

---

**(1980) 09 BOM CK 0029**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 639 of 1980**

More Narayan Bhadke

APPELLANT

Vs

Shashikant Balakrishna Malkar

RESPONDENT

---

**Date of Decision :** 12-09-1980

**Acts Referred:**

Bombay General Clauses Act, 1904 — Section 11  
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11, 11(1), 11(3), 12, 12(2)  
Limitation (Amendment) Act, 1964 — Section 29(2), 4  
Limitation Act, 1963 — Section 29(2), 4

**Citation :** AIR 1982 Bom 10 : (1981) 83 BOMLR 160

**Hon'ble Judges :** Pendse, J

**Bench :** Single Bench

**Advocate :** M.A. Rane, for the Appellant; G.R. Rage and D.R. Banavalikar, for the Respondent

---

## Judgement

1. By this petition and under Act, 227 of the Constitution of India, the petitioner is challenging the legality of the judgment dated Jan., 5, 1980 passed by the District Judge, Kolhapur, revering the decree passed by the Second Joint Civil Judge, Junior Division, Kolhapur, On June 7, 1977.

2. The proceedings arise out of a suit for eviction filed by the respondent under the provisions of S. 12(3) of the Bombay Rents, Hotel and Lodging House Rates control Act, 1947 (hereinafter referred to as the Rent Act), The respondent is an owner of a house bearing city Survey No. 1064 at Kolhapur with three rooms on the first floor. One room on the loft and two rooms on the ground floor were let out to the petitioner for his residence at the contractual monthly rent of Rs. 70/-. The petitioner remained in arrears from Aug. 1, 1970 and the respondent terminated the tenancy and called upon the petitioner to pay the arrears of rent as required by Section 12(2) of the Rent act by notice dated April 17, 1974, The notice was received by the petitioner on April 27, 1974, On June 10, 1974, the petitioner filed Misc, Appln, No, 98 of 1974 in the court of Civil Judge, Junior

Division, Kolhapur for fixation of standard rent as provided by S. 11(3) of the Rent Act,. Thereafter on June 12, 1974, the respondent instituted Civil suit No.498 of 1974 in the Court of Civil Judge, Junior Division, Kothapur for recovery of possession of leased premises on two grounds. The first was that the premises are unlawfully sublet by the petitioner. While the second ground was that the petitioner had incurred liability by not paying the arrears of rent and is liable to be evicted u/s 12(3)(a) of the Rent Act.

3. In the Misc, Application filed by the petitioner, on July 28, 1974, an application was filed by the petitioner for fixation of interim rent. It appears that no order was passed on the application by the trial Court. On August 29, 1974, the respondent/landlord filed an application in the suit instituted by him for direction to the tenant to pay the rent. In answer to this Application the petitioner filed an application at Exh. 14 on Sept, 16, 1974, in the suit requesting the trial Court to fix interim rent. On this application, the trial Court passed order, in the suit, on oct 4, 1974, directing the petitioners to deposit the entire arrears then due before Nov. 11, 1974, and also to deposit the costs of the suit, Accordingly, the petitioner deposited the entire arrears on Oct, 16, 1974, along with the amount of costs, It is not in dispute that thereafter all along the petitioner-tenant had regularly paid the rent in the Court.

4. At the hearing of the suit, the trial Court found that the petitioner-tenant had filed the application under S. 11(3) of the Rent Act within one month of the receipt of notice and has also paid the interim rent as directed by the Court, and is, therefore, entitled to the advantage of Explan. I to Section 12 of the Rent Act, The trial Court held that the case of the petitioner fall under S. 12(3)(b) of the Rent Act and dismissed the claim of the conditions of that sub-section were satisfied. The trial not guilty of unlawfully subletting the premises.

5. The respondent carried on appeal before the District Judge, Kolhapur and before the learned District Judge the only ground on which possession was sought was the default committed by the petitioner in payment of rent. The learned District Judge came to the conclusion that the application for fixation of standard rent under S. 11(3) of the Rent Act was not filed by the petitioner within a period of one month from the date of receipt the notice under sub-section (2) of S. 12 of the Rent Act, and, therefore, the tenant is not entitled to the advantage of Explan. 1 to sec. 12 of the Rent Act. The learned District Judge also held that the mere filing of the application under s. 11(3) of the Rent Act is not sufficient to attract the Explan. 1 of S. 12 but it is obligatory on the tenant to get the interim rent determined forthwith. The learned District Judge also held that as the petitioner did not apply for fixation of interim rent till July 28, 1974, the application u/s 11(3) of the Rent Act should be deemed to have been filed on that day, The learned District Judge was of the opinion that mere filing of the application under Sec. 11(3) of the Rent Act by the petitioner without seeking fixation of the interim rent forthwith. Indicates that the application was not bona fide. On the strength of these findings, the learned District Judge allowed the

appeal and passed the decree of eviction. The judgment of the learned District Judge is under challenge in this petition

