

(1983) 07 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No's. 1210 and 1868 of 1981

Raghunath Bhaskar Chitale

APPELLANT

Vs

Jagannath Balwant Kumathekar

RESPONDENT

Date of Decision : 14-07-1983

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(2), 12(3)

Transfer of Property Act, 1882 — Section 105

Citation : (1983) 2 BomCR 469

Hon'ble Judges : C.S. Dharmadhikari, J

Bench : Single Bench

Advocate : V.S. Gokhale, for the Appellant; M.D. Angal, for the Respondent

Judgement

C.S. Dharmadhikari, J.—The petitioner-landlord filed a suit bearing Regular Civil Suit No. 3221 of 1970 which was purely a money suit and was filed to recover the arrears of rent, education cess, electricity charges for water pump, notice charges etc. The money claim made was for Rs. 8,000/-. A second suit was filed bearing Regular Civil Suit No. 2787 of 1975 for the possession of the tenanted premises. In that suit a money claim for Rs. 7,000/- was also made which was towards the arrears of rent and damages in lieu of rent, education cess and notice charges. The trial Court dismissed the claim for possession and decreed the money claim partially. Aggrieved by the said decrees in both the suits the parties preferred appeals before the District Court which were heard and decided by the Fourth Extra Assistant Judge, Pune vide his judgement and order dated 16th August, 1980. The appeal Court came to the conclusion that the defendant was not a defaulter. The defendant had not caused any damage to the property nor had secured any alternate accommodation at Wai. So far as the question of fixation of standard rent was concerned, the appeal Court confirmed the findings recorded by the trial Court and fixed the standard rent at Rs. 175/- per month and confirmed the money decree passed by the trial Court. However, it dismissed the appeals filed by the landlord so far as the possession of the premises was

concerned. Being aggrieved by these judgments and decree the landlord has filed the present two writ petitions.

2. So far as the Writ Petition No. 1210 of 1981 is concerned, which was mainly for recovery of a money claim towards rent etc., in my opinion the trial Court was right in not granting a decree for a time-barred claim. That was a pure and simple suit for recovery of an amount and admittedly the landlord could not have recovered the time-barred claim in the said suit. This position could not be disputed by Shri Gokhale the learned Counsel appearing for the petitioner and, therefore, the Rule is discharged in Writ Petition No. 1210 of 1981 with no order as to costs.

3. So far as the Writ Petition No. 1868 of 1981 is concerned, it was mainly confined to an issue of non-payment of standard rent by the defendant-tenant and, therefore, he was defaulter within the meaning of section 12(3) and 12(3) (b) of the Rent Act. It appears that the respondent-tenant was a tenant of the old premises. Thereafter by an agreement between the parties he vacated the premises and it was agreed that he will be allotted premises in the newly-constructed building. Accordingly in the newly-constructed building the tenant was given a flat on rent with effect from 1st February, 1967. By relevant term which related to the payment of rent, it was agreed between the parties that the rent will be payable from the date of occupation of the flats and if there is no agreement between the parties relating to the amount of rent, then the rent payable will be as fixed by the competent Court of law. It appears that the other tenants of the same building occupying similar area filed an application for fixation of standard rent and the standard rent was fixed at the rate of Rs. 175/- per month. After the order of the Court fixing the standard rent in other matters, the petitioner-landlord issued a notice u/s 12(2) of the Rent Act on 13th October, 1970 and had contended therein that the defendant-tenant has not paid a single pie towards the rent from 1st February, 1967 itself. Since nothing was paid even after the notice, the suit for recovery of rent was filed on 19th October, 1970 wherein an amount of Rs. 8000/- was claimed, in the written statement it was contended by the defendant that the rent fixed in other matters is not binding upon him and the claim is also partially barred by limitation. In the mean time the tenant had filed an application for fixation of standard rent and interim standard rent of Rs. 100/- was fixed by the competent Court. This application for fixation of standard rent was filed on 7th November, 1970 and the interim standard rent at Rs. 100/- was fixed on 9th November, 1970. The defendant then started paying the standard rent at that rate. However, the said standard rent application came to be dismissed for default on 13th June, 1974. After the said application was dismissed for default the tenant again filed another application for fixation of standard rent which was also dismissed for default. Thereafter the present suit was filed by the plaintiff-landlord on 20th July, 1975. In the said suit the landlord had claimed possession of the suit premises also on the ground of change of user, act of waste and that the defendant had secured alternate accommodation. It appears that even after the dismissal of the application, the

tenant deposited the amount in the first suit which was filed by the plaintiff for recovery of rent at the rate of Rs. 100/- per month. It is also clear that the application for fixation of standard rent was filed by the defendant-tenant within a period of one month from the issuance of the notice u/s 12(2) of the Rent Act. The first standard rent application came to be dismissed on 13th June, 1974 and the second application was also dismissed for default.

