

(1991) 08 BOM CK 0002
In the Bombay High Court
Case No : S.A. No. 44 of 1979

Rambilas Ramchandraj Mundhada and another	APPELLANT
Vs	
Shriram Shaugram Malviya	RESPONDENT

Date of Decision : 02-08-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(12)

Citation : (1991) MhLj 1017

Hon'ble Judges : B.V. Chavan, J

Bench : Single Bench

Advocate : A.M. Gordey, for the Appellant; B. P. Jaiswal, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Chavan, J.—An important question of law arises regarding the rate at which future mesne profits can be granted in a Mesne Profits Enquiry arising out of a decree for possession passed in respect of premises governed by the provisions of Central Provinces and Berar Letting of Premises and Rent Control Order, 1949 (hereinafter called, "C. P. and Berar Rent Control Order").

2. Appellant is a tenant of the suit premises, which consists of a residential block. Respondent filed C. S. No. 415/66 against appellant for possession after obtaining the requisite permission from the Rent Controller as required by the provisions of C. P. and Berar Rent Control Order. The said suit was decreed on 10-10-1969 with a direction to determine future mesne profits under Order 20, Rule 12, Civil Procedure Code. Respondent claimed mesne profits (5) Rs. 10/ per day from 16-7-1966 i.e. the date of suit till 18-12-1970, the date on which he obtained possession. Appellant resisted the said claim inter alia on the ground that appellant was not entitled to claim mesne profits at a rate exceeding the amount of Rs. 70/- per month, which was the fair rent of the suit premises.

3. The learned Jt. Civil Judge, Jr. Dn., Amravati accepted the respondent's case and passed a final decree in the mesne profits application @ Rs. 10/-per day for

the period from the date of the suit till obtaining of possession of the suit premises.

4. Appellants filed R. C. A. No. 142/77 challenging the said decision of the Trial Court. Learned Extra Assistant Judge, Amravati by his order dated 23-11 -1978 confirmed the order passed by the Trial Court and dismissed the appeal. It appears from the judgment of the learned Appellate Judge that two decisions of this Court were cited before him in support of the rival views and the learned Assistant Judge has chosen to accept the decision reported in 1965 Mah. Law Journal 688 in preference to a later decision in C.R.A. No. 496/71.

5. Aggrieved by the decision of the Lower Courts, appellants have filed this second appeal.

6. The question that arises before me is whether the respondent was entitled to get mesne profits at a rate higher than the rate of Rs. 70/- per month, which was the fair rent in respect of the suit premises, from the date of the suit till the date of recovery of possession. Shri Gordey, learned counsel for appellant urged that in the first instance since the premises were governed by the provisions of C. P. and Berar Rent Control Order, under which fair rent was fixed, the Court was not justified in awarding mesne profits at a rate in excess of this fair rent. He relied upon a decision of Padhye, J. in Civil Revision Application No. 496/71 decided on 6-1-1975. Shri Gordey also pointed out two more decisions: i) Ratilal Thakordas Tamkhuwala and Another Vs. Vithaldas Magandas Gujarathi, , and ii) Smt. Chander Kali Bai and Others Vs. Shri Jagdish Singh Thakur and Another, and contended in the alternative that in the case of a tenant governed by the provisions of the Rent Control Act, his possession does not become wrongful unless and until a decree for eviction is made and it is only after eviction-decree is passed that his possession becomes wrongful. He, therefore, submitted that in any case respondent cannot claim mesne profits at a rate higher than the fair rent till the" date of eviction decree and it is only from the date of eviction decree and upto the date of delivery of possession that respondent may be entitled to mesne profits at a higher rate in view of these two subsequent decisions.

7. On the other hand, Shri Jaiswal, learned counsel for respondent urged that all the decisions except that of Padhye, J. relied upon by Shri Gordey were under such Rent Control provisions, where until a decree for possession is passed, tenant continues to be a statutory tenant by virtue of the statute, and, therefore, the Courts have held that till the date of decree, possession of the tenant is not wrongful and it is only after passing of the decreee for possession that his possession becomes wrongful and as such mesne profits after the date of decree can be fixed at a rate higher than the standard rent or contractual rent. He pointed out that under the provisions of C. P. and Berar Rent Control Order, position is different. According to him, once landlord obtains permission of the Rent Controller as required by clause 13 of the C. P. and Berar Rent Control Order and determines the tenancy of tenant by giving him an appropriate notice,

the tenant ceases to be a person in lawful possession and, therefore, tenant who continues in occupation even after the determination of his tenancy by an appropriate notice, is liable to pay mesne profits at a rate higher than the fair rent, which continues to operate only and so long as the tenancy is not determined after obtaining the requisite permission of Rent Controller. He relied upon *Kesardeo vs. Nathmal*, 1965 Mah.LJ. 688, a case arising under the provisions of C. P. and Berar Rent Control Order and, urged that after the determination of tenancy, tenant becomes trespasser and he is no longer entitled to privileges available to tenants under Rent Control Legislation. He, therefore, urged that what erstwhile tenant is liable to pay after termination of his tenancy is mesne profits according to the value of the user of the premises to him and not on the basis of rent that would be payable by him as tenant to the landlord. He also relied upon *Dalhousie Properties Ltd. vs. Surajmal*, AIR 1977 SC 233, in support of his proposition that mesne profits are admissible from the date of the suit according to present rental value and not the existing rent.