6. Shri Rane, the learned counsel appearing in support of the petition, submitted that the learned District Judge has committed an error apparent on the face of record in disturbing the decision of the trial court. Shri Rane submitted that the presentation of the application on July 10, 1974, could by no stretch of imagination be held to be beyond period of one month from the date of receipt of notice. Shri Rane further urges that the learned District Judge did not properly appreciate the scope of sub-section (1) and sub-sec (3) of S. 11 of the Rent Act. The learned counsel submits that the assumption of the learned District Judge that advantage of Expln. 1 of Section 12 is available only when they application under S. 11(3) of the Rent Act is filed and an application for fixation of interim rent is made forthwith, is not correct. Shri Rage, the learned counsel appearing on behalf of the respondent, on the other hand urges that the findings arrived at by the learned District Judge are in accordance with law and need no interference in this petition. Shri Rege submits that the application under S. 11(3) of the Rent Act filed by the petitioner did not include prayer for interim rent and unless the application includes such as prayer, the advantage of Explanation 1 to S. 12 of the Rent Act is not available, Shri Rage also submitted that the presentation of the application after the expiry of one month from the date of receipt of the notice disentitles the petitioner from claiming advantage of the explanation.

7. In view of these rival submissions, two questions fall for my determination in the present petition, The first question is whether the presentation of the application on June 10, 1974 by the petitioner was within period of limitation provided by Explanation 1 to S. 12 of the Rent Act, and secondly whether the petitioner is entitled to advantage of Expln. 1 of S. 12 of the Rent Act even though the interim standard rent was not determined at the behest of the tenant immediately on the lodging of the application under S. 11(3) of the Rent Act.

8. Turning to the first question, it is not in dispute that the notice of termination issued on April 17, 1974, was received by the petitioner-tenant on April 27, 1974. On receipt of such notice, it was open for the tenant to file an application under S. 11(3) of the Rent Act within a period of one month to claim advantage of Expln. 1 to Section 12, It is not in dispute that the Civil courts at Kothapur were closed for Summer Vacation from may 6, 1974, to June 9, 1974, The period of one month from the date of receipt of notice expired during the time the court was closed for vacation. The petitioner filed the application under S. 11(3) of the Rent Act on the reopening of the Court i.e. on June 10, 1974. The trial court rightly held that the presentation of the application on the reopening of the Court was perfectly within time in view or provisions of S. 4 read with Section 29 of the Limitation Act, 1963, the learned District Judge observed that the trial Court seems to have developed a new idea to attract the provisions of S. 4 read with S. 29 of the Limitation Act to the filing of the application under S. 11(3) of the Rent

Act. The learned District Judge is obviously in error in assuming that the provisions of S. 4 read with S. 29(3) of the Limitation Act has no application to the filling of proceedings under S. 11(3) of the Rent Act. The learned District Judge overlooked that S. 4 of the Limitation Act specifically provides that -

"Where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted. Preferred or made on the day when the Court re-opens."

The Limitation Act, 1963, encompasses in its sweep not only the suits or appeals, but the applications also, Sub-Section (2) of S. 29 of the Limitation Act provides that -

"Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in ss. 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law." Article 137 of the Limitation Act provides that the period of limitation for filing any application for which no period of limitation is provided elsewhere in the schedule is three years from the date when the right to apply accrues. This residuary article provides period of three years for any application, but by the provisions of the Rent Act, which is local law, period for filling of the application under S. 11(3) of the Rent Act is limited to one month from the date of receipt of the notice under S. 12(3) of the Rent Act is limited to one month from the date of receipt of the notice under S. 12(2) of the Rent Act. Sub-section (2) of S. 29 of the Limitation Act would clearly attract to the filling of such applications. In my judgement. It is very difficult to appreciate why the learned District Judge observed that the provisions of the Indian Limitation Act are not attracted to the filling of the application under S. 11(3) of the Rent Act.

9. Even otherwise, the learned District Judge has oversize the provisions of Section 11 of the Bombay General Clauses Act, 1904. That section provides that - "Where by any Bombay Act for Maharashtra Act) made after the commencement of this Act, any act or proceedings is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceedings shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open ." Proviso to S. 11 states that -

"Nothing in this section shall apply to any act or proceedings to which the Indian Limitation act, applies." In my judgment, the provisions of the Limitation Act applies to the filling of the application under S. 11(3) of the Rent Act, but even otherwise the provisions of Sec 11 of the Bombay General Clauses Act, 1904, is a

clear answer to the finding of the learned District Judge that the application filed on July 10, 1974 was not within period of limitation.

