

(1971) 12 BOM CK 0001

In the Bombay High Court

Case No : Special Civil Application No. 2903 of 1967

Shevantibai Dattatraya Mane and Another

APPELLANT

Vs

Vasant Gopal Deshmukh and Others

RESPONDENT

Date of Decision : 09-12-1971

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11(4), 12(3)

Citation : AIR 1973 Bom 97 : (1972) 74 BOMLR 701 : (1972) MhLj 953

Hon'ble Judges : Bhasme, J

Bench : Single Bench

Advocate : M.R. Navangule, for the Appellant; V.K. Joshi, for the Respondent

Judgement

1. This is an application by the petitioners, who had filed a suit against the respondent-tenants for possession of the suit premises on certain grounds. The respondent-tenants are full brothers. According to the petitioners, the respondents had taken the suit premises on rental basis and agreed to pay rent of Rs. 30/- per month. The tenants have paid the rent till the end of November, 1963 and remained in arrears for the period from December, 1963 to the end of January 1965. The petitioners by a quit notice determined the tenancy and filed a suit on 11-3-1965 claiming the possession, inter alia, on the ground that the tenants had remained in arrears for more than six months, despite the notice of demand served on them u/s 12(2) of the Rent Act.

2. Defendant No.1 filed his written statement only to point out that he has separated from defendant No.2 long ago to the knowledge of the petitioners. He has no interest in the suit premises and the petitioners had unnecessarily impleaded him. Defendant No.2 by his written statement raised several contentions. According to him he had, in fact, paid the rent and the landlords had not passed the receipts. He also contended that the agreed rent of Rs. 30/- per month was excessive and that the Court should fix the standard rent at Rs. 7/- per month.

3. During the pendency of the suit defendant No.2 deposited a sum of Rs. 500/- on 17-12-1965 and a further sum of Rs. 380/- on 8-2-1966 towards the arrears of the rent claimed by the plaintiffs. It must be noted that defendant No.2 did not pay or tender in court the arrears of rent either on the first day of hearing or on any other date got fixed by the Court for making the payment. The learned trial Judge framed the relevant issues. Parties adduced evidence in support of their rival contentions. The learned trial Judge decided against the plaintiffs in respect of the several other grounds of ejectment urged by them. However, the issue about the standard rent was decided in favour of the plaintiffs. After consideration of the evidence the learned trial Judge came to the conclusion that the agreed rent of Rs. 30/- per month was the standard rent. According to the learned Judge the defendant had failed to establish his plea of satisfaction. When the defendant claimed relief against forfeiture the learned Judge rejected the same on the ground that the case is governed by Section 12(3)(a) of the Bombay Rent Act. As defendant had not made an application within a period of one month u/s 11(3) of the Rent Act, he cannot get any protection against forfeiture of his tenancy. Accordingly the learned Judge decreed the claim for possession and arrears of rent at the rate of Rs. 30/- per month.

4. The contesting defendant, i.e. defendant No.2 approached the District Court in appeal. the learned District Judge confirmed the finding of the learned trial Judge about the quantum of standard rent. But the learned appellate Judge held that the case was governed by Section 12(3)(b) of the Rent Act and the tenant should be allowed to deposit the amount of standard rent in Court. He passed an interlocutory order on 16-3-1967 directing the tenant to pay Rs. 492-05 on or before 30th March 1967. As the tenant deposited the arrears of rent within time, the learned Judge passed a final order on 31-3-1967 to the following effect :

"In the result the appeal allowed and the trial Court decree is set aside and the following is substituted"

"The standard rent of the suit premises is fixed at Rs. 30/- per month. The suit for possession is dismissed. The amounts deposited in this Court and the Lower Court, if not withdrawn, by the landlord till today, be paid to the landlords.""

5. Mr.Navangule for the petitioners is challenging this decree mainly on the ground that the suit is governed by Section 12(3)(a) of the Rent Act as the tenant was found to be in arrears of rent for more than six months and as no application was made by him for fixing standard rent, the decree passed by the trial Court was in order. Mr.Navangule also submitted that even assuming that the suit is governed by Section 12(3)(b) of the Rent Act, the tenant had not shown that he was ready and willing to pay the rent and, therefore, the learned District Judge for the first time in appeal should not have allowed time to the tenant to pay up the arrears which were never paid earlier till the decree of the trial Court.

6. The first contention raised by Mr.Navangule is clearly untenable in view of the recent Full Bench decision of this Court in Dattu Subhana Panhalkar Vs. Gajanan

Vithoba Bobhate and Another, . It is now well settled that the tenant can raise a dispute as to the standard rent even after the suit is filed against him for his eviction on the ground of non-payment of rent for more than six months by his written statement and that will be a dispute for the purpose of Section 12 of the Act.

