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**(1968) 06 BOM CK 0013**

**In the Bombay High Court**

**Case No :** Criminal Appeal No. 1010 of 1966 and Cri. Application No. 719 of 1966

State or Maharashtra

APPELLANT

Vs

Sharadkumar Virchand Shah

RESPONDENT

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**Date of Decision :** 19-06-1968

**Acts Referred:**

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13, 16, 16(4)

**Citation :** (1968) MhLj 893

**Hon'ble Judges :** D.G. Gatne, J

**Bench :** Single Bench

**Advocate :** C.R. Dalvi, Asstt. Govt. Pleader for State and S.B. Bhasme in Criminal Appeal No. 1010/66, for the Appellant; M.A. Rane in Criminal Appeal No. 1010/66, for the Respondent

**Final Decision :** Dismissed

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## Judgement

D.G. Gatne, J.—These two proceedings arise out of the decision of the Judicial Magistrate, First Class, Satana, on deputation at Malegaon, in Criminal Case No. 5245 of 1965.

2. The facts giving rise to these cases are few and simple and are not in dispute. The property bearing House No, 48 at Malegaon belongs to accused No. 1, Sharadkumar Virchand Shah. Accused No. 2 happens to be his brother. One shop situated on the ground floor of that building was in occupation of complainant Hukmidland Dipchand Jain as a tenant of accused No. 1. Accused No. 1 instituted a suit for his eviction in the Court at Malegaon, the relief of possession being claimed on two grounds. The first ground was that the suit premises were reasonably and born fide required by him for his own occupation, and the second ground was that the property of which the premises formed a part was in need of repairs, which could only be carried out after the shop was vacated by the tenant. These grounds were not accepted by the trial Court and the landlord's suit for eviction was dismissed. That order of dismissal was challenged by the

landlord in the District Court at Nasik in Civil Appeal No. 108 of 1963. That appeal was decided by the 2nd Extra-Assistant Judge of Nasik on March 31, 1964. The learned appellate Judge also did not accept the landlord's case that the premises were reasonably and bona fide required by the landlord for his own occupation; but he did accept the second allegation that the premises were in need of repairs and that those repairs could only be effected after the premises were vacated by the tenant. Therefore, on this second ground the learned appellate Judge allowed the appeal and passed a decree for possession in the landlord's favour on March 31, 1964. Before passing that decree, the provisions of section 16 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, were complied with. The complainant-tenant was asked whether he wanted to re-occupy the premises after the repairs were carried out; and on his having said yes, a decree for possession was passed in favour of the landlord and the complainant was directed to deliver possession to him to enable him to commence the work of repairs on or before May 1, 1964.

3. Before the date specified for delivering possession, on April 26, 1964, the tenant gave a notice as per exh. 9 to the landlord (accused No. 1) and informed him of his readiness and willingness to give possession of the shop to him for the purposes of effecting repairs as soon as the necessary intimation was received from him. That notice was replied by the landlord (accused No. 1) by his letter (exh. 16) dated April 29, 1964. He stated that he was not willing to accept possession in terms of the appellate Court's decree because he wanted to challenge that decree in revision in the High Court, but that the tenant was at liberty to vacate the premises unconditionally if he so desired. The tenant (complainant) was obviously not prepared to vacate the premises unconditionally. He, therefore, stuck to his possession, and unfortunately on August 11, 1965, a part of the premises collapsed and some damage to the property was caused.

4. Thereafter on August 12, 1965, the complainant (tenant) by his notice, exh. 11, dated August 12, 1965, informed accused No. 1 (landlord) of the damage caused to the property, and called upon him to carry out the repairs without any further delay. It appears that the property being in a dilapidated condition and its removal being considered desirable, the Municipality of Malegaon gave a notice to the landlord (accused No. 1) on August 19, 1965, u/s 149 of the Bombay Municipal Boroughs Act and demanded demolition of that property. A copy of that notice, exh. 16, was also given to the complainant (tenant). When things reached that stage, the complainant-tenant vacated the premises on August 21, 1965, and gave an intimation to that effect to accused No. 1 as per exh. 12. Accused No. 1 was again called upon to accept possession in terms of the appellate Court's decree. On August 24, 1965, accused No. 1 eventually accepted possession. On November 15, 1965, the complainant-tenant again gave a notice as per exh. 17 to accused No. 1 and called upon him to effect the necessary repairs and to give back possession of the premises to him. To the aforesaid two notices of the tenant, accused No. 1 (landlord) replied as per exh.

15 on November 16, 1965. He informed the complainant-tenant that he having failed to vacate the premises in time, the repairs could not be carried out and the question of carrying out the repairs at the date of exh. 15 did not arise because the property was extensively damaged and required to be rebuilt.

5. When things came to such a pass, the complainant-tenant filed the complaint giving rise to this appeal in the Court of the Judicial Magistrate, First Class, at Malegaon, on November 18, 1965, u/s 16 (4) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The defence of accused No. 1 (landlord) as also his brother, accused No. 2, was that they were not liable u/s 16 (4) as the complainant himself had failed to vacate the premises on the due date i. e. on or before May 1, 1964. That contention having found favour with the learned Magistrate, the complaint filed by the complainant was dismissed and the accused were acquitted of the charge u/s 16 (4) of the Bombay Rent Control Act, and the correctness of that order of acquittal is now being challenged by the State in Criminal Appeal No. 1010 of 1966, and by the original complainant-tenant in Criminal Application No. 719 of 1966.

