

(2025) 11 BOM CK 1759
In the Bombay High Court
Case No : Writ Petition No. 5410 Of 2012

Sarvesh

APPELLANT

Vs

Sakalnarayan J. Sharma

RESPONDENT

Date of Decision : 03-11-2025

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Transfer of Property Act, 1882 — Section 108
Bombay Rent Act, 1947 — Section 12, 13
Maharashtra Rent Control Act, 1999 — Section 15(2)

Citation : (2025) 11 BOM CK 1759

Hon'ble Judges : M.M. Sathaye, J

Bench : Single Bench

Advocate : Omprakash Pandey, Rahul Pandey, Pramila Prajapati, Suchita Pandey, Girish Godbole, Jai Kanade, Ankit Tiwari, Yash Tiwari, K.P. Tiwari & Co

Final Decision : Dismissed

Judgement

M.M. Sathaye, J

1. By this petition under Articles 226 & 227 of the Constitution of India, the Petitioner is challenging the judgment and decree dated 06.02.2012 passed in Appeal No.13 of 2010 by the Appellate Bench of the Small Causes Court at Bandra, Mumbai. By the impugned judgment, the appeal filed by the Petitioner is dismissed, thereby confirming decree of eviction passed against him dated 30.11.2009 passed by the Court Small Causes at Mumbai in R.A.E. & R. Suit No.5444 of 1985.

2. The petition is arising out of provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, as it existed prior to 1987 amendment ('Bombay Rent Act', for short). Present petitioners are legal heirs of original Defendant (Shri. Madhukar Bapu Gurav) and the Respondents are original Plaintiffs. The said suit was filed for recovery of possession and arrears of rent in respect of suit premises which are double room having area of 14'-3" x 10'-5" and 9' x 11'-3",

along with open verandah converted into a room and constructed bathroom in Sharma Juni Chawl, Sharma Industrial Estate, Walbhat Road, Goregaon (E), Mumbai – 400 063. The suit was filed on the ground of default (arrears of rent), breach of provisions of section 108(o) of the Transfer of Property Act, 1882 ('TP Act', for short) and erection of permanent structure without consent of the landlord i.e. under sections 12, 13(1)(a), 13(1)(b) of the Bombay Rent Act. The landlord contended inter alia that the rent of suit premises at the relevant time was @ Rs.20/- per month and the Defendant tenant was in arrears of rent for more than 6 months. Suit notice dated 02.08.1985 was issued demanding arrears from 01.12.1983 to 31.07.1985, amounting to Rs.400/-. Since the Defendant failed to comply with the demand of arrears, the said suit was instituted. The landlord contended that the Defendant has encroached upon a passage in front of suit premises and converted the same into a room and has carried out alteration of permanent nature without consent of the landlord which is in contravention of provisions of Section 108(o) of the TP Act.

3. The Defendant filed written statement contending inter alia that he is not in arrears. The service of suit notice is admitted. It is contended that he has replied the suit notice by sending notice reply dated 20.08.1985 along with a cheque of Rs.400/- dated 19.08.1985. The other allegations in the plaint are also denied.

4. The learned Trial Judge, after hearing both sides and on appreciation of evidence decreed the suit directing the Defendant to hand over vacant a peaceful possession of the suit premises, on the ground of arrears of rent/default as contemplated under Section 12(3)(a) of the Bombay Rent Act. The other grounds were held against the landlord.

5. Original Defendant filed aforesaid appeal and challenged the decree of eviction. The Appeal Court after considering the submissions, confirmed the decree of eviction only on the ground of arrears/default. It is in these circumstances that the original Defendant filed present writ petition challenging concurrent finding of fact in this Court. During pendency of the petition, the Petitioner expired and his legal heirs are brought on record, who are currently prosecuting the petition. The writ petition was admitted on 19.10.2012 and ad-interim stay to the eviction decree was granted.

SUBMISSIONS

6. Learned counsel Mr. Pandey appearing for the Petitioners submitted that the suit notice itself is illegal, in as much as, the Defendant had paid rent during the period of demand. He submitted that along with notice reply dated 20.08.1985, a cheque of Rs.400/-being full demanded amount, was sent to the landlord and therefore the tenant was ready and willing to pay the rent. It is submitted that the Defendant examined one advocate Mr. Bipin J. Joshi as Defendant Witness (DW) No.2 in order to support his contention that along with notice reply, the demanded rent was sent by cheque. He submitted that the aspect of hardship is

not considered. He has relied on two rent receipts of Rs.20/- each in support of his submission that for month of December 1983 and February 1984, the rent was paid and the demand is illegal. Relying on order dated 23.07.1993 passed by the Trial Court as well as the order dated 15.02.2013 passed by this Court during pendency of the petition, it is submitted that since Defendant tenant was permitted to deposit arrears of rent, the Defendant cannot be said to be a defaulter. He has relied on the following judgments, in support of his case:

i. Chimanlal V. Mishrilal [(1985) 1 SCC 14].

ii. Badrinarayan Chunilal Bhutada V. Govindram Ramgopal Mundada [(2003) 2 SCC 320]

iii. Babulal s/o Fakirchand Agrawal V. Suresh s/o Kedarnath Malpani and Ors [CRA No.76 of 2010 Full Bench decision of this Court pronounced on 12.06.2017].