10. The learned District Judge deprived the protection or Expln. 1 to S. 12 of the Rent Act to the petitioner-tenant on the ground, that even if the application filed on June 12, 1974 under S. 11(3) of the Rent Act is found to be within period of limitation, the petitioner-tenant has not filed the application of determination of the interimrent on the same date. The conclusion arrived at by the learned District Judge is clearly erroneous. Section 11 of the Rent. Act provides for determination of the standard rent when a dispute arises between the landlord and the tenant about the quantum of rent. Sub-section (1) of S. 11 enables the Court upon an application made to it to fix the standard rent having regard to the provisions of the Act and the circumstances of the case. Sub-section (1) of Section 11 enables either the regnant of the landlord to approach the Court for fixation of standard rent. The regnant would file an application if contractual rent is required to be increased due to alteration in the premises or due to change in the amenities or in respect of any other factors which are relevant to the fixation of the standard rent. Sub-section (2) of Sec, 11 enables the landlord or regnant to approach the Court for determination of the dispute regarding the amount of permitted increases. Sub-section (3) of S. 11 provides that an application for fixing the standard rent or for determination or permitted increase can be filed by the tenant who has received the notice from his regnant who has received the notice from his landlord under sub-sec. (2) of S. 12 about being in arrears of rent. A tenant who has not received such a notice or the standard rent under S. 11(1) of the Rent Act and for determination of permitted increases under sub-section (2) of section 12 can file the application only under sub-section (3) or S. 11 is required to deposit the interim rent that would be determined by the Court. In fact sub-section (3) itself provides that on filling of the application the Court shall forthwith specify the amount of rent or permitted increases which are to be deposited in Court by the tenant and make an order directing the tenant to deposit such amount. A copy of such order is also required to be served upon the landlord. Sub-section (3) further provides that if the tenant fails to deposit such amount, his application shall be dismissed. It is required to be stated that there is a distinction between an application to be filed by the tenant under sub-sec. (1) and sub-section (3) of S. 11 of the Rent Act. The application under sub-section (1) of S. 11 does not require the tenant to deposit any interim rent, nor can such a tenant be called upon to deposit any amount to the Court. The power to direct the tenant to deposit interim rent is conferred on the Court provided the tenant has received notice under sub-section (2) of S. 12 and files an application under sub-sec (3) of Section 11 of the Rent Act. The intention of the Legislature in imposing additional obligation on the tenant who filed the application under sub-section (2) of S. 12 and files an application under sub-sec. (3) of S. 12 and files an application under sub-sec (3) of Section 11 of the Rent Act, The intention of the Legislature in imposing additional obligation on the tenant who files the application under sub-section (3) is obvious. The tenant who has committed

default in payment of rent and receives notice from the landlord, cannot avoid his liability to make payment by merely filing an application for determination of the standard rent. Sub-section (2) or S. 11 also provides that such a tenant would not be entitled to file any appeal against the order passed in his application under sub-section (3) or sec. 11. In other words, a tenant filing an application under sub-section (3) of S. 11 is required to perform certain obligations and is also deprived of a right to file and appeal against the order passed in the application while these restrictions are not present in the case of a tenant who files an application under sub-section (1) or S. 12 of the Rent Act. This distinction has escaped the attention of the learned District Judge. The learned District Judge proceeded on the assumption that the application for fixation of standard rent by all classes of tenants can be filed only under sub-section (1) and sub-section (3) of S. 11 of the Rent Act merely provides for fixation of interim rent. As pointed out herein above, the scope of sub-section (1) and sub-section (3) is totally different and the application under sub-section (3) of sec. 11 is an independent application.

11. The learned District Judge was also in error in holding that the tenant is required forthwith to apply to the Court under sub-section (3) of S. 11 for fixation of interim rent and in absence thereof it will be deemed that the application under sub-section (3) was filed only when a request is made by the tenant for fixation of interim rent. The assumption of the learned District Judge is not warranted by the language of sub-section (3). Once an application is filed for determination of standard rent under sub-section (3) of S. 11 of the Rent Act, a duty is cast upon the Court to forthwith specify the amount of rent. It is open either for the landlord to request the Court to fix the interim rent, but the date of such a request or actual fixation of interim rent cannot be deemed to be the date of filing of the original application under sub-section (3) of S. 11 of the Rent Act. The application for determination of interim rent is not a sine qua non to attract Explanation 1 of S. 12 of the Rent Act. It is open for a tenant to file the application under sub-section (3) and thereafter to pay or deposit the contractual rent without seeking determination of the interim rent. In such a case, even though interim rent is not fixed, the advantage of explanation is available to the tenant. It must be remembered that determination of the interim rent and it can not be treated as an obligation or a liability of the tenant. In my judgment, the advantage of the explanation to S. 12 of the Rent Act cannot be denied to the tenant merely on the ground that on the date of filing of the application under S. 11(3) of the Rent Act, the tenant did not get the interim rent fixed. The application under S. 11(3) of the Rent Act. The tenant did not get the interim rent fixed. The application under s. 11(3) of the Rent Act cannot be treated as not bona fide on that count.

12. Shri Rege, relied upon certain observations made by Chief Justice Chagla in the case of Karamsey Kanji Vs. Velji Virji, to claim that not only filing of the application under S. 11(3) of the Rent Act. There cannot be any dispute with the

principle laid down by the interim rent determined within one month from the date of receipt of notice under S. 12(2) of the Rent Act. Neither the section requires it nor the judgment relied upon supports such proposition. The judgment of the learned District Judge cannot be sustained.

13. Accordingly, the petition succeeds and the rule is made absolute and the judgments of the learned district judge dated Jan. 5, 1980 is set aside and that passed by the Second Joint Civil Judge, Junior Division, Kothapur on June 7, 1977 is restored. In the circumstances of the case. There will be no order as to costs.

14. Petition allowed.