6. Mr. C. R. Dalvi appearing on behalf of the State urged that having regard to the facts of the case it was clear that the date for delivering possession of the premises to the landlord was May 1, 1964, and before that date, on April 28, 1964, the tenant had given a notice as per exh. 9 and expressed his willingness and readiness to vacate the premises on the due date; but that offer was not accepted by the landlord and he demanded possession unconditionally and that being so, there was failure on his part to accept possession and he, therefore, came within the mischief of section 16 (4) of the Bombay Rent Control Act. Although at first blush this argument appears to be attractive, it cannot, in my opinion, stand the test of closer scrutiny.

7. While appreciating the submission of the learned Assistant Government Pleader, it is necessary to examine the provisions of section 16 of the Bombay Rent Control Act. Sub-section (1) of section 16 says:

The Court shall when passing a decree on the ground specified in clause (b) of subsection (1) of section 13 ascertain from the tenant whether he elects to be placed in occupation of premises or part thereof from which he is to be evicted and, if the tenant so elects, shall record the fact of the election in the decree and specify in the decree the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs.

Then sub-section (4) which is material for the purposes of these proceedings says:

Any landlord who, when the tenant has vacated by the date specified in the decree without reasonable excuse fails to commence the work of repairs and any landlord or other person in occupation of the premises who fails to comply with the order made by the Court under sub-section (3), shall, on conviction be punishable with imprisonment for a term which may extend to three months or

with fine or with both.

This being the penal provision must be strictly construed, and the first thing that deserves notice in this connection is that while in sub-section (I) the words used are "deliver possession", the word used in sub-section (4) is "vacate". There is evidently some distinction between the two expressions. While delivery of possession is a bilateral act and requires one side to give up possession and the other side to receive it or accept it, the term "vacate" implies a, unilateral act, and for that purpose all that is necessary is that the person in possession should give up possession. The plain dictionary meaning of the word "vacate" is given in Vol. X, Part II of "A. New English Dictionary" or Historical Principles, edited by Sir James Murray, LL. D., and the meaning of the word has been given as "to leave or to withdraw from (a place, seat, etc.), to quit or give up". This clearly means that for vacating nothing further is required beyond giving up or quitting. It is, therefore, necessary for a tenant to vacate without the aid of the landlord, while for the purpose of delivering possession, co-operation of the landlord would be necessary. No such co-operation is necessary for the purpose of vacating premises.

8. If we look at the facts of the case in the light of this position, it is an once clear that the complainant-tenant in this case did not vacate the premises before May 1 1964. All that he did by his notice, exh. 9, dated April 26, 1964, was to express his readiness and willingness to give up possession. The argument that the offer of delivering possession was itself substantial compliance with the provisions of section 16 (4) of the Act cannot, in my opinion, be accepted. Although at first blush it appears that the landlord (accused No. 1) had adopted an unfair attitude in refusing to accept the offer made by the tenant in his reply (exh. 16-A) dated April 29, 1964, that is not in fact so if it is borne in mind that he wanted possession of the premises on two grounds. He did not want possession merely for the purposes of repairs; he also wanted it for personal occupation; and the latter ground having been refused in both the Courts, he desired to challenge the decision of the appellate Court in revision before the High Court, and that is why he informed the tenant in his reply dated April 29, 1964, that he would only accept possession without any condition because he desired to challenge the appellate Court's decree before the High Court in revision. That was not a dishonest pretence and accused No. 1 was in fact serious about it, was demonstrated before me by producing the actual record of C. R. A. No. 1441 of 1963. It shows that accused No. 1 had really filed the revision application, although the same was rejected by the Court on September 18, 1964. Therefore, on April 19, 1964, when accused No. 1 declined to accept possession in terms of the appellate Court's decree, he could not possibly be said to have adopted an unfair attitude. It is further to be borne in mind that the decree of the appellate Court was a decree in favour of accused No. 1 and not against him. All that the decree did was to give some right to accused No. 1, and it was therefore, open to accused No. 1 either to avail of that right or not to avail of it. To avail of the right given by the appellate Court's decree would have

meant acceptance of possession and then giving back that possession to the tenant after effecting the repairs. That accused No. 1 did not evidently like. He wanted possession for his own occupation, and believing that he could get it from the Court, he declined the tenant's offer contained in the notice dated April 26, 1964. It must be realised that not to accept the benefit conferred by the appellate Court's decree was not made penal u/s 16 (4) of the Bombay Rent Control Act.

9. This view does not mean that the tenant was helpless and could not enforce his right under the decree. He could, if he had really vacated the premises before May 1, 1964 and then called upon accused No. 1 (landlord) to carry out the repairs. There would have been no other alternative for accused No. 1 but to carry out the repairs in the time specified; and if that had not been done, he could have been hauled up u/s 16 (4) of the Bombay Rent Control Act. That the complainant did not do, but he stuck up to his possession till August 11, 1965; and it was only when a part of the premises collapsed and further continuance on the premises became risky that he vacated the premises on August 21, 1965 and informed the landlord about it as per his letter, exh. 12. If he had only done that before May 1, 1964, the provisions of section 16 (4) could very easily have been invoked in his favour.

10. In the view I have taken, the learned Assistant Government Pleader is not right when he says that in the present case there was a refusal on the part of the landlord to carry out the repairs after the premises were vacated by the tenant in time. In my judgment the accused were rightly acquitted and the appeal filed by the State must fail. In this view of the matter the Criminal Application filed by the complainant also fails and has to be dismissed. The appeal as well as the criminal application are dismissed.