7. Per contra, Mr. Godbole, learned senior Advocate appearing for the landlord submitted that assuming without admitting that for December 1983 and February 1984, rent was paid for these two months, still default of about 18 months duly covered by suit notice remains and there is nothing on record to show that demanded amount was paid. He submitted that mere inaccuracy in demand made in the suit notice is not fatal to the claim of the landlord seeking eviction on the ground of default. For this purpose he relied upon Kalyaraman Pillai (deceased) through heirs and Ors. V. G.K. Satyanarayan Iyer (deceased) through heirs and Ors. [2018 SCC OnLine Bom 1053]. He further submitted that this suit being squarely falling under Section 12(3)(a) of the Bombay Rent Act (as it existed prior to 1987 Amendment), once the statutory requirements of said section are met, there is no discretion left with the Court to consider aspect of readiness and willingness of the tenant to pay the rent and law provides a mandate for passing decree of eviction. For this proposition, he has relied upon recent judgment of this Court in Sudhir Kumar Sengupta V. Kusum Pandurang Keni [2024 SCC OnLine Bom 3077]. He further submitted that unless a case of malafide demand is made out, even inaccuracy of large measure in the demand notice will not be fatal to the claim of eviction. Finally he submitted that the Trial Court and Appeal Court has considered the contentions raised by the tenant and has concurrently held that the ground of default has been made out. Therefore no interference is required in writ jurisdiction.

REASONS AND CONCLUSION

8. I have carefully considered the submissions and perused the record of writ petition as well as pending interim application for amendment raising addition grounds and bringing various orders on record.

9. At the outset, it is material to note that admittedly suit notice demanded the arrears of rent from 01.12.1983 to 31.07.1985 which is a period of 20 months. Undisputedly, the rent at relevant time was Rs.20/- per month, payable by month. There is no dispute about service of suit notice upon Defendant-tenant.

There is no dispute raised by the tenant about rent. There is no evidence of payment of demanded arrears.

10. Having said that, the demand of arrears made in the suit notice, is for a period of more than six months and therefore, the period in suit notice is as per Section 12(3)(a) of the Bombay Rent Act. Assuming that for the month of December 1983 and February 1984, tenant had paid rent for these two months, still the demand of 18 months (more than six months) remains duly raised by the suit notice, which is not complied.

11. The argument about hardship not being considered by the Courts below, is only stated to be rejected, because admittedly this is not a decree of eviction under bona-fide requirement. The aspect of comparative hardship under Section 13(2) of the Bombay Rent Act is applicable when the eviction is sought on the ground of reasonable and bona-fide requirement. Since only ground on which decree is passed is arrears of rent, the aspect of hardship is beyond the scope of statutory consideration and therefore, omnibus argument about hardship, being made at the stage of writ petition, cannot be considered.

12. In respect of evidence of Advocate Bipin Joshi, it is material to note that the notice reply was issued by Advocate V. K. Shah and not by Advocate Bipin Joshi. Despite this position, for objective satisfaction of the Court, I have gone through the oral evidence of DW-2 Advocate Bipin Joshi. From his deposition, it appears that said Advocate had prepared written statement. He has stated that he does not recollect what reply was given by the Defendant to the suit notice. He has stated that he does not recollect who drafted the notice reply. He has only stated that he recollects that Defendant showing a counterfoil of cheque. He has admitted that the Defendant tenant had made a complaint against him in Bar Council and he has replied to the said complaint. He also stated that the said complaint is dismissed. Apart from the said deposition, witness has not stated anything material about the cheque being sent with the notice reply. In that view of the matter, the evidence of this witness, relied upon by the Petitioners is not at all helpful.

13. The orders permitting the Defendant tenant to deposit arrears during pendency of the suit or petition, cannot change the factual aspect of default within the time-frame specified by the statute and therefore, the two orders relied upon by the Petitioners will not help them, so far as the ground of default is concerned.

