

(2000) 06 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No. 686 of 1988 with Writ Petition No. 3551 of 1988

Shri Raghunath Ramchandra Natu

APPELLANT

Vs

Dattatraya Sitaram Salgaonkar and Others

RESPONDENT

Date of Decision : 16-06-2000

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(2), 15

Citation : AIR 2001 Bom 300 : (2001) 3 BOMLR 334 : (2001) 2 MhLj 401

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : Mr. P.D. Dalvi and Ms. Shakuntala Mudbidri, for the Appellant;

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—As the common question of the law arises in both the Petitions, the same were heard together and are being disposed of by this common judgment.

2. The Petitioners in Writ Petition No. 686 of 1988 are the Respondent Nos. 2a to 2f in Writ Petition No. 3551 of 1988, and are hereinafter referred to as "the Petitioners", the Respondent Nos. 1 and 2 in Writ Petition No. 686 of 1988 are the Petitioners in another Writ Petition are hereinafter referred to as "the Respondents" and the Respondent No. 3 in Writ Petition No. 686 of 1998 is the Respondent No. 1 in Writ Petition No. 3551 of 1988 and is hereinafter referred to as "the original tenant". The Respondents are the landlords and the plaintiffs in the suit for eviction filed by them against the Petitioners and the original tenant on the ground of default in payment of rent and sub-letting of the premises by original tenant to the petitioners.

3. The facts in brief are that the Respondents while complaining of nonpayment of rent in respect of the suit premises from February, 1973 till July, 1975 served a notice of demand dated 3.7.1975 upon the petitioners and the original tenant. It was also grievance of the respondents that the suit premises had been illegally

occupied by the petitioners and therefore there was sub-letting of the suit premises by the original tenant. The said notice was followed by the eviction suit and Trial Court after recording the evidence, holding that the petitioners were liable to pay the arrears of rent ordered payment thereof but dismissed the suit as far as relief regarding possession of the premises was concerned on the ground that the respondent had failed to establish that a valid notice in terms of Section 12(2) of the Rent Act was served upon the Petitioners prior to institution of the suit. On appeal against the said judgment, the Appellate Court, while reversing the judgment of the Trial Court on the said point, held that the petitioners had enough knowledge of the notice of demand and therefore, they ought to have paid the arrears of rent within a period of one month having failed to do so they were liable to be evicted on the ground of the default in payment of rent and therefore, ordered the eviction of the petitioners and delivery of the possession of the suit premises to the respondents.

4. The ground on which the impugned Judgment is challenged by the Petitioner is that the Lower Appellate Court failed to take note of the fact that there was no demand of arrears of rent from the petitioners as is otherwise required u/s 12(2) of the Rent Act before Institutions the suit for eviction against the petitioner and the original tenant and the proceedings initiated by the respondents without complying with the provisions of Section 12(2) of the Rent Act are bad in law. On the other hand the respondents have challenged the impugned judgment on the ground that the finding arrived at by the Courts below regarding the sub-tenancy in favour of the petitioners being protected in view of the provisions contained in Section 15 of the Rent Act is perverse and contrary to the materials on record inasmuch as that neither the Courts below have arrived at any finding regarding the existence of the relationship of landlord and tenant between the original tenant and the petitioner and regarding the consideration which has to flow from a tenant to the landlord or from subtenant to the main tenant and the finding regarding regularisation of sub tenancy u/s 15 of the Rent Act has been arrived at only on the basis of the occupation of the petitioners in suit premises since 1955. The learned Advocate appearing for the Petitioners has placed reliance on the Judgment of the learned Single Judge of this Court in the matter of Bindichand Hiralal Bhandari v. Sadashiv Borbhade and Ors., in support of his contention that in the absence of valid demand notice in terms of provisions contained in Section 12(2) of the Rent Act, no suit can be Instituted for eviction of tenant or sub-tenant besides that mere nonpayment of rent by the main tenant to the landlord cannot result in eviction of the sub-tenant.

5. Upon hearing the learned Advocates for the parties at length and on perusal of record only point which arises for consideration in the matter is whether the notice dated 3.7.1975 issued by the Respondents was satisfying the requirements of law to enable the Respondents to file a suit for eviction of the petitioners from the suit premises on the ground of non - payment of rent. Though the impugned judgment is sought to be challenged by the respondents on the ground that the finding arrived at regarding the regularisation of the sub-

tenancy is perverse and not borne out from the record. I do not find much substance in the said challenge as perusal of the judgments of the Courts below and particularly of the Trial Court clearly disclose that the Court on detail analysis of the evidence has arrived at the finding that the materials on record disclose that the original tenant parted with possession of the suit premises in favour of the petitioners in or about 1955 and since then the petitioners are in possession of the suit premises and doing the business independently in their name and also paying the rent to the respondents though in the name of the original tenant. This finding having been arrived on appreciation of the evidence and the same is not being a pure question of law and being a finding of fact, it is not permissible for this Court to interfere therein in exercise of its jurisdiction under Article 227 of the Constitution of India. Besides it is not a perverse finding as is sought to be alleged. The detail discussion regarding oral as well as documentary evidence clearly discloses that the view taken by the Courts below is the only possible view in the facts and circumstances of the case.

6. As regards the contention regarding the absence of notice u/s 12(2) of the Rent Act to the Petitioners, the Trial Court has arrived at a finding that there is no dispute that the notice dated 3.7.1975 was served on both the defendants i.e. the Petitioners and the original tenant, it is only validity and legality of the said notice that is sought to be challenged.

