
(1973) 12 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No's. 1070, 1797 and 2585 of 1969

Nandlal Topandas

APPELLANT

Vs

R.K. Joshi

RESPONDENT

Date of Decision : 17-12-1973

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 13
Constitution of India, 1950 — Article 227

Citation : (1974) 76 BOMLR 703

Hon'ble Judges : Nathwani, J;Hajarnavis, J

Bench : Division Bench

Judgement

Nathwani, J.—These three petitions filed by tenants under Article 227 of the Constitution of India raise a common question of interpretation of Section 12(3) (a) of the Bombay Rents, Hotel and Lodging House Bates Control Act, 1947 (hereinafter referred to as the Act) and are disposed of by one common judgment.

2. The petitioners are monthly tenants of one Mohanlal Sitaram Ladha (hereinafter referred to as the landlord) in respect of different portions of House No. 398-A, situate at Poona. It is not in dispute before us that all the three tenants were in arrears of rent for a period of six months or more and were served by the landlord with a notice terminating their tenancy and calling upon them to pay the arrears of rent and that the tenants made part-payments to the landlord within a month of the service of notice so as to reduce the arrears of rent to less than six months. Thereafter the landlord filed ejectment suits against the tenants in the Small Cause Court, Poona, on the ground that the tenants had failed to pay the entire arrears of rent within one month after service of notice as required by Section 12(3)(a) of the Act. The tenants resisted the suit, inter alia, on the ground that having regard to the part-payments made by them the provisions of Section 12(5)(a) were not attracted. The trial Court decreed the suits and, on appeal, the District Court, Poona confirmed the same. The tenants have, therefore, filed these petitions to quash the said orders.

3. The common question that falls for determination is whether a case where a tenant who is in arrears of rent for six or more months makes part-payment of rent within one month after service of notice so as to reduce the arrears to less than six months falls under Sub-section (3)(a) of Section 12 of the Act. The Supreme Court in *Manorama v. Dhanlaxmi* (1966) 69 BomLR 138, considered the scheme of Section 12. Sub-section (1) of Section 12 imposes a general restriction on landlord's right to recover possession of the premises. Sub-section (2) of Section 12 further restricts the said right by providing that no such suit on ground of non-payment of rent shall be instituted by a landlord until the expiration of one month after notice demanding the arrears of rent is served by him upon the tenant. Then comes Sub-section (3) which provides for consequences that would follow after notice under Sub-section (2) is served on the tenant. Sub-section (3)(a), in so far as is material, provides that if the tenant was in arrears of rent for six or more months and he neglects to make payment thereof until the expiration of one month after service of such notice the Court shall pass a decree for eviction. It is well-settled that in such a case a tenant cannot claim protection from eviction by showing his readiness and willingness to pay the rent after expiration of one month's period. Sub-section (3)(b) deals with consequences in a case where arrears of rent demanded in the notice are for less than six months.

4. In the present case, no doubt, the tenants tendered, and the landlord accepted, certain amounts towards the arrears of rent within one month period with the result that the arrears of rent were reduced to less than six months in each case before the expiration of the said period. It is, therefore, urged by the learned advocate for the petitioners that their cases do not fall with Sub-section (3)(a) of Section 12 but would be governed by Sub-clause (3)(b). There are conflicting rulings on this point of single Judges of this Court but before considering them it would be better to refer to the material part of Sub-section (3)(a) which reads:

...if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in Sub-section (2)....

(Italics ours).

5. The whole dispute turns on the meaning of the words "payment thereof" because if the tenant makes default in payment of such amount he neglects his obligation and the landlord would have a right to recover possession of the premises. In our view, the word "thereof" according to its plain grammatical meaning refers to "the arrears of rent for a period of six months or more" occurring in the earlier part of Sub-section (3)(a) and in respect of which notice is given to the tenant under Sub-section (2). It would, therefore, follow that the payment is to be made within the statutory period of the whole amount of arrears of rent demanded in such notice. Therefore, mere part-payment by a tenant of such arrears of rent so as to reduce the same to less than six months

would not take out the ease from the purview of Sub-section (3)(a) of Section 13 and protect the tenant from ejectment.