14. Viewed in the light what is observed above, when the judgment of the Trial Court is perused, following aspects emerge :

- i. That Defendant has not filed any application for fixation of standard rent within a period of one month from the date of service of demand notice.
- ii. That Defendant has not produced any documentary evidence to show that money orders were sent by him towards payment of rent. That the case of

payment by money order is beyond pleadings in the written statement.

iii. That the Defendant has not produced office copy of notice reply and counterfoil of alleged cheque sent along with it.

iv. That though the Defendant contended that Advocate Shri Joshi has not returned the original documents to him, the said Advocate has specifically stated in his evidence that he has not retained any documents in his custody.

v. The Trial Court has considered that it was for the Defendant to prove that the notice reply and alleged cheque was sent along with it and has been served upon the landlord or it has been refused by the landlord. The evidence in that regard is lacking.

vi. That Defendant's witness admitted that he has no documentary evidence to show that the rent was tendered by issuing cheque along with notice reply.

vii. That Defendant has produced on record bank passbook of his son; however, there is no debit entry corresponding to the alleged cheque.

viii. That DW-1 Suresh has admitted in his cross-examination that the rent for a period from 01.12.1983 to 31.07.1985 was due.

15. The Appeal Court has held in paragraph No.30 that rent is payable by month, there is no dispute regarding amount of standard rent, the Defendant has not made payment as demanded within a period of one month after the suit notice is served. The Defendant has not paid standard rent when due. On such re-appreciation of the evidence, the Appeal Court has dismissed the appeal.

16. In view of the aforesaid, both the Trial Court and Appellate Court have concurrently held that the landlord is entitled to decree of eviction on the ground of default.

17. So far the judgment of Chimanlal (supra) is concerned, the same was considering validity of notice with defect in description of suit premises. In the present case, there is no such case of defect in description of suit premises. The aspect of arrears and its period is clearly falling within the statutory requirement. Therefore, said judgment will not advance the case of the Petitioner.

18. So far as the judgment of Badrinarayan Chunilal Bhutada (supra) is concerned, which is pressed into service in support of argument about hardship, as already noted above, since the comparative hardship is not within the statutory realm of section 12(3)(a) of the Bombay Rent Act, the said aspect itself is immaterial and therefore said judgment will also not help to the Petitioner.

19. So far as the judgment of Babulal s/o Fakirchand Agrawal (supra) is concerned, in the said full bench judgment, this Court was considering whether a landlord can file a suit for eviction on the ground of arrears of rent under Section 15(2) of the Maharashtra Rent Control Act, 1999 if a tenant complied with notice issued by landlord demanding arrears of rent and paid the entire amount as

demanded within time stipulated. In the present case, the arrears demanded by the landlord are not paid and therefore, the suit was filed. In the present case, the aspect of maintainability of suit is not at all involved, much less argued. Therefore the same judgment will also not help the Petitioner.

20. In the case of Kalyaraman Pillai (supra) this Court after considering the earlier law has reiterated what was held by the Division Bench, which reads as under:

"26. The Division Bench ultimately held as under:

The court shall have to make an attempt to find out whether the inaccuracy in the demand of arrears of rent and permitted increases in the notice under Section 12(2) of the Act is traceable to any malafide or dishonesty on the part of the landlord. If a positive finding of malafides or dishonesty is recorded, then, in our opinion, the notice could be faulted as bad on that ground alone. Otherwise on the mere inaccuracy, the notice could not be faulted. Even if the inaccuracy is of large measure, that also would be no ground to fault the notice unless of course the magnitude of inaccuracy coupled with other facts and circumstances appearing on record is capable of leading to a finding of malafides or dishonesty on the part of the landlord."

[emphasis supplied]

21. Therefore, In the present case even if the tenant proves that rent was paid for two months out of twenty months and demand is inaccurate to that extent, the same will not be fatal to the claim of the landlord, because there is nothing on record to indicate nor is there any case of demand being mala-fide or dishonest. Therefore present case is covered by judgment of Kalyaraman Pillai (supra) in favour of the Respondent landlord. The demand is not mala-fide or dishonest. Hence payment of rent for a couple of months only, from out of 20 months, will not make any difference and demand will not be rendered illegal.

22. In Sudhir Kumar Sengupta (supra), recently the learned Single Judge of this Court, after considering the earlier law, has held that Section 12(3)(a) of the Bombay Rent Act (prior to 1987 Amendment) did not leave any discretion for the Court to go into the issue of readiness and willingness to pay the rent. Since there is no dispute about amount of rent nor has the Defendant filed any application for fixation of standard rent and on noticing non-payment of arrears within statutory period, the eviction decree becomes imminent. The provisions of 12(3)(a) were strict and there is statutory mandate. This judgment is also directly applicable to the facts of the present case in favour of the landlord.

23. In the aforesaid circumstances and for the reasons indicated above, the impugned judgment and decree does not suffer from any perversity. There is no error apparent on the face of the record. There is no jurisdictional error.

24. The Writ Petition and pending interim application are accordingly dismissed. Rule is discharged. No order as to cost.

25. The Respondent is at liberty to withdraw rent amount deposited by the Defendant/Petitioners in Trial / Executing Court or Appellate Court or this Court.
26. The Petitioners are directed to hand over vacant and peaceful possession of the suit premises to Respondent within a period of 6 weeks from today. The decree of eviction becomes executable immediately after 6 weeks.
27. All concerned to act on duly authenticated or digitally signed copy of this order.