
(1985) 04 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 2813 of 1979

Pushpaben Narayan Rathod

APPELLANT

Vs

Uttamchand Bhurmal Nahar etc.

RESPONDENT

Date of Decision : 04-04-1985

Acts Referred:

Bombay General Clauses Act, 1904 — Section 3(30)
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(2),
12(3)
Negotiable Instruments Act, 1881 (NI) — Section 23

Citation : AIR 1986 Bom 82 : (1985) 2 BomCR 650 : (1985) 87 BOMLR 431 :
(1985) MhLj 757

Hon'ble Judges : Jamdar, J

Bench : Single Bench

Advocate : V.P. Tipnis, for the Appellant; M.R. Kotwal, for the Respondent

Judgement

1. A short but interesting question is raised by a somewhat novel argument advanced by Shri V.P. Tipnis, the learned Advocate for the Petitioner, whose appeal against the decree for eviction on the ground of default in payment of rent for a period of more than six months, has proved unsuccessful. Admittedly the petitioner tenant was in arrears of rent for the period from 1st January 1976 to 30th September 1976 and the arrears amounted to Rs. 245.70 p. The landlord since deceased addressed a notice dated 5th October 1976 to the Petitioner calling upon her to pay all arrears of rent then due and terminated her tenancy at the end of November 1976. The notice was served on the petitioner on 7th October 1976. The petitioner paid all arrears of rent up to the end of October 1976 on 11th November 1976 vide the receipt of even date. The landord filed suit on 1st December 1976 for decree of eviction against the petitioner under S. 12(3)(a) of the Bombay Rent Act on the ground that the petitioner was in arrears of rent for more than six months and that she neglected to make payment thereof until expiration of the period of one month after receipt of the notice. The suit came to be decreed as mentioned above and the appeal preferred by the

petitioner against the said decree was dismissed.

2. Shri Tipnis, the learned counsel for the petitioner urged that no decree can be passed against the petitioner under the Bombay Rent Act because the payment made by the petitioner on 11-11-1976 was a valid payment within the meaning of S. 12(3)(a) of the Bombay Rent Act. According to him the period of one month contemplated by S. 12(3)(a) expired at the expiration of the month next to the month in which the notice contemplated by S. 12(2) of the Bombay Rent Act was received by the tenant . Elaborating this argument further he submitted tha the period of one month contemplated by S. 12(2) of the Rent Act and S. 12(3)(a) is the same. Hence according to himif the notice is served on any date in October, then the tenant can pay rent any time before 30th November and that the landlord by virtue of S. 12(2) is prevented from filing a suit before that date. He pointed out that the word "month" is not defined in the Bombay Rent Act and referred, in support of his argument that the period of one month must be reckoned according to the British Calender, to the meaning attached to the said phrase in the General Clauses Act and in New Webster"s Dictionary of the English language .

3. Section 3(30) of the Bombay General Clauses Act, 1904 which is applicable to all Bombay and Maharashtra Acts made after the commencement of the said Act, unless there is anything repugnant in the subject or context, defines the word "month" to mean a month reckoned according to the British calendar.

4. New Webster"s Dictionary defines the word "month"as follows:

"month, month n. (O.E.minath = C mount = ice = Goth menothi, month). The period called a "lunar month," of a complete revolution of the moon with regard to some point, usu. The interval from one new moon to the next, called a "synodical month" and equivalent to 29 days, 12 hours, 44 minutes and 2.7 seconds; the 12th part of a solar year called a "solar month"; any one of the 12 parts, as January, February and so on, into which the calendar year is divided called a "calender month"; the time from any day of the calender month to the corresponding day of the next; a period of four weeks or thirty days."

Shri Tipnis laid particular emphasis on the meaning "any one of the 12 parts as January, February and so on into which calender year is divided called "calender month" ".

5. It is thus clear from S.3(30) of the Bombay General Clauses Act read with the definition of the calender month according to the British calender that a month means 12th part of solar year called a solar month and not a lunar month of 30 days" duration. According to the British calender a solar year is divided into 12 parts as January, February and so on. The period of one month will not therefore necessarily be of 30 days" duration. The duration of the month in a particular case would depend upon the number of days in the relevant month. If the relevant month has 31 days, the period of one month will be of 31 days. If the relevant month has 30 days , the period of one month would be of 30 days, while

in the case of February the period may be of 28 days or 29 days, as the case may be. Hence if the period of one month is to be calculated from 1st January, the period of one month will expire on 1st February. If the period of one month is to be calculated from 7th October, then it will expire on 7th November. Thus as mentioned in the New Webster's Dictionary, a month means time from any day in a calendar month to the corresponding day in the next month. In the present case, however, the notice was received by the tenant on 7th October and admittedly the petitioner did not pay the amount before the expiry of 7th November 1976.