7. But Mr.Navangule tried to raise a slightly different contention in this behalf. He says that the dispute about standard rent contemplated by Section 12 of the Rent Act is a bona fide dispute. As in the present case there was no such bona fide dispute the tenant cannot rely on the provisions of Section 12(3)(b) of the Rent Act. Mr.Nangule pointed out that in the present case the tenant had refused the registered packet containing the notice addressed to him. He had taken up a false plea about the payment of rent. Even after filing of the written statement he had not deposited the whole of the amount due from him on account of rent. But it is clear from the record of the case that the plaintiff never suggested in any of the earlier stages of the proceedings that the dispute raised by the tenant was not a bona fide dispute. In fact, an issue was framed and parties adduced evidence in support o their rival contentions. It may be that on a consideration of the evidence the learned trial Judge came to the conclusion that the agreed rent was the standard rent. This finding was confirmed by the District Court in appeal. But these facts will not indicate that there was no bona fide dispute between the parties about the fixation of standard rent.

8. Next Mr.Navangule contended that the tenant cannot avoid ejectment in the suit by relying on S. 12(3)(b) of the Rent Act. His conduct clearly shows that he was not ready and willing to pay the rent within the meaning of S. 12 (1) of the Rent Act. What is more, as required by Section 12(3)(b) he had not deposited the standard rent on the first day of hearing of the suit. he had not applied to the Court for granting him time to deposit the rent at any later date. According to Mr.Navangule he should have at least made an application to the Court for fixation of the interim rent and thereafter he should have deposited the amount as directed by the Court. As stated above, he had on two occasions tendered some amount towards the payment of the arrears but at the date of the decree, he was still in arrears of rent. As he had not complied with the provisions of Section 12(3)(b) the Appellate Judge should not have given him further time to deposit the arrears of rent in Court.

9. Mr.Navangule referred to the recent Full bench decision of this Court in Dattu Subhana Panhalkar Vs. Gajanan Vithoba Bobhate and Another, where the scheme of Section 12 with reference to Sections 11(3) and 11(4) of the Rent Act has been considered. It is held by this Court that Explanation II to Section 12, although it is prefaced by the words "for the purposes of sub-section (2)", will be equally applicable in the interpretation of the words "standard rent" and "permitted increases" in sub-section (3) (a) of S. 12. The Full bench decision has expressly kept open the question whether Explanation II would also apply to the other provisions of Section 12. According to Mr.Navangule, although that

question is kept open, there is no doubt that the words "standard rent" and "permitted increases" would be relevant while considering the case of the tenant u/s 12(3)(b) of the Rent Act. Section 12(3)(b) of the Rent Act expressly refers to these words. But Explanation I contemplates a case where the dispute about standard rent wherever it is raised is linked up with an application filed by the tenant before the expiry of the period of one month after the notice referred to in sub-section (2). This clarification will not help me to answer the precise question which arises for consideration in these proceedings.

10. Section 12(3)(b) certainly provides that in cases where (unlike Section 12(3)(a)) a dispute regarding the standard rent or permitted increases is raised, the tenant-defendant to avoid a decree for eviction has to pay the standard rent and permitted increases then due either on the first day of the hearing of the suit or on such other date as is allowed by the Court for making the deposit. Mr. Navangule tried to rely upon certain decisions which certainly favour him but all those decisions were given in proceedings which were instituted before the amendment of the Rent Act by Maharashtra Act 14 of 1963. By that Amending Act certain additional words were introduced in Section 11(3) providing for the dismissal of the application for fixation of standard rent where the tenant-applicant fails to comply with the conditional order about deposit made by the Court. Sub-section (4) of S. 11 is newly introduced by the amendment and in my opinion in view of this new provision, the decisions given by Courts on the interpretation of Section 12(3)(b) will not be of any assistance while considering the points raised before me.

11. In *Vishwanath Sadashi v. Gokuldas Gujar*, 72 Bom LR 466, I had an occasion to consider the effect of the amendment provisions contained in Sections 11(3) and 11(4) of the Rent Act. I held in that case that Sections 11(3) and 11(4) of the Rent Act are identical in terms and deal with the same subject-matter, viz., the dispute raised by the tenant about the fixation of the standard rent. The only difference between the two provisions is that u/s 11(3) the tenant makes the original application for fixation of standard rent and u/s 11(4) the tenant-defendant in the suit filed by the landlord raises a dispute about the fixation of standard rent. In other words, the two sub-sections require the tenant to pay the interim rent fixed by the Court as a condition precedent for consideration of the dispute on merits. If he fails to make the deposit then in one case his application is liable to be dismissed and in the other case his defence is liable to be struck off or the Court may grant conditional leave to defend the suit. The Legislature no doubt has made a provision to safeguard the interest of the landlord by preventing the tenant from raising a mere dispute and then avoiding the liability to pay the rent due to the landlord. But it is only when the Court. In the application or in the suit, as the case may be fixes the interim rent and calls upon the tenant to pay the same that there is an obligation on the tenant to comply with the order and if he fails to comply with the order then he will have to face the consequences mentioned in the two sub-sections.

