

(2008) 08 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No. 1350 of 1994 and Civil Application No. 957 of 2008

Krishnaji Vaghu Thakur (since deceased through his legal heirs) Bhagirathi Krishna Thakur and Others APPELLANT

Vs

Govind Gopalkrishna Bapat since deceased through his legal heirs Lilavati Govind Bapat and Others RESPONDENT

Date of Decision : 30-08-2008

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 12(3)
Constitution of India, 1950 — Article 227

Citation : (2008) 6 MhLj 683

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : Rahul P. Walawalkar, instructed by D.S. Sawant, in W.P. No. 1350 of 1994 and M.V. Limaye, in Civil appln. No. 957 of 2008, for the Appellant; M.V. Limaye in W.P. No. 1350 of 1994 and Rahul P. Walawalkar, instructed by D.S. Sawant in Civil Appln. No. 957 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This Writ Petition under Article 227 of the Constitution of India takes exception to the Judgment and Decree passed by the IInd Additional District Judge, Raigad, Alibag dated 3rd January, 1994 in Civil Appeal No. 81 of 1989. By this Judgment, the Appellate Court allowed the Appeal preferred by the landlord and decreed the Suit for possession filed by the landlord on the ground that the petitioner/tenant had committed default within the meaning of Section 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Act").

Present Petition raises limited controversy as to whether the conclusion reached by the Appellate Court on this aspect is appropriate. To appreciate the controversy, the reference can be made to the admitted facts. It is admitted position that suit notice was issued on 2nd October, 1985 demanding arrears of rent for the period between February, 1985 to September, 1985. It is asserted in

the suit notice that the tenancy created in favour of the petitioners" predecessor was monthly tenancy and the rent of Rs. 35/- (Rupees Thirty Five) was payable on monthly basis. It is not in dispute that the demand notice was received by the predecessor of the petitioners (tenant) on 7th October, 1985.

2. The tenant did not remit the amount as demanded in the suit notice nor filed the application for standard rent disputing his liability to pay the amount of rent as demanded by the respondent/landlord within the statutory period. As a result, the landlord was left with no option but to institute Suit for possession.

In addition to the ground of default, the landlord also asked for possession on other counts, which, however, has not been accepted by the Court below. The Appellate Court as aforesaid, for the first time, decreed the Suit in favour of the landlord on the ground of default within the meaning of Section 12(3)(a) of the Act. It is also not in dispute that the tenant deposited the arrears of rent for the first time in Court on 9th September, 1986. On these admitted facts, the Appellate Court proceeded to hold that provisions of Section 12(3)(a) of the Act were squarely applicable to the fact situation of the present case.

3. Indeed, the trial was pending when Section 12 of the Act was amended in the year 1977. However, it is now well established position that the amended provisions would not apply retrospectively. In the present case, therefore, amended provisions have no application.

Going by the admitted facts on record, as it emerges that the tenant neither paid the arrears of rent as demanded in the suit notice nor raised any dispute or filed standard rent application within the statutory period, decree of eviction within the meaning of Section 12(3)(a) of the Act was inevitable. The Court has no discretion in such a situation.

4. The fact that the tenant has subsequently regularly paid the rent in Court, does not take the matter any further. The Appellate Court has therefore rightly allowed the appeal preferred by the landlord and decreed the Suit for eviction on the ground of default within the meaning of Section 12(3)(a) of the Act.

Learned Counsel for the petitioners, however, contends that the suit notice was issued on 2nd October, 1985 and the tenancy was terminated by the said suit notice with effect from 3rd October, 1985. In other words, notice as issued was not in compliance with the statutory requirement within the meaning of Section 12 of the Act. It is not possible to countenance this submission for the simple reason that it is admitted position that after notice was sent on 2nd October, 1985, the same was duly served on the tenant on 7th October, 1985 and the landlord proceeded to file the Suit only on 7th December, 1985.

5. It is the decree passed by the Rent Court which results in termination of the tenancy and not the stand taken by the Plaintiff in the suit notice. Thus understood, there is no substance in this contention.

Accordingly, the Petition is devoid of merits. The same deserves to be dismissed.

During the pendency of this Petition, Civil Application No. 957 of 2008 has been filed by M/s Bayma Constructions claiming that now the said partnership firm has become the owners of the suit property as they have purchased the same by Sale Deed dated 9th January, 2008.

6. However, there is no mention in the application that the landlord has assigned his right for recovery of arrears of rent to the Applicants. In absence of such assertion, the question of Applicants being made party to the present Writ Petition does not arise. I am not expressing any opinion as to whether the Applicants would be entitled to pursue execution of the decree against the petitioners in their own rights or through the landlords/respondents herein. That question is left open to be decided at the appropriate stage.

7. Accordingly, Writ Petition and the Civil Application are disposed of on the above terms.