8. At first sight, it may appear there is some conflict in the view taken by L. M. Paranjape, J. in *Kesardeo* 's case cited supra and by Padhye, J. in C.R.A. No. 496/71 decided on 6-1-1975. Padhye, J. in the said decision came to the conclusion that the claim for damages granted by the lower court at a rate in excess of the agreed rent was illegal, inasmuch as plaintiff-decree-holder was not entitled to get anything more than Rs. 55/- per month i.e. agreed rent as damages as claimed by appellant unless rent was got fixed by the Rent Controller. The plaintiff could not have been able to claim more than Rs. 55/- per month in any case from any other tenant. However, while passing final order, Padhye, J. directed that damages from the date of determination of lease till the date of filing of the suit would be at Rs. 55/- per month as agreed rent and not at Rs. 4/- per day granted by the Trial Court but so far as the future mesne profits from the date of suit till the date of delivery of possession are concerned, the matter will be enquired into under the provisions of Order 20, Rule 12, Civil Procedure Code. Therefore, considered in the context of the final order passed by Padhye, J., it does not appear that it was intended to lay down that so far as mesne profits from the date of suit till delivery of possession, they were also restricted to the agreed rent. However, it appears that the learned Appellate Judge has proceeded on the footing that the ratio of this decision of Padhye, J. is that in no case mesne profits can be allowed at a rate higher than the agreed rate in respect of the premises governed by the provisions of C. P. and Berar Rent Control Order and on that footing, he preferred to follow the view taken by L. M. Paranjape, J. in *Kesardeo*'s case cited supra that the ex-tenant who continues to be in possession after the termination of his tenancy is in the position of a trespasser and as such not entitled to the privileges of a tenant under Rent Control Order and, therefore, he would be required to pay mesne profits according to the value of the user of the premises to him and not on the basis of rent that would be payable by him as tenant. Argument was advanced in this case before L. M. Paranjape, J. that the quantum of mesne profits could be

fixed only at the rate of the fair rent fixed under Rent Control Order but the learned Judge negated this argument by holding that after the termination of the tenancy relationship of landlord and tenant comes to an end and the tenant becomes a mere trespasser and if that is so, having regard to the definition of mesne profits u/s 2(12), Code of Civil Procedure, what the landlord is entitled to get by way of mesne profits is not what landlord would have derived as rent under the provisions of Rent Control Order but what tenant might have obtained for the value of the user of the premises, which were in his wrongful possession. Reference was made to a decision of Nagpur High Court in Bhagwandas vs. Smt. Kokabai, 1952 NLJ 393, wherein the learned Chief Justice had pointed out that the Rent Control Order governs limited purpose of that order the relationship of landlord and tenant but it has no relevance to the question of what should be the measure of damages which a successful landlord gets for being kept out of his property. It was further observed that after determination of the tenancy, the possession of tenant/defendant is that of a mere trespasser and he cannot take advantage of the provisions of Rent Control Order and claim that rent he paid should be the measure for awarding damages to landlord. Therefore, ultimately L. M. Paranjape, J. came to the conclusion that the quantum of rent that was allowed by the courts below which was in excess of the fair rent for the period from the date of suit until delivery of possession was permissible in accordance with law.

9. In my judgment for the purpose of deciding the question as to what is the status of a tenant after the determination of his lease, it is necessary to examine relevant provisions under relevant laws. Definition of term "tenant" as given in sub -clause (5) of clause 2 of C. P. and Berar Rent Control Order would be relevant. By this definition, "tenant" means any person by whom or on whose account rent is payable for a house and includes a sub tenant and a person continuing in possession after the term of his tenancy has expired. This has to be read with clause 13 of the C. P. and Berar Rent Control Order. It prohibits a landlord from giving notice of termination or require the tenant to vacate the premises by process of law or otherwise, except after obtaining the previous written permission of the Controller. This gives extra protection to a tenant. However, once previous permission is obtained from the Rent Controller, there is no further protection to a tenant and the landlord can, after giving notice of termination, wherever, called for, require the tenant to vacate the house by process of law by filing a suit. Therefore, the protection against eviction ceases on the filing of a suit. It does not continue further till any order or decree is made as provided by section 2(i) of M. P. Accommodation Control Act, 1961 referred to in para 8 of the judgment in Smt. Chander Kali Bai and Others Vs. Shri Jagdish Singh Thakur and Another, .

