

**(1981) 09 BOM CK 0060**

**In the Bombay High Court**

**Case No : Special Civil Application No. 125 of 1978**

Shamrao Abaji Jadhav

APPELLANT

Vs

Chaturbai Sidheshwar Javeri

RESPONDENT

**Date of Decision : 01-09-1981**

**Acts Referred:**

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(1)

**Citation :** AIR 1982 Bom 132 : (1982) 1 BomCR 60 : (1982) 84 BOMLR 9 : (1982) MhLj 347

**Hon'ble Judges :** S.C. Pratap, J

**Bench :** Single Bench

**Advocate :** D.S. Marathem, for the Appellant; A.C. Agarwal, A.C. Agarwal and Bhushan Kanade for V.B. Joshi, for the Respondent

## Judgement

S.C. Pratap, J.—This petition arises out of original proceedings instituted by the respondent plaintiff, inter alia, for possession of the suit premises under the provisions of the Bombay Rent Act.

2. The instant suit for possession was filed to Sept., 1973 on three grounds viz., (a) default in payment of rent, (b) bona fide and reasonable requirements of the suit premises for personal use and occupation and (c) nuisance and annoyance. The trial Court held against the plaintiff on all the said three grounds and dismissed the suit. In plaintiff's appeal against the said dismissal, the appellate court confirmed the finding trial court on the plaintiff's claim for possession on the ground of bona fide and reasonable requirement as also on the ground of nuisance and annoyance. On the ground of default in the payment of rent, the appellate court reversed the finding of the trial court and came to the conclusion that the defendant was liable to be evicted from the suit premises under the provisions of S. 12(3)(a) of the Rent Act. The appeal was consequently allowed. The trial court's decree was set aside and instead a decree for possession of the suit premises was passed in favour of the plaintiff. Hence, this petition by the defendant-tenant.

3. In support of the petition, I have heard Mr. D.S. Marathe, learned counsel for the petitioner. The respondent landlord plaintiff is represented by her learned counsel Mr. A.C. Agarwal.

4. Hearing the rival submissions of the respective Advocates and going through the judgments of the two courts below as also the record of the case, I find myself unable to sustain the finding of the appellate court (reversing that of the trial court) on the question of alleged defaults by the tenant in payment of rent, consequent whereupon he can be said to have rendered himself liable to eviction from the suit premises. Relevant facts in this behalf are as follows :- Long prior to the institution of the present suit and even long prior to the issuance of the quit notice by the plaintiff to the defendant-tenant herein, the defendant-tenant had himself applied in Jan.1969 by way of Miscellaneous Application 34 of 1969 for determination of standard rent of the suit premises which consisted of only one room. In the said proceedings, application was made by the tenant on the same day for fixation of interim rent. In the said proceedings, application was made by the tenant on the same day for fixation of interim rent. By order dated 13th Jan. 1969 interim rent was fixed at Rs. 4/- per month. In the said standard rent proceedings and after obtaining an order of the court on the question of interim rent, the tenant deposited in the said proceedings Rs. 76/- on 5th Feb-1969, Rs. 12/- on 9th Apr. 1969 and Rs. 20/- on 14th July 1969, thus in all, as at this stage, Rs. 108/- It so happened that this application for fixation of standard rent was dismissed for default on 21st Nov. 1969. However, little knowing that his application was dismissed for default as aforesaid, the tenant continued to deposit in the said proceedings and the court continued to accept from the tenant further deposits of rent in the said proceedings. These further deposits are Rs. 16/- on 16/2/-1969, Rs. 20/- on 24-4-1970 and Rs. 16/- on 22-9- 1970 making of all these three items a total of Rs. 52/- Thus, all the aforesaid six deposits together made up a total of Rs. 160/-

5. Having come to know that his application for fixation of standard rent was dismissed for default, the tenant filed another application, being miscellaneous Application No.739 of 1969, for the same relief of fixation of standard rent of the suit premises. In these proceedings, the tenant made further deposits in all of Rs. 72/- Ultimately , in lieu of the agreed rent of Rs. 5/- (five) per month, the standard rent was fixed at Rs. 3/- per month. This order of fixation of standard rent was not challenged by either of the parties any further. After the standard rent of the suit premises was fixed as aforesaid at Rs. 3/- per month. It was the tenant himself who through his Advocate sent a notice dated 21st Feb.1973 to the plaintiff -landlord (respondent herein) intimating to her that he had in all deposited in the standard rent proceedings a total amount of Rs. 232/- i.e, Rs. 160/- in the first standard rent proceedings and Rupees 72/- in the second standard rent proceedings. He further informed the landlord that this total deposit of Rupees 232/- covered the entire arrears of rent at the standard rent of Rs. 3/- per month for the period 1st July 1967 to 30th Apr. 1973. Indeed, the aforesaid deposit even covered future rent up to the period Dec. 1973. The

plaintiff-landlord sent her reply to the notice and by this reply she also terminated the tenant's tenancy of the suit premises and asked him to handover possession thereof. The tenant having declined to do so. The landlord filed the instant suit in Sept. 1973.