6. In a decision of this Court, in *Hirachand Sonu Bhavsar Vs. Mahadeo Waman Upasani*, , Mr. Justice B.N. Gokhale came to the same conclusion as to the meaning of the said words in Sub-section (3)(a). In that case the tenant had made two part-payments towards arrears of rent within one month of the notice so as to reduce the arrears of rent to five months' arrears. The tenant, therefore, contended that it could not be said that he had neglected to make payment as required by Section 12(3)(a). The learned Judge repelled the said contention and said (p. 859) :

...The wording of Section 12(3)(a) that "if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in Sub-section (2)" must imply in the context that the tenant must make payment of the entire amount of rent or increases which are in arrears for a period of six months or more if he wishes to avoid the consequences of his earlier default. A part payment of such arrears before the expiry of the period of one month after notice would not prevent the bringing into operation of the provisions of Section 12(3)(a).

(Italics ours).

We respectfully agree with the above view of the learned Judge as to the effect of the said words, but he thought that the said view was implicit in the context, while with respect, as already pointed out by us the words "payment thereof" read in their ordinary grammatical sense mean that payment is to be of the entire arrears of rent.

7. Mr. Gursahani on behalf of the tenants relied upon a recent decision of Mr. Justice Vaidya in *Isabel v. Kasarchand* (1971) 74 Bom. L.R. In that case the tenant had made a part-payment towards the arrears of rent within one month so as to reduce the arrears to less than six months. The learned Judge held that the case did not fall within Sub-section (3)(a) of Section 12. After referring to *Manorama's* case (supra) and dealing with the landlord's contention that the tenant had neglected to make payment of all the arrears, he observed (p. 117) :

...This argument, in my opinion, cannot be accepted because the word "thereof" would mean only of the rent or increases which are in arrears for a period of six months or more, which is referred to earlier in that sub-section. If, as stated above, the tenant makes a payment before the expiry of the period of one month so as to reduce the arrears to less than six months, then it cannot be considered to be a case falling under Sub-section (3)(a) of Section 12 but a case falling under Sub-section (3)(b) of Section 12.

This authority is, no doubt, directly in point in favour of the present petitioners. While we agree, with respect, with the learned Judge in his construction of the

word "thereof" we are unable to agree with the conclusion reached by him. It is apparent from the judgment that the attention of Vaidya J. was not drawn to Hirachand Sonu's case. But this apart, the learned Judge seems to have thought that as the arrears of rent were reduced to less than six months the condition of tenant neglecting to make payment of arrears of six or more months within the stipulated period was not fulfilled and, therefore, the landlord could not avail of the said Sub-section (3)(a). This view implies that the condition for attracting Sub-section (3)(a) is that there should remain unpaid at the end of one month after serving of notice arrears of rent for six or more months. With respect, such a reading of Sub-section (3)(a) is opposed to the meaning of the words "payment thereof" attributed by the learned Judge in the passage quoted above. Consequently neglect on the part of a tenant to make payment of the entire amount of arrears in time would entitle the landlord to avail of the provisions of Section 12(3)(a).

8. Mr. Pratap, the learned advocate for the respondent, invited our attention to an unreported decision of Mr. Justice K.K. Desai (as he then was) in Eknath Krishnaji Wodnere v. Balaji Hari Sonawane (1966) Civil Revision Application No. 1616 of 1963, decided by K.K. Desai J., on February 14, 1966 (Unrep.). In that case the landlords gave notice to a tenant u/s 12(2) claiming-arrears of rent for more than six months and the tenant offered part-payment of two months' rent within one month after service of notice but the landlords refused to accept it and filed a suit to recover possession of the premises. The learned Judge held that the landlords were not bound to accept part-payment of rent and the provisions of Section 12(3)(a) were attracted. The reason given by the learned Judge was that the tenant was bound to pay all the rents which were in arrears for more than six months. The facts of the present case, however, are distinguishable inasmuch as the landlord in the present case accepted part-payment of rent from the tenants so as to reduce the arrears to less than six months.

9. For the reasons indicated above we hold that the Courts below were right in holding that the provisions of Section 12(3)(a) were attracted.

10. In the result rules are discharged. In view of the conflicting decisions on the point there will be no order as to costs of these petitions.