

(1991) 11 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition No. 2015 of 1981

Ladlesahab Shah Ahmed Sayyed

APPELLANT

Vs

Arifulasha Kadari Dargah Trust

RESPONDENT

Date of Decision : 14-11-1991

Acts Referred:

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

Citation : AIR 1992 Bom 222 : (1991) 4 BomCR 354 : (1991) 2 MhLj 1572

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : A.N. Maniyar, for the Appellant; J.R. Lalit, for the Respondent

Judgement

1. By this petition under Article 227 of the Constitution of India, the petitioner has impugned the judgment and decree passed by the IVth Joint Civil Judge, Junior Division, Solapur, in Regular Civil Suit No. 1282 of 1973 on 28th June, 1979 and judgment and decree passed by the Extra Assistant Judge of Solapur on 7th April, 1981 in Civil Appeal No. 368 of 1979.

2. The crucial facts required to be stated for disposal of this petition are as under:--

(a) The petitioner was the tenant of the suit premises since the year 1959. The contractual rent of the suit premises was Rs. 11/- per month. Arifulasha Kadari Dargah Trust is the landlord of the property bearing Municipal House No. 352 at Begum Peth, Solapur. The petitioner carries on tailoring business in the shop premises in question.

(a) The petitioner did not pay rent for the period commencing from 1st January, 1970. On 5th November 1973, the landlord Trust issued a notice to the petitioner u/s 12(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Bombay Rent Act) demanding arrears of rent for the period commencing from 1st January, 1970. The said arrears amounted

to Rs. 517/-. The said notice was duly received by the petitioner on 8th November, 1973. The petitioner did not tender any amount to the landlord and the said notice remained uncompleted with. The petitioner did not file any application for fixation of the standard rent within one month after service of the said notice as contemplated under Explanation I to Section 12 of the Bombay Rent Act. The petitioner sent a reply to the said notice on 6th December, 1973.

(c) On 15th December 1973, the landlord Trust filed Civil Suit No, 1282 of 1973 for eviction of the petitioner from the suit premises on various grounds. None of these grounds is now relevant except the ground of alleged default in respect of payment of rent within the notice period.

3. It is the contention of the respondents that the petitioner incurred liability to be evicted from the suit premises u/s 12(3)(a) of the Act as the petitioner was in arrears of rent for a period of more than six months from the date of the notice and the notice of demand was not complied with. It was the contention of the respondents before the Court below that the petitioner was bound to raise the dispute regarding fixation of standard rent, if any, by filing an application within a period of one month from receipt of the said notice and that was the only mode by which such dispute could be raised if the petitioner desired to avail of the statutory presumption of readiness and willingness to pay the amount of rent within the contemplation of Explanation I to Section 12 of the Act. The respondents also contended before the Courts below that even if Section 12(3)(b) of the Act were to be held applicable, the petitioner was not entitled to the protection of the Act under the said provision as the petitioner had not paid the amount of rent due and payable by the petitioner at the first hearing of the suit within the contemplation of Section 12(3)(b) of the said Act. It is contended that the petitioner tenant was not ready and willing to pay rent in respect of the suit premises and the petitioner was a "defaulter" in this respect.

4. It emerges from the record that issues in the suit were settled on 7th June, 1974 and the petitioner made the first deposit of rent in the trial Court only on 19th July, 1978.

5. The petitioner alleged before the Courts below that the petitioner had made payment of Rs.66/- and Rs. 132/- towards rent for which the landlord had failed to give credit. The petitioner failed to prove the said allegations. The findings of fact recorded by the Courts below have become final. The said findings are not shown to be perverse.

6. The trial Court as well as the appellate Court held in terms that Section 12(3)(a) of the Bombay Rent Act was clearly attracted to the facts of the case and the decree for eviction must therefore follow in view of the "default" proved. The appellate Court observed in paragraph 12 of its judgment that even if Section 12(3)(b) of the Act were to be applied, decree for possession shall have to be passed as the petitioner had failed to comply with the requirements of the said Section also. It was observed by the Appellate Court in the said paragraph of its

judgment that the petitioner had not paid the arrears of rent and recurring rent regularly within the contemplation of the said Section. The petitioner did not pay arrears of rent within the notice period. The petitioner did not pay the said arrears at the first hearing of the suit. The petitioner failed and neglected to comply with his contractual and statutory obligation to pay the rent regularly.

