
(1994) 07 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No. 2949 of 1981 and W.P. No. 3074 of 1989

Mohammed Shafi Khalifa and Another

APPELLANT

Vs

Kurban Alli Kasam Alli

RESPONDENT

Date of Decision : 18-07-1994

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11(3), 12(1), 12(3)

Citation : (1995) 1 BomCR 614 : (1994) 96 BOMLR 923

Hon'ble Judges : M.S. Vaidya, J

Bench : Single Bench

Advocate : R.N. Dhorde, for the Appellant; V.S. Bedre, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Vaidya, J.—The tenants/defendants against whom decree for possession has been passed by the trial Court in Regular Civil Suit No. 488 of 1976 in the Court of learned Civil Judge, Sr. Dn., Ahmednagar and whose appeal bearing Regular Civil Appeal No. 448 of 1980 was dismissed in the Court of the Extra Assistant Judge, Ahmednagar, has filed this writ petition, praying that the decrees passed by both the courts below be quashed and set aside.

2. The petitioners were tenants in the residential premises admeasuring about 8 Khans in House No. 6214 and 6215 of Ahmednagar. The rent was payable monthly and the tenancy month commenced from 1st of every month. In a previous proceeding between the parties bearing Regular Civil Suit No. 510 of 1969 and in the appeal bearing Regular Civil Appeal No. 164 of 1971 arising out of that, the standard rent of the suit premises was determined to be Rs. 17/- per month. The respondent/plaintiff gave a notice dated 27-4-1976 (Exh. 18 in the suit) to the petitioners contending, inter alia, that the petitioners were in arrears of rent for the period from 1-4-1973 to 31-3-1976. This notice was received by the petitioners on 28-4-1976 vide Exh. 19. The tenancy stood terminated by the end of 31-5-1976. The petitioners replied the notice under their reply dated

20-5-1976 in which, it was contended that in the previous proceeding an excess amount of Rs. 52/- was paid on or about 14-6-1973 and if that amount was considered for the purposes of the present proceeding, the arrears due from the petitioners were not to the extent claimed by the plaintiff. According to the plaintiff/respondent, the defendant No. 1 - petitioner had sub-let the premises. The name of that sub-tenant was mentioned in the notice dated 27-4-1976. Later on, it was found that there was some mistake in naming the sub-tenant and, therefore, a second notice dated 9-6-1976 (Exh. 18-A in the suit) came to be given only for the purposes of giving the correct name of the tenant and it had confirmed the averments made in the earlier notice dated 27-4-1976. Thereafter, Regular Civil Suit No. 488/76 came to be filed in the Court of Civil Judge, Sr. Dn., Ahmednagar on 17-6-1976. The Court negatived all grounds other than the ground of default, but decreed the suit for possession on the ground of default invoking the provisions of section 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (in brief, referred to as the "Bombay Rent Act"). The matter was carried in appeal by the tenants, but the same came to be dismissed and the decree for possession on the ground of default came to be confirmed. Under such circumstances, the tenants have preferred this writ petition, praying that the decrees passed by the courts below should be quashed and set aside.

3. It was not in dispute that the standard rent of the suit premises was determined at Rs. 17/- per month in the previous proceeding. The arrears of rent claimed by the plaintiff as per the notice to quit were for the period from 1-4-1973 to 31-3-1976. True it is that, in the reply dated 20-5-1976 the tenant had contended that certain amount deposited in the Court in previous proceeding had to be adjusted towards the rent for the period from 1-4-1973 and that, therefore, he was not in arrears for the period as indicated in the notice to quit by the landlord. Neither the petitioners/tenants indicated in their depositions, at the trial, the date on which the amount was paid or the period for which the rent was deposited in the Court, nor was any question asked to the plaintiff/respondent in the cross-examination. The trial Court, therefore, came to the conclusion that it was not proved that any amount deposited in the previous proceeding could be towards the arrears of rent for the period from 1-4-1973 to 31-3-1976. It appears from the record of the appeal that after the arguments were heard and the matter was posted for judgment, the Advocate for the appellant/tenants tendered on record (Exh. 20 in the appeal), a certified copy of the C & D registers showing that Rs. 68/- were deposited in Regular Appeal No. 164/71 on 14-6-1973 and they were paid by the Nazarat on 5-8-1975. The amount is shown in the register to be the amount of rent payable to the respondent, but Columns 11 to 22 of the register do not indicate to whom the payment was made. Moreover, the original application under which the amount was tendered in the Court or a certified copy thereof, were never brought on record to indicate that at the time of depositing the amount, the petitioners/tenants had indicated that the amount was being paid towards the arrears of

rent for any specific period. The learned Appellate Judge did not allow the production of this document because, it was produced at a late stage and because the respondent/plaintiff could have no opportunity thereafter to reply on the factual aspect of the matter. Even if we consider the document, at this stage, the document is hardly of much assistance to the present petitioners/tenants, in as much as, it does not indicate to whom the amount was, in fact, paid and against which claim the amount was paid. In the absence of oral as well as documentary evidence on the point, it is not possible for us to conclude that the amount of Rs. 68/- deposited under the aforesaid entry covered any portion of the period from 1-4-1973 to 31-3-1976 i.e. the period, now, in dispute.