6. Now, it is relevant to note that in this suit a total claim towards rent was Rs. 210/- which was far less than the amount of Rs. 232/- already deposited long back by the tenant in two standard rent proceedings aforesaid. There was, therefore, no question of the tenant being in any arrears as such of rent either at the date of the quit notice or on the date of the suit. The trial court rightly, therefore, came to the conclusion that this was not a case where any decree for possession of the suit premises could be passed in favour of the landlord under the provisions of S. 12(3)(a) of the Rent Act. The Appellate court, unfortunately for the tenant, reverted this finding on the ground that the deposit made by the tenant in the first standard rent proceedings after the said proceedings were dismissed for default cannot come to the aid of the tenant in protecting his possession of the suit premises. In other words, the reasoning was that the deposits made in the first standard rent proceedings after the same were dismissed for default were not valid tenders and, therefore, had to be excluded from consideration while determining the readiness and willingness of the tenant in terms of S. 12(1) of the Rent Act.

7. It is difficult to accept this reasoning and the ultimate conclusion of the Appellate court. There is no dispute of the fact of the aforesaid deposits. There is also no dispute of the fact that these deposits covered the entire period of arrears. There is also no dispute of the fact that the deposits in fact covered even payment of advance rent. There is also no dispute of the fact that as at the date of the suit notice issued to the tenant in Mar. 1973, the tenant was factually not in any arrears at all. Nor is there any dispute of the fact that even as at the date of the suit, the tenant was factually not in arrears at all. Whole claim in support of her case for eviction by the plaintiff was that though the tenant had made full deposits and though the tenant was factually not in arrears at the date of the quit notice or at the date of the suit itself, payment made in the standard rent proceedings after the said proceedings stood dismissed for default cannot be termed as valid tenders and, therefore cannot come to the aid of the tenant for protecting his possession of the suit premises. In my view, to accept such a contention would be a hyper-technical approach in a matter relating to eviction of the tenant from the suit premises. In enacting sec. 12 of the Rent Act. It cannot be said to be the intention of the Legislature to penalise a person such as the tenant herein and beset him with the penalty of eviction even though he has paid the entire arrears in judicial proceedings between the parties and even though he is found factually not to be in any arrears at all either at the date of the quit notice or at the date of the suit itself. Indeed, the intention of the Legislature is, at the out set, clear from the provisions of sub sec. (1) of S. 12 of the Rent Act. By virtue of the said provisions, the Legislature has, at the very threshold, put a bar against a landlord's claim for possession by enacting that he

shall not be entitled to recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases. Thus, if the tenant is found to have paid or if the tenant is found to be ready and willing to pay, it is not open to the landlord to recover possession. This readiness and willingness has, of course, been interpreted as being, in a case to which S. 12(3)(a) may apply readiness and willingness within a period of one month of the receipt of the notice referred to herein. But even in that light, when we see the facts of the present case, it is clear that much prior to the notice in question and even before receipt of any notice by the landlord to the tenant . the tenant had himself deposited in judicial proceedings between the parties the entire amount of rent which covered not only the entire period of arrears but also period subsequent thereto. Here is, in my view, a case of a tenant who has paid the entire rent long prior to the receipt of the notice. On this ground itself, he deserved to be protected in his possession of the suit premises.

8. Even in the alternative, this is a case where the tenant must be held to be one ready and willing to pay. If one were to consider payments made by him in the standard rent proceedings as not (in terms of technicality) a valid tender, the said payments nevertheless constituted a strong circumstance which, in no manner of doubt clinchingly indicated the tenant's readiness and willingness to pay. Even on this latter ground, therefore, the tenant here, on the strong facts in his favour in the present case, was entitled to be protected in his possession of the suit premises.

9. The Appellate court observes that the payment of Rs. 52/- Made in the standard rent proceedings after the said proceedings were disposed of was not a valid tender. Question arising in the mind of the court in this context would be; will a payment accepted by a court in a judicial proceeding between the same parties and credited to the account of the said proceeding be nevertheless termed as not a valid tender? That apart, is a tenant to be blamed and punished with the penalty of eviction if it is a court which permits him to deposit the amount in the said proceeding, which actually accepts the said amount from him in the said proceeding and which has the said amount credited in the said proceeding? The better view of the matter would be to term the said tender as a valid tender. It was certainly a valid tender so far as the court was concerned. Having permitted the tenant to deposit and having accepted the said deposit, it would hardly be in consonance with justice for the court itself to later on term the same as not a valid tender. But apart from the fact whether it was or was not a valid tender, the tender was undisputedly permitted to be made and the tender was undisputedly accepted. Under such circumstances, the tenant surely cannot, by and stretch, be termed or described as one not ready and willing to pay. Indeed, the case is pre-eminently of a tenant who has ready and willing to pay and who in fact did pay. The tenant was thus entitled to be protected in his possession of the suit premises. This was certainly not a case where a mandatory decree of eviction can be said to be warranted under S. 12(2)(a) of the Rent Act.

This, on the contrary, was a case which was covered fairly and squarely by the provisions of sub-s, (1) of S. 12 of the Rent Act.

10. In this view of the matter that I take, the impugned decree passed by the Appellate court requires to be set aside and quashed and that passed by the trial court requires to be restored and confirmed. In the result, this petition succeeds and is allowed. Decree dated 18th Oct. 1977 passed by the Appellate court in Civil Appeal 329 of 1976 is set aside and quashed and decree dated 12th Apr. 1976 passed by the court of small causes, poona, in civil suit 1803 of 1978 is restored and confirmed. Rule earlier issued on this petition is made absolute. In the circumstances of the case, however, there will be no order as to costs.

11. Petition allowed.