

(1993) 03 SC CK 0104

In the Supreme Court Of India

Case No : Civil Appeal No. 2484 of 1985

Sulochana Damodar (Smt)

APPELLANT

Vs

Ratnaprabha V. