

(2000) 06 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 3850 of 1987

Smt. Tarabai Shivilal Pardeshi deceased, by heirs and L.Rs.
and Others

APPELLANT

Vs

Shri Murlidhar Paraji Devde

RESPONDENT

Date of Decision : 27-06-2000

Acts Referred:

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

Citation : (2000) 3 ALLMR 299 : (2001) 1 BomCR 89 : (2000) 4 MhLj 858

Hon'ble Judges : A.M. Khanvilkar, J

Bench : Single Bench

Advocate : Deshpande, for the Appellant; S.M. Paranjape, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanvilkar, J.—This writ petition under Article 227 has been filed by the legal heirs of the original landlord taking exception to the decision of the Extra-Judicial District Judge, dated 4th December, 1986 in Civil Appeal No. 851 of 1984.

2. Briefly stated, the facts leading to the present petition are that, the respondent was inducted in the premises consisting of a block of three rooms on the first floor at House No. 97, Mangalwar Peth, Pune 411 011, by the landlord pursuant to lease deed Exh. 54 dated 12-6-1967 at the monthly rent of Rs. 75/-. It is stated that the respondent was in arrears for a period from 1-5-1975 onwards, for which, landlords issued demand notice on 17th May, 1976 (Exh. 64). It is the case of the landlords that the said notice was duly received by the respondent on 21st May, 1976. This is, however, disputed and the finding of the courts below is that the said notice was registered on 23rd May, 1976 and received thereafter. Both the courts below have concurrently found that, immediately after the receipt of the demand notice, the respondent raised a dispute regarding the amount of rent and also filed an application for fixation of standard rent u/s 11 of the Bombay Rent Act on 28th June, 1976, which has

been held to be within one month from the date of receipt of the suit notice.

3. It is interesting to note that, after the suit notice was duly served upon the respondents, the landlords slept over the matter as late as till 17th January, 1980 to file the present suit for possession against the respondents. It is doubtful as to whether a suit can be filed on the ground of default after a lapse of almost three and half years from the service of suit notice. However, neither the trial Court nor the Appellate Court has gone into the said aspect of the matter.

4. Be that as it may, the suit as filed by the landlord came to be decreed by the judgment and order of the trial Court dated 2nd January, 1984 only on the ground of arrears of rent within the meaning of section 12(3)(a) of the Act. Needless to point out that, section 12(3)(a) of the Act would be attracted when the tenant fails to deposit the rent regularly in Court during the pendency of the trial. The trial Court decreed the suit on the ground of default, as in its view the respondent has merely filed the application for fixation of standard rent without taking any further steps of determining the interim rent or obtaining order of deposit from the Court. The respondent naturally took exception to the said decree before the Appeal Court. The Appeal Court by its judgment and order dated 4th December, 1986 was pleased to reverse the decree and consequently dismissed the suit filed by the landlord.

5. The only ground which is pressed in the present petition is as to whether the respondent was a wilful defaulter. According to the learned Counsel for the petitioners, although the respondent had filed an application for fixation of standard rent within time, however, since no steps were taken by the respondents for fixing the interim rent or to obtain order of deposit, therefore, he had made himself liable for eviction within the meaning of section 12(3)(a) of the Act. In support of this submission, reliance has been placed on the decision of this Court reported in *Karamsey Kanji Vs. Velji Virji*, . On the other hand, the learned Counsel for the respondent has placed reliance on the decision of this Court reported in *More Narayan Bhadke Vs. Shashikant Balakrishna Malkar*, . According to him, the subsequent decision of this Court applies on all fours to the facts of the present case. He points out that, in the latter decision, this Court has considered the observations in the decision replied upon by the petitioner and in para 12 of the judgment in *More Narayan Bhadke Vs. Shashikant Balakrishna Malkar*, , this Court has distinguished the said decision. Both the learned Counsel agree that the decision of this Court reported in *More Narayan Bhadke Vs. Shashikant Balakrishna Malkar*, is holding the field even today and no contrary view has been expressed in any another decision on the facts with which we are concerned.

6. After having considered the rival submissions, I am of the view that the decision of this Court reported in *More Narayan Bhadke Vs. Shashikant Balakrishna Malkar*, squarely applies to the facts on hand. This Court, in the said decision, was required to examine the correctness of the view taken by the appeal Court that mere filing of the application u/s 11(3) of the Rent Act is not

sufficient to attract the Explanation-1 to section 12, but it is obligatory on the tenant to get the interim rent determined forthwith. This is evident from para 5 of the said decision. While dealing with the said proposition, this Court in para 11 has unambiguously stated the correct legal position that the application for determination of interim rent is not a sine qua non to attract Explanation-1 of section 12 of the Rent Act. In para 12 of the said decision, reference has been made to the decision in the case of Karamsev Kanji v. Velji Virji, reported in 1954(56) Bom.L.R. 619 and the said decision has been distinguished.

7. Besides ruling on the aforesaid decision, the learned Counsel for the respondent has also relied on the decision of the Division Bench of this Court reported in 1980 Mh.L.R. 737, particularly, para 8 to contend that mere institution of the standard rent application by the tenant within one month from the date of receipt of the suit notice would accord protection to the tenant from eviction on the ground of default under provisions of section 12(3)(a) of the Act.

8. Having regard to the aforesaid decisions which are relied upon by the learned Counsel for the respondent and the admitted facts in the present case, I am disposed to accept the conclusion of the Appellate Court that the petitioners-landlords were not entitled for a decree of eviction on the ground of default either within the meaning of section 12(3)(a) or section 12(3)(b) of the Bombay Rent Act against the respondent tenant. It is not disputed that, after the receipt of the suit notice, the respondent filed the standard rent application within one month and later on deposited the entire arrears and continued to regularly deposit the rent in Court from time to time. It is also not disputed that when the suit for eviction was filed on 17th January, 1980, on that date the respondent tenant was not in arrears at all, in which case, in my view, there could be no cause of action to institute the suit on the said ground. Taking any view of the matter, no decree could have been passed on the ground of default in the facts of the present case. In my view, there is no infirmity in the conclusion reached by the Appellate Court which would warrant interference under Article 227 of the Constitution.

9. Consequently, the writ petition deserves to be dismissed being devoid of merits.

10. For the reasons aforesaid, the writ petition is dismissed with costs.

Rule stands discharged.