

(1999) 01 BOM CK 0020
In the Bombay High Court
Case No : Writ Petition No. 160 of 1990

Mahalingayya S. Hunshalmath since deceased by his heirs	APPELLANT
Vs	
Shri Anant S. Nifadkar	RESPONDENT

Date of Decision : 28-01-1999

Acts Referred:

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

Citation : (1999) 2 ALLMR 342 : (2000) 1 BomCR 182

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : Mrs. Anita A. Agarwal, for the Appellant; Dinesh Khaire, for the Respondent

Judgement

R.M. Lodha, J.—This writ petition filed under Article 227 of the Constitution of India is directed against the judgment and decree passed by 8th Addl. District Judge, Pune on 8-11-89 affirming the judgment and decree for eviction passed by the 4th Addl. Small Causes Court, Pune. The only question that arises for consideration in this writ petition is whether the decree for eviction passed by the courts below on the ground of default under Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (for short Bombay Rent Control Act) is justified or not.

2. The brief facts necessary for consideration of the said question are : Shri Anant S. Nifadkar, respondent herein is the landlord in respect of 3 rooms on the second floor in house No. 697, Kasba Peth, Pune which was let out to Shri Mahalingayya S. Hunshalmath, since deceased and now represented by his legal representatives. According to the landlord, the said premises were let out to the tenant for the rent of Rs. 33.50 ps. per month. The tenant, it is alleged by the landlord, committed default in payment of rent and for the period from 1st August, 1981 upto 31st May, 1985, the rent fell due. The landlord sent a notice to the tenant on 8th April, 1985 demanding arrears of rent and his vacation from

the premises in question. The said notice was received by the tenant on 12th April, 1985. The landlord then filed the suit for eviction. The suit was contested by the tenant and he denied the landlord's allegation and that was defaulter. The tenant set up the plea that notice dated 8th April, 1985 was received by him on 12th April, 1985 and as the Civil Court was closed for Summer Vacation from 29th April, 1985 to 2nd June, 1985, on reopening of the Court i.e. on 3rd June, 1985, he made an application for fixation of the standard rent. The learned Judge of the Small Causes Court by his order dated 10th June, 1985, fixed the interim rent at Rs. 25/- per month and directed the petitioner to deposit the arrears of rent within one month from that order. The tenant deposited Rs. 1600/- on 26th June, 1985 in Court and since no rent remained outstanding, he prayed for dismissal of the suit.

3. The application for fixation of the standard rent and the suit were disposed of by the trial Court by its judgment and order dated 20th January, 1988. The trial Court held that tenant was defaulter and since he did not comply with the provisions of section 12(3)(b) of the Bombay Rent Control Act, he was liable to be evicted. The tenant carried the matter in appeal unsuccessfully.

4. Few facts are not in dispute and these facts are that the tenant made an application for fixation of the standard rent within time as permitted under law upon receipt of the notice from the landlord. The trial Court on 10th June, 1985 fixed the interim rent at Rs. 25/- per month and directed the tenant to deposit the arrears of rent within one month from the date of that order. Within the time granted by the trial Court, the tenant deposited Rs. 1600/-. Since the interim rent was fixed at Rs. 25/- per month and due rent was from 1st August, 1981, the amount of rent due at that rate from 1st August, 1981 till 31st May, 1985 i.e. for 46 months comes to Rs. 1500/-. The tenant deposited a sum of Rs. 1600/- on 26th June, 1985. Thus, admittedly, when the deposit was made by the tenant, four months rent remained deposited in advance. According to the landlord, during the pendency of the suit, the tenant made the payment in the following manner :-

Sr.No.	Amount	Ref. No.	Date	Receipt
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|----|--------|-------|------------|---------|
| 1. | 1600/- | 4901 | 26-06-1985 | 0839187 |
| 2. | 25/- | 5270 | 03-07-1985 | 0839350 |
| 3 | 25/- | 7614 | 07-08-1985 | 0710021 |
| 4. | 25/- | 9108 | 03-09-1985 | 0251408 |
| 5. | 50/- | 12761 | 04-11-1985 | 086375 |
| 6. | 50/- | 15988 | 02-01-1986 | 0201084 |
| 7. | 75/- | 403 | 04-04-1986 | 0538245 |
| 8. | 125/- | 8212 | 02-09-1986 | 0349235 |

9. 100/- 18699 05-03-1987 0353548
10. 150/- 6420 30-07-1987 0484228
11. 354/- 13543 04-01-1988 0861293
12. 101/- 17297 16-03-1988 0793120
13. 34/- 505 08-04-1988 0775339
14. 34/- 2173 08-06-1988 0696336
15. 34/- 5419 05-07-1988 0809537
16. 34/- 1449 04-05-1988 1006040
17. 467/- 17298 16-03-1988 0793121
18. 100/- 4216 15-07-1988 0028920
19. 34/- 4601 02-08-1988 0028471

5. If the aforesaid statement is seen in the light of the fact that a sum of Rs. 100/- remained deposited in advance, it cannot be said that the tenant did not deposit the rent regularly as contemplated u/s 12(3)(b) of the Bombay Rent Control Act. The judgment of the Apex Court relied upon by the first Appellate Court, as a matter of fact, does not help the landlord at all and rather the observations made therein definitely help the tenant. The Apex Court observed that the regularity contemplated u/s 12(3)(b) may not be a punctuality of clocklike precision and exactitude but it must reasonably conform with substantial proximity to the sequence of times or intervals at which the rent fails due. Since, four months rent remained deposited in advance and thereafter, in the month of July, 1985, August, 1985, September, 1985, the monthly rent was still deposited that means in the month of September, 1985, four months rent again remained deposited in advance and therefore by deposit of two months rent in the month of November, 1985, it cannot be said that any default was committed. Similarly, for the month of January, 1986, April 1986, September, 1986 and March , 1987, the inference cannot be drawn that tenant was not regular in making payment of rent since four months rent remained in advance.

6. The aforesaid facts clearly make the judgment and decree passed by the courts below unsustainable and decree for eviction cannot be sustained.

7. Resultantly, the judgment and decree dated 8-11-89 passed by the 8th Addl. District Judge, Pune confirming the judgment and decree passed by the Addl. Small Causes Court, Pune are quashed and set aside. Plaintiffs suit for eviction stands dismissed with no order as to costs.

8. Rule is made absolute in the aforesaid terms.

9. Petition allowed.