7. The Trial Court has held that notice in question cannot be treated as the notice of demand u/s 12(2) of the Rent Act particularly as regards the petitioners and the finding is arrived by referring to the provisions of law contained in Section 12(2) read with definition of the sub tenant and the decision of the learned Single Judge in the matter of Bindichand Hiralal Bhandari (supra). The Lower Appellate Court However, has held that the sub-tenant cannot have separate legal entity and is not entitled to claim as a matter of right a notice u/s 12(2) and that if notice is served upon the tenant and sub-tenant has a full knowledge about the said notice then it would be sufficient compliance of Section 12(2) by the landlord. The contention of the learned Advocate for the petitioners is that the valid and lawful notice was not served upon the sub-tenant before institution of eviction proceedings and in the absence of valid notice u/s 12(2) to the sub-tenant no eviction proceedings can be initiated against him.

8. There is no dispute that notice dated 3.7.1975 was served upon both - predecessor of the petitioners and the original tenant. The Petitioners are the legal representatives of Raghunath Ramchandra Natu. Undisputedly the notice was addressed to both the persons viz. Krishnaji Sadashiv Kulkarni i.e. the original tenant and R. R. Natu i.e. Raghunath Ramchandra Natu, the predecessor of the petitioners. Perusal of the record further discloses that the Respondent through their Advocate by their letter dated 16.8.1973 addressed to the predecessor of the Petitioners had demanded to disclose the capacity in which the lessor was in occupying, however, the petitioner's predecessor had not bothered to reply the same. Besides in case the original tenant had any

subsisting interest in the suit premises, the same stood terminated after the expiry of notice period. It was further made clear that consequently on the said day the possession of the premises to be delivered to the lessor and arrears of rent as well as mesne profit were also required to be paid by the original tenant. The notice further disclosed that the original tenant had paid the standard rent upto the month of February, 1973 and thereafter from July, 1975 the rent for a period of two years and five months was due amounting to Rs. 724.00 and the same was required to be paid along with Interest at the rate of 12% p.a. and the necessary arrangement had to be made to pay the same. The Notice, therefore, nowhere restricts claim for arrears of rent from the original tenant alone. It did not state that the rent in arrears was required to be paid by the original tenant alone and not by the petitioners' predecessor. On the contrary proper reading of the notice clearly discloses that it was addressed to both the parties and they were required to pay the said rent amount of Rs. 724/- along with 12% interest thereon. There is no doubt that there is a sentence in the letter which says that the possession and arrears of the rent and the main profits are payable by the original tenant. But further, it was also stated that the necessary arrangement was required to be made for the payment of the dues. The notice cannot be construed or understood by picking up one sentence from here and the other from there but has to be read as whole. Having so read, I do not find any infirmity in the notice and it was clearly addressed to both the persons.

9. The decision in the matter of Bindichand Hiralal Bhandari has no application to the case in hand. All the observations, in the said decision, are to be read in the facts of that particular case and the points for determination therein. In the said case there was no dispute that the notice u/s 12(2) of the demanding standard rent was not served upon the sub-tenant and the notice was issued only on the original tenant. In fact the landlord had not accepted the defendant No. 2 therein as the lawful subtenant and he was disclosed as a servant of the defendant No. 1. It was also not the case of the sub-tenant therein that at any time the rent was paid by him to the landlord in the name of original tenant, as is otherwise the contention of the petitioners in the case in hand. The findings of the Courts below disclose that the rent upto February, 1973 was in fact paid by the petitioner's predecessors in the name of the original tenant and even receipts were obtained in the name of the original tenant. That being not the case in Bindichand Bhandari's case, the decision was in totally different set of facts, the same can be of no assistance to substantiate the case of the petitioners.

10. Once it is clearly established that the notice Issued by the Respondents was addressed to both the parties viz. the original tenant as well as the predecessors of the Petitioners and the notice clearly disclosed demand for arrears of standard rent for more than six months, and that it was always the case of the petitioners that rent was paid by their predecessors in the name of original tenant to the respondents, the petitioners cannot be heard to say that the notice is not in compliance with the provisions of Section 12(2) of the Rent Act. The Division Bench of this Court in the matter of Chhaganlal Mulchand Jain v. Narayan

Jagannath Bangh, has clearly held while interpreting the provisions of Section 12(2) the normal rule is that a notice exchanged between the landlord and the tenant should be construed liberally and not for the purpose of finding out any fault and that a notice u/s 12(2) of the Bombay Rent Act is a communication between the landlord and tenant and both the parties know the rights and liabilities about the payment of rent and hence any mistake in demanding the amount of rent would not render the notice invalid. Hence the contention regarding the illegality and invalidity of the notice raised by the petitioners is devoid of substance.

11. No other ground of challenge is urged in the matter. Hence no case is made out for interference in the impugned judgment. As a result, both the petitions fail and are dismissed with no order as to costs. Rule is discharged. However, the date for delivery of possession of the suit premises is extended till 31st December, 2000, subject however that the petitioners shall file their undertaking in the Court to the effect that they shall not part with the possession nor shall induct any third person in the suit premises, nor shall create third party interest in any manner on the suit premises, shall deliver the vacant peaceful possession to the respondent/landlord on or before 31.12.2000.

12. Certified copy is expedited.