4. On the basis of these facts it is contended by Shri Gokhale the learned Counsel appearing for the petitioner that the courts below committed an error apparent on the fact of record in coming to the conclusion that the present case is not covered by section 12(3)(a) or 12(3)(b) of the Rent Act. According to Shri Gokhale in view of the provisions of section 105 of the Transfer of Property Act, the defendant-tenant was liable to pay rent to the landlord. Further in view of the provisions of section 12(1) read with subsection (5) of section 10 of the Rent Act this rent could be standard rent. The landlord had claimed standard rent on the basis of the order passed by the competent Court qua the similar flats in the same building. It was the case of the landlord that it was agreed between the parties orally that as and when the application filed by other tenants are decided, present defendant-tenant will also pay the standard rent at the same rate which position is seriously disputed by the defendant and both the courts below have not accepted the oral evidence adduced by the landlord in that behalf. Therefore, this writ petition will have to be decided on the basis as if there was no independent oral agreement regarding payment of rent apart from the written agreement itself. However, according to Shri Gokhale admittedly the defendant-tenant had not paid the rent even at the rate of Rs. 26/-. According to him nothing was paid after the 1st February, 1967 till the interim standard rent was fixed by the competent Court. According to the learned Counsel the courts below are not right in not taking into consideration even the time-barred arrears of rent, since the law is well settled that in a suit filed by the landlord based on a cause of action u/s 12(3)(b) or 12(3)(a) of the Rent Act, even the time-barred claim will have to be taken into consideration. In support of his contentions he has placed reliance upon the decision of the Supreme Court in *Khadi Gram Udyog Trust Vs. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur*, . *Khadi Gram Udyog Trust v. Shri Ram Chandraji Virajman Mandir*, the decisions of this Court in 58 Bombay Law Reporter 284 *The Children's Educational Uplift Society and Another Vs. Kaushalya Govindsing Moral*, . *The Children's Educational Uplift Society and another v. Mrs. Kaushalya Govindasingh Moral*. He also contended that no rent is deposited by the defendant-tenant even during the pendency of the appeal also. Further the deposits made at the rate of Rs. 100/- were also irregular and, therefore, the plaintiff-landlord was entitled to a decree both u/s 12(3)(b) and 12(3)(a) of the Rent Act.

5. On the other hand it is contended by Shri Angal the learned Counsel appearing for the defendant-tenant that since there was no agreed rent payable for the suit premises the provisions of section 12(2) of the Rent Act will not come into operation. There was admittedly no agreement between the parties regarding the

payment of rent and unless the said dispute was resolved, it was not competent for the landlord to have issued a notice u/s 12(2) of the Rent Act. As a necessary consequence of this the suit based on a notice u/s 12(2) was not maintainable. Upto 1970 there was a dispute between the parties and any amount paid could have been on account. It is contended by the learned Counsel that during the pendency of the suit or appeal. A dispute about payment of rent was not raised by the defendant-tenant after the suit was instituted. Therefore, in substance it is the contention of Shri Angal that the provisions of section 12(2) of the Rent Act had no application to the facts and circumstances of the present case, and therefore, the provisions of section 12(2)(a) or 12(3)(b) of the Rent Act will also not come in the picture. Hence the courts below were right in coming to the conclusion that this was not a case covered by sections 12(3)(a) or 12(3)(b) of the Rent Act.

6. It cannot be disputed nor is it disputed by Shri Angal that in view of the provisions of section 105 of the Transfer of Property Act, a tenant occupying a premises of a landlord is liable to pay some rent. From the evidence and material placed on record it appears that the tenant started paying rent at the rate of Rs. 26/- per month which was double the rate which he was paying for the old premises. By an agreement between the parties it was agreed that if there is no agreement between regarding the payment of rent, then the rent payable will be as fixed by the competent Court of law. An oral agreement was pleaded by the plaintiff-landlord that it was agreed between them that once the standard rent is fixed qua other flats which are similar in area and other respects, the defendant-tenant will also pay the rent at that rate. After fixation of the standard rent qua the other tenants in the same building, the landlord issued a notice u/s 12(2) of the 3 Act for payment of arrears of rent at the rate of Rs. 175/- per month. It is no doubt true that both the courts below have not accepted the evidence of the landlord qua the oral agreement and for good reasons. However, it cannot be disputed that the landlord made bona fide claim for payment of rent at the rate of Rs. 175/- per month qua the present premises also on the basis of the decrees passed by the competent Court of law in other connected matters. It is an admitted position that the dimensions etc. of the premises occupied by the defendant-tenant and other tenants are equal and the same. In these circumstances it cannot be said that the claim is made in the notice by the landlord was not bona fide. Assuming that there was dispute between the parties regarding the payment of rent, still it appears that the defendant-tenant had not paid the arrears of rent at the rate of Rs. 26/- also which he was earlier paying. Further the tenant raised a dispute about standard rent by filing an application within one month and in these proceedings interim standard rent was fixed. However, he has not deposited the said rent also regularly. Thus he has committed defaults at every stage. Therefore, it cannot be said that there was no cause of action for filing the suit itself.