12. A reference to Sections 11(3) and 11(4) is made by this Court in the above mentioned Full Bench Decision. The learned Chief Justice, while enumerating the point of distinction between sub-section (3) and sub-section (4) of S. 11. has made the following observations : -

"Thus sub-section (3) of S. 11 gives the tenant a right to apply for fixation of the standard rent or for determination of the permitted increases and sub-section (4) gives him an independent remedy in a suit for recovery of rent."

13. As stated by me above, Section 11(3) was amended by Act 14 of 1963 and the other sub-sections, including sub-section (4) were added by the same Amending Act. Although the said Amending Act made certain consequential changes in Section 12 particularly by renumbering the Explanations as Explanation I and Explanation II, the provisions contained in Section 12(3)(b) remained unchanged. It is true that the Courts before the Amending Act had interpreted Section 12(3)(b) in a certain manner with reference to the obligation of the tenant to pay or tender in Court the standard rent or permitted increases on the first day of hearing of the suit or on or before such other date as the Court may fix. But now the position in law, in my opinion, is substantially altered by the amendment of Section 11(3) and the addition of the sub-clauses by Maharashtra Act 14 of 1963. Section 12(3)(b) and Section 11(4) therefore will have to be considered together and one will have to adopt an interpretation which would meet the requirements of the different sets of the provisions. It is now held by the Full Bench of this Court that the tenant can raise a dispute about the standard rent even by his written statement. Once such a plea is raised, then the procedure prescribed u/s 11(4) and Section 12(3)(b) will have to be adopted. In a suit for recovery of rent whether with or without a claim for possession of the premises the Court may give appropriate directions u/s 11(4) of the Rent Act requiring the tenant to deposit in Court such amount of rent as the Court considers to be reasonably due or at the option of the tenant directing him to pay to the landlord such amount as is specified by the Court. The Court can also given directions requiring the tenant to deposit in Court such amount as it considers proper as interim standard rent or at the option of the tenant requiring him to pay to the landlord the specified amount during the pendency of the suit. Any such direction given by the Court may form part of a conditional order cautioning the tenant that if he fails to comply with the aforesaid direction within the time allowed he will not be entitled to appear in or defend the suit except with leave of the Court which leave may be granted subject to such terms and conditions as the Court may specify. These directions can be given so as to be consistent with the provisions of Section 12(3)(b) of the Act directing that the tenant u/s 12(3)(b) of the Act must pay or tender in Court the standard rent or permitted increases on the first day of the hearing of the suit or on or before such other date as the Court may fix and that he must continue to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pay such costs as directed by the Court. It is necessary that the Court must either before the first day of hearing or within any time thereafter fix the

standard rent or permitted increases. It is only in such a case that the tenant can comply with the direction of the Court and deposit the arrears and also make the periodic payment in Court so as to avoid a decree for eviction. It may be that before the first day of hearing or within a shorter time thereafter in a case it may not be possible for the Court to fix the standard rent or the permitted increases. Then, if the Court is satisfied that the tenant is withholding the rent on the ground that the rent is excessive and standard rent should be fixed, the Court shall give the necessary directions under sub-s (4) of Section 11 of the Act requiring the tenant to pay in Court the arrears due on the basis of the interim standard rent fixed by the Court. Even in any other case if it appears to the Court that it is just and proper the Court will make such an order. In all such cases the plaintiff-landlord is the person primarily interested in securing the payment of rent by the tenant who may otherwise avoid or postpone his liability. But if the Court for some reason or the other in such suit has not fixed the standard rent or permitted increases as mentioned in Section 12(3)(b) of the Act, or has not given any directions about the deposit of rent on the basis of interim standard rent fixed by it u/s 11(4) of the Act, then the tenant cannot be penalised in any manner. His plea about standard rent or permitted increases raised in the suit will be finally heard and decided by the Court. If at the end of the hearing of the suit the Court comes to the conclusion that on the basis of the standard rent and permitted increases fixed by it, the tenant is liable to pay certain amount as due then the Court should specify the amount and direct the tenant to pay the same within a prescribed time. If the tenant fails to pay the amount, then the Court will proceed to pass a decree for his eviction.

14. In the present case the learned District Judge while disposing of the appeal has followed the correct procedure indicated by me above. The learned District Judge disagreed with the view of the learned trial Judge and came to the conclusion that it was open to the defendant tenant to raise a plea about standard rent in his written statement even without making a separate application for that purpose u/s 11(3) of the Rent Act. He then confirmed the finding of the learned trial Judge about the fixation of the standard rent. On the basis of the standard rent so fixed, he found that the defendant-tenant was liable to pay Rs. 492-05. As stated above, an interlocutory order was passed on 16-3-1967 requiring the tenant to deposit the said amount in Court on or before 30th March 1967. As the defendant-tenant had deposited the said amount within the time he rightly allowed the appeal and modified the order of the trial Court as indicated above.

15. In the result the application fails and the rule is discharged. In the circumstances of the case there will be no order as to costs.

16. Application dismissed.