10. Similarly, while dealing with the provisions of Bombay Rent Control Act, particularly sections 5(11), (12) and (13) it was held in Nathmal vs. Damodhar, 1979 Mh.L.J. 22 that an eviction decree in a suit under the Bombay Rent Act becomes effective only when it is passed and therefore, tenant's possession

becomes unlawful for the first time when eviction decree is passed and till such decree is passed a fortiori, liability of the tenant will be to pay standard rent. It is specifically held, between the date of institution of suit and passing of the decree for eviction, a tenant will be liable to pay merely the standard rent and nothing in excess thereof. In support of this view, reliance was placed on the decision of Supreme Court in Chandrakali's case cited supra. Similarly in one more case arising under the Bombay Rent Act, Ratilal Thakordas Tamkhuwala and Another Vs. Vithaldas Magandas Gujarathi, , the view taken is, possession of a judgment debtor becomes wrongful on the passing of eviction decree while the provisions like those of Rent Act have a different point of reference regarding lawful possession. In the said case, a decree for eviction was passed and in the revision against the order quantifying the liability of mesne profits, High Court upheld the order fixing higher rate of mesne profits from the date of decree till the date of delivery of possession and at the rate of standard rent from the date of the suit till the date of the decree.

11. In my view, as stated earlier, it is the relevant provisions in a particular rent legislation that would decide the character of a tenant's possession and the point of time upto which he will be entitled to the protection of the particular Rent Control Legislation. Even if a tenancy of a tenant entitled to the protection of Bombay Rent Act is determined by a notice of termination, unless and until a decree for possession is passed against him, he cannot be said to be in unlawful possession till such a decree is passed. However, that cannot be said to be the position in case of a tenant as defined by clause 2(5) of C. P. and Berar Rent Control Order. Here by definition, protection is only extended to a person continuing in possession after the term of his tenancy has expired, but a tenant whose tenancy has been terminated by giving him a notice of termination, after obtaining permission of Rent Controller as required by sub-clause (i) of clause 13, C. P. and Berar Rent Control Order, he would cease to be a tenant and his possession would become unlawful. It is precisely this view that has been taken by L. M. Paranjape, J. in Kesardeo's case cited supra. It appears that earlier decision of L. M. Paranjape, J. was not cited before Padhye, J., while deciding C.R.A. No 496/71 decided on 6-1-19 75, but as pointed out earlier in the context of the final order passed by Padhye, J. there does not appear to be any conflict between these two decisions because Padhye, J. ordered determination of mesne profits from the date of the suit till the date of delivery of possession in the same way as was done in Kesardeo's case. In my judgment, therefore, after termination of tenancy of a tenant of a premises governed by the provisions of C. P. and Berar Rent Control Order, after obtaining permission of the Rent Controller he becomes a trespasser and if he continues to be in possession, he would be required to pay mesne profits not at the rate of fair rent available under the Rent Control Order because he is no longer entitled to the privileges available to a tenant being a trespasser but on the basis of mesne profits according to the value of the user of the premises to the tenant.

12. It may be mentioned that although the Supreme Court in Dalhousie

Properties Ltd. 's case supra relied upon by Shri Jaiswal, reversed the order passed by the High Court and Trial Court directing mesne profits at the rate of existing rent as a fair measure and not present rental value as sought to be claimed by plaintiff, yet on the facts of that case what was only decided was that the Trial Court should have allowed the plaintiff to prove the amount of mesne profits from the date of institution of suit until delivery of possession without specifically deciding as to at what rate plaintiff will be entitled to get the mesne profits before passing of decree and after passing of decree till delivery of possession. In my humble view, it is clear from the final direction given in that case that the Trial Court was directed to make enquiry as to the amount of mesne profits from the date of institution of suit until delivery of possession after giving opportunity to both sides, which did not exclude determination for two periods of time i.e. upto the date of decree and after the decree till delivery of possession, at different rates.

13. However, on the legal position that is obtained under the provisions of C. P. and Berar Rent Control Order, I am of the view that a tenant whose premises are governed by the provisions of the C.P.and Berar Rent Control Order on determination of his lease after obtaining necessary permission from the Rent Controller, on institution of an eviction proceeding, is liable to pay mesne profits depending on the value of the user of the said premises to the tenant and not on the basis of the fair rent payable by him to the landlord. Shri Gordey also incidentally mentioned that in view of the conflicting decisions between two Single Judges of this Court, the matter may be referred to a Division Bench. As stated earlier, I do not see in principle, there is any conflict of decisions as such and, therefore, on the view that I have taken, order passed by the Trial Court and confirmed by the Lower Appellate Court awarding mesne profits at a rate higher than the fair rent from the date of the suit till delivery of possession is correct in law and does not call for any interference.

14. The result is : Decree passed by the Courts below is confirmed and the present second appeal stands dismissed. In the circumstances of the case, parties to bear their own costs of this second appeal.