7. In view of the decision of this Court in *Chhaganlal Mulchand Jain v. Narayan Jagannath Banch*, 1983 Mh. Law Journal 254, the tenant should have offered the

amount at least at the rate of Rs. 26/- per month since he had already offered to pay at that rate. At the trial it was contended by the defendant-tenant that he was not liable to pay at that rate also since that was not the rate fixed by the competent Court of law. However, in my opinion that would be joint too far since admittedly something was payable as rent for the premises. It was contended by Shri Angal that if the amount paid by the tenant at the rate of Rs. 100/- per month after the interim standard rent was fixed is calculated on that basis, then the tenant had paid the amount at the rate of Rs. 26/- per month. However, this payment was not within one month. Further, in the present case it cannot be forgotten that within a period of one month after the notice was issued an application for fixation of standard rent was filed by the tenant and the interim standard rent was also fixed at Rs. 100/- per month and the rent at the rate of Rs. 100/- per month was being deposited by him in the suit filed by the landlord. However, from the evidence it is clear that the said deposits were also not regular and admittedly nothing is paid after this suit was decided and during the pendency of the appeal. In any case once an interim standard rent is fixed at Rs. 100/- per month in the proceedings instituted by the tenant himself and he had started paying the rent at that rate it was obligatory on his part to have continued to pay the rent at that rate regularly during the pendency of the suit as well as the appeal. I am inclined to take this view since the application for standard rent filed by the tenant was consolidated with the suit filed by the landlord. Further the suits filed by the landlord for recovery of rent and for possession were also consolidated. As a matter of fact ultimately standard rent has been fixed in these proceedings only. The effect of consolidation of the suits was that for all practical purposes they were one and the same proceedings and, therefore, it was obligatory on the part of the tenant to have deposited the rent regularly at least at the rate of Rs. 100/- per month which was the interim standard rent fixed by the Court. This is admittedly not done and nothing is admittedly paid during the pendency of the appeal. The tenant allowed the proceedings instituted by him for fixation of standard rent, to be dismissed for default, though interim standard rent was already fixed. Thus the whole conduct of the defendant-tenant clearly establishes the fact that he was not willing to pay anything towards the rent.

8. In the peculiar circumstances of this case it cannot be said that there was no cause for issuance of notice u/s 12(2) of the Rent Act. Admittedly the tenant had offered rent at Rs. 26/- per month which was initially not accepted by the landlord. Basing his claim on oral agreement as well as on decrees passed in the connected matters the landlord made a claim for payment of rent and issued the notice u/s 12(2) of the Act and this notice cannot be termed as mala fide or without any basis. After the receipt of the notice the tenant filed an application for fixation of standard rent and that too within a period of one month, in which interim standard rent was fixed. It cannot be disputed that the tenant cannot occupy the premises belonging to the landlord without paying anything. A genuine and bona fide dispute qua the rent can well be understood. However, the

dispute raised by the tenant since very beginning wholly lacks bona fides. The stand taken by him was extreme one. In these circumstances at least after fixation of standard rent he should have paid all the arrears without raising any dispute about the time-barred rent and have continued to do so during the course of the proceedings. Since he has failed to do so, in my opinion the plaintiff-landlord was entitled to a decree at least u/s 12(3)(b) of the Act. See Mranalini B. Shah and Another Vs. Bapalal Mohanlal Shah, . Therefore, the view taken by both the courts below cannot be sustained. Hence to that extent the Writ Petition No. 1883 of 1981, will have to be allowed. As already observed no other contention was raised and argued before me by Shri Gokhale. Hence it is not necessary to consider them in this writ petition. Hence rule is made absolute in Writ Petition No. 1888 of the, and the decree passed by the trial Court is modified to the extent that the plaintiff-landlord is entitled to a decree for possession of the suit premises. Accordingly, the order passed by both the courts in Regular Civil Suit No. 2737 of 1975, are set aside and the defendant-tenant is directed to deliver vacant possession of the suit premises to the plaintiff-landlord. The decree-holder shall not execute the decree for the period of 3 months from today.

However, in the circumstances of the case there will be no order as to costs. Liberty to respondent-tenant apply for extension of time to vacate the premises.