litigation as also in the present litigation. however, the learned Judge took the view that partial payment takes out the case from the provisions of Section 12(3)(a) and the matter would then be governed by the provisions of Section 12(3)(b). It is because of this view which has been subsequently taken by another Judge, that the present reference became necessary.

13. We may now point out that similar reference was made in yet another matter which was heard by a Division Bench of this Court on 17-12-1973 in a group matter Spl. C. A. Nos. 1070 of 1969, 1797 of 1969 and 2585 of 1969 = Nandlal

Topandas Vs. R.K. Joshi, . The Division Bench consisting of Nathwani and Hajarnavis,. JJ. took the view that the case of (1961) 63 Bom LR 855 was correctly decided and the subsequent judgment of the learned Single Judge in Isabel M. Rebello Vs. Kasarchand Anandram Bantia and Others, does not represent the correct law. The learned Judges have briefly pointed out that on a plain reading of language of Section 12(3)(a) the payment "thereof" contemplated is the payment of all the arrears and not a portion thereof. We are in respectful agreement with the view taken by the learned Judges of the Division Bench and we are also of the view that the case of Hirachand Sonu Bhavsar Vs. Mahadeo Waman Upasani, was correctly decided. It is not necessary to give elaborate reasoning as the judgment in Hirachand's case as also the judgment of the Supreme Court in Mrs. Manorama S. Masurekar Vs. Mrs. Dhanlaxmi G. Shah and Another, deal with the principle on which Section 12 is drafted.

14. In the case of Kurban Hussen Sajauddin Vs. Ratikant Nilkant and Another, the Division Bench of this Court was called upon to construe the provisions of Section 12(3)(a). However, the context was slightly different. The question that was raised was whether the Court must pass a decree when all the four condition laid down by Section 12(3)(a) are satisfied or was it still the discretion. The controversy was argued on the basis of expression "may" used by the legislature. The Division Bench pointed out that in the context in which that expression has been used, the real intention was to enable the court to pass a decree and not to vest any discretion in the court. In that context the word "may" really meant "must or shall". While pointing out the background why such a meaning must be attributed to the word "may", the general scheme of Section 12 and the intention of the legislature behind the use of that language as a whole is also pointed out. On this discussion made from item to item, this court clearly pointed out that the protection available to a tenant who has no other dispute to raise with the landlord is available only if he does not remain in arrears for more than six months, and if he is in arrears for more than six months the entire payment must be made within one month from the date of notice. If he does not do so , he forfeits his right to possession and must vacate the premises. In this view of the matter, the present writ petition deserves to be dismissed.

15. We may point that Shri Gole tried to build up the argument on facts before us, though he had no right to do so. He said that there was a distinct feature of the present litigation. There was a dispute about total payment due, though there was no dispute about the standard rent or permitted increases. Certain repairs were effected by the tenant which were agreed to be compensated by the landlord towards the rent. Some taxes of the Municipalities were paid and an account of all these things was to be made. The landlord did not pass a regular receipt from October 1960 and some amount was remitted by Money Order by the tenant. This shows that a proper account was really due between parties and unless a proper account was made the amount finally due from the tenant could

not be ascertained. This, according to him, was the approach of the trial Court and the finding was given in favour of the tenant and because of this disputed account, the tenant could not be said to be a person who was not ready and willing to pay.

16. We have heard him at some length but we are not impressed at all. The appellate Judge has considered all this argument and has dealt with the same and in para 9 of his judgment has given a clear finding. That finding has been accepted and confirmed by the learned Single Judge, who made the reference. In view of this fact, we are not bound to hear the learned counsel but having heard him we find that there is nothing which is erroneous on the face of the record. There is therefore to substance in the argument that the tenant was not aware as to how much he was really required to pay and that there was no deliberate or wilful default in not making payment. The finding of the learned Appellate Judge is that the tenant was not aware as to how much he was really required to pay and that there was no deliberate or wilful default in not making payment. The finding of the learned Appellate Judge is that the tenant was aware as to how much he had to pay and he raised a dispute, which is not contemplated by the Act, and failed and neglected to pay. This amounts to neglecting to pay as contemplated by the provisions of Section 12(3)(a).

17. In this view of the matter, the case is covered by section 12(3)(a) and in the view we take, the petition must fail and the rule is discharged with costs.

18. Rule discharged.