4. As the standard rent of the premises was already fixed in a previous proceeding and as the arrears claimed were for a period of more than six months and as the defendant himself had admitted in his deposition that after 1-4-1973 he had not paid any amount to the landlord, except by way of money order of Rs. 576/- which was despatched on 26-5-1976, it is clear that the petitioners/tenants were in arrears of the rent for the period from 1-4-1973 to 31-3-1976 as contended by respondent/plaintiff. No oral evidence was adduced on that point and there was hardly anything on record which could rebut the version of the plaintiff/respondent. The amount of arrears at the rate of Rs. 17/- per month for the period from 1-4-1973 to 31-3-1976 works out at Rs. 595/-. The defendants/petitioners had despatched a money order for a sum less than that of Rs. 578/-. This was not even a tender of full amount that he was bound to pay to the landlord for enabling him to seek protection of section 12(3)(a) of the Bombay Rent Act. Again, all that the tenant had done was despatching the money order on 26-5-1976. The period of 30 days contemplated by section 12(3)(a) within which the entire arrears should have been paid, expired on 28-5-1976, in as much as, the notice dated 27-4-1976 (Exh. 18) came to be served on the tenants on 28-4-1976 vide Exh. 19. The coupon showing the date on which the respondent/plaintiff had received the amount, was not tendered on record. No question was asked even to the respondent/plaintiff in his cross-examination to ascertain, whether or not, he had received the amount of Rs. 578/- within a period of 30 days from the date of service of notice on the tenant. Mr. Dhorde's contention that the fact that the money order was sent on 26-5-1976 itself was enough to discharge of the responsibility cast by the statute on the tenant. I am afraid, we cannot agree with his submission on that point, because, section 12(3) (a) casts a duty on the tenant "to make payment thereof until expiration of the period of one month after the notice referred to in sub-section (2)". In the case of tender of amount by money order through post, the post would become an agent, at the most, of the dispatcher and not that of the recipient. The duty cast on the tenant is very specific, namely, "to make payment" and not "to tender the amount". In this context, it is relevant to see the provisions contained in section 11(3) of the Bombay Rent Act also, which casts on the tenant a duty to deposit the amount in the Court before a particular date and not to show that he had tendered the amount. When the rights of the parties are defined to the minutest

details by various provisions of the statute, it is not possible for us to give the sections an interpretation which would be not warranted by law. The legislation contained in the Bombay Rent Act, is a social legislation, which is intended to give benefits as well as disadvantages sometimes to the landlords and sometimes to the tenants. A provision need not be construed liberally for the benefit of the tenant on the grounds of sympathy when, in a provision like the one contained in section 12(3)(a) of the Act, a rigorous duty is cast on the tenant. In the absence of any evidence on record that the landlord had received the money order before completion of 30 days from the date of service of his notice to quit, it is not possible to hold that the tenant has discharged his burden of duty cast on him by the statute. In the light of the aforesaid legal position, it could not be urged on behalf of the tenant that on account of short payment of Rs. 578 before the institution of the suit, the cause of action for the suit for possession on the ground of default in payment of the standard rent did not survive. Such a contention, if accepted, could give a handle to a wily tenant to harass his landlord by tendering after every default for six months an amount that was short of the due amount. The law does not intend to give such a handle to the tenant to cause harassment to the landlord.

5. Thus from both points of view, the petitioners/tenants are required to be found defaulters on the date of institution of the suit. In addition, Mr. Bedre, the learned Counsel for the respondent-landlord, contended that though the stay on usual terms to the execution of the decree was granted by this Court as far back as on 22-9-1981, the tenant has failed to deposit in the Court the amount falling due from that date. There was hardly any material before us to verify, whether or not, he had deposited any amount during the pendency of this writ petition. If the tenant had, in fact, deposited, he should have tendered some material on record to lead us to believe so. If those amounts also are not deposited, there is a third aspect to the whole issue on account of which the petitioners would not be entitled to protection of even section 12(1) of the Bombay Rent Act. It is needless to say here, that in the case of default for a period of more than six months, the readiness and willingness is to be measured with the norm given in section 12(3)(a). Therefore, if during the pendency of the suit nothing is deposited by the tenant, the very foundation of his case gets lost.

6. The courts below have considered the issue of default at length and have recorded a concurrent finding on the point of default. In view of the considerations discussed above, we find no reason to take a different view of the matter. There is, therefore, no reason to interfere with the decisions given by the courts below. The writ petition is, therefore, dismissed with costs throughout.

Rule discharged.