6. There is also no difficulty in accepting the submission of Shri Tipnis that the phrase "Expiration of one month next after the notice" appearing in S. 12(2) of the Bombay Rent Act and the phrase "expiration of period of one month after the notice" appearing in S. 12(3)(a) connote the same period of one month after the receipt of the notice by the tenant. Obviously, if a tenant cannot be evicted, if he makes payment before the expiration of the period of one month after notice, no suit can also be filed for that purpose until expiration of the said period. It is, however, difficult to accept the next limb of Shri Tipnis's argument that "one month next after the notice" denotes the period expiring at the end of the month next after the month in which the notice is given. The word "next" used in S.12(2) is not an adjective of one month. But it is to be read along with the following word "after" and these two words together have reference to the date on which notice is received by the tenant. The word "next" appearing in S. 12(2) has no particular significance and that it does not denote any other period than the period contemplated by S. 12(3)(a) in which the word "next" is not used. But both these words mean that the relevant period would be of one month's duration to be calculated after excluding the day on which the notice is received by the tenant. By no stretch of grammatical acrobatics it can be said that expiration of one month next after notice means expiry of the next month, ignoring all the days of the month in which the notice is given. Moreover, as mentioned above the word "next" does not appear in the relevant clause in section 12(3)(a) of the Bombay Rent Act.

7. Phrases analogous to the above referred phrases appearing in sections 12(2) and 12(3)(a) of the Rent Act appear in various other enactments.

8. In *In Re: V.S. Metha and Others*, Division Bench of the Andhra Pradesh High Court had an occasion to interpret the phrase "within three months of the date" appearing in section 106 of the Factories Act, which provided that no Court shall take cognizance of any offence punishable under the said Act unless a complaint thereof is made within three months from the date on which the alleged offence is brought to the knowledge of an Inspector. In that case the Inspector visited the factory on 29-9-66 and the complaint was lodged on 29-11-66. It was contended that the word "month" means a month of 30 days and therefore a complaint should be filed within 90 days of knowledge. This contention was repelled and it was held that the prosecution was within time. Of course in that

case it was not contended as is done in the present case that the month in which the notice is received or an event occurs is to be excluded and that period is to be calculated from the commencement of the next month.

9. In *Daryodh Singh Vs. Union of India and Others*, the deposit made on 16-5-1960 when the decree stipulated that the deposit should be made two months prior to 15-7-1960 was held to be within time.

10. Section 80 of Civil P.C. 1908 lays down that save as otherwise provided in sub-sec. (2) no suit shall be instituted against the Government or against the Public Officer in respect of any act purported to be done by such Public Officer in his official capacity until the expiration of two months next after notice in writing is delivered or left at the office of the concerned officer. The phrase "until expiration of two months next after notice" has been interpreted to mean that the period expired at the end of the corresponding day of the second month and that no suit can be filed until expiration of that date. In *Maduari K. Rengiah Chettiar and Co., Madurai Vs. Union of India*, it was held that British Calender months are contemplated by the provision which is to be literally followed and hence the date of the delivery of the notice under the section and fraction of a day cannot be counted. Applying this principle to the suit filed on 8-10-1963 at 2 p.m. on the basis of a notice received on 8-8-1963 it was held to be premature.

11. In *Lakshmi Narain Ram Narain Vs. The State of Bihar*, the notice was served on the defendant on 31st March 1965 and the suit was filed on 31st May 1965. Rejecting the argument that the month is equivalent to 30 days. the learned Judge of the Division Bench of the Patna High Court observed as follows :-

"The 31st March 1965 on which date the notice was served, has to be excluded. The full period of two months must intervene between this day and the day on which the plaint is filed. There is no warrant for the proposition that the period of two months should mean 60 days. This period may, at times, be 61 days, or 60 days or 59 days depending on the season in which the notice is served. The calculation of the period has to be made monthwise."

12. It will not be out of place, if a mention is made of the provision contained in S. 23 of the Negotiable Instruments Act about calculating maturity of bill or note payable so many months after date of sight. The provision reads as follows :

"In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month."

It is thus crystal clear that the period of one month next after notice or next after a particular event expires at the end of the corresponding day of the next month and that there is no warrant for the proposition that all the remaining days of the month in which the notice is or the event occurs are to be excluded. As the petitioner failed to pay the arrears of rent before the end of 7th November 1976, she is rightly evicted under S. 12(3)(a) of the Bombay Rent Act. The petition, therefore, fails and is dismissed. No order as to costs. Petition dismissed.