7. Both the Courts below held that the standard rent of the suit premises was liable to be fixed at Rs. 2.65 per month.

8. The first question which arises for my consideration is as to whether the impugned judgments and decree suffer from any error of law apparent on the face of the record. In Harbanslal Jagmohandas and Another Vs. Prabhudas Shivilal, , the Apex Court held that in order "to avoid operation of Section 12(3) (a) of the Act, the dispute in regard to standard rent or permitted increases, must be raised at the latest before the expiry of one month from the date of service of notice u/s 12(2) of the Act and it was not enough to raise a dispute for the first time in the written statement. Admittedly, no application was made by the petitioner tenant for fixation of standard rent within one month from the service of the notice u/s 12(2) of the Act.

9. Mr. Lalit, the learned counsel for the landlord, has also invited my attention to the Division Bench judgment in the case of Chhaganlal Mulchand Jain Vs. Narayan Jagannath Bangh, which is on all fours. The Division Bench of our High Court clearly held in this case that Section 12(3)(a) of the Bombay Rent Act was applicable if the application for fixation of standard rent was not made within one month from service of the notice. In that case the Court had fixed the standard rent at Rs. 11/- even though the contractual rent was Rs. 35/- per month. It was therefore argued before the Division Bench of our High Court in this case that the amount deposited by the tenant was liable to be considered as adequate and sufficient compliance in view of the standard rent having been fixed at a much lower rate than the contractual rent. Dealing with the submission, the Division Bench of our High Court presided over by Chandurkar, J. (as His Lordship then was) held that in view of the decisions of the Supreme Court and of our High Court, the tenant was not entitled to raise any dispute and accordingly raising of the dispute in the suit itself without filing an application within one month from service of the notice was of no consequence. On any view of the matter, the petitioner tenant having not complied with his obligation to pay the arrears of rent within one month from service of notice of demand or make an application to the Court for fixation of standard rent within one month from service of the notice u/s 12(2) and make payment of the rent and permitted increases regularly and as may be specified in the order of the Court, the decree for possession passed by the Courts below cannot be faulted with. Section 12(3)(a) of the Act makes it obligatory on the Court to pass the decree for eviction where the conditions prescribed by the said Section are satisfied. The Courts below have rightly held that all the conditions prescribed by the said Section were complied with and the petitioner had failed and neglected to pay arrears of rent and

recurring rent in accordance with his statutory obligations.

10. Mr. Maniyar, the learned counsel for the petitioner, invited my attention to the judgment of Jahagirdar, J. in the case of Gulabchand Ramchand Jain Vs. Noorbeg Umarbeg Mirza, . In this case it was held by the learned Judge that the suit will be governed by the provisions of Section 12(3)(b) of the Act if the dispute about the standard rent existed when the notice was issued and existence of such dispute was sufficient to oust the applicability of Section 12(3)(a) of the said Act. In other words, the learned Judge held that the landlord could not invoke the provisions of Section 12(3)(a) of the Act if the dispute as to standard rent existed on the date of the notice merely because the tenant had not made an application u/s 11(3) of the Act within one month from the receipt of the notice. In my judgment, the ratio of this judgment no longer holds the field in view of the Division Bench judgment of our High Court in the case of Chhaganlal v. Narayan Jagannath, 1983 MLJ 254 (supra). The interpretation of the Supreme Court's judgment in Harbanslal's case reported in Harbanslal Jagmohandas and Another Vs. Prabhudas Shivilal, , by the abovereferred Division Bench decision is binding on me. I respectfully agree with the ratio of the decision of the Division Bench judgment of our High Court and respectfully follow the same. With respect, I hold that the ratio of the abovereferred judgment in Gulabchand v. Noorbeg, is in conflict with the Division Bench judgment in Chhaganlal's case and no longer holds the field,

11. Mr. Maniyar also argued that the notice u/s 12(2) was not issued under proper authority of the trustees. In paragraph 13 of the judgment, the Appellate Court below has clearly held that the decision to adopt proceedings against the petitioner was taken by passing necessary resolution and Mr. Kasim Ankalgi had the requisite authority to take steps for issue of the said notice. It is not possible to reappraise the factual material in exercise of my jurisdiction under Article 227 of the Constitution of India. The finding recorded by the Appellate Court is correct.

12. In the result, the petition fails. Rule is discharged with no order as to costs. The decree for possession shall not be executed for a period of six months from today, provided the petitioner files usual undertaking on affidavit to hand over vacant possession of the suit premises to the decree holder Trust on expiry of the period of six months and pay the amount of compensation in the meanwhile regularly. Written undertaking must be filed within one month from today. If the undertaking is not filed, liberty to the decree holder to execute the decree on expiry of one month from today.

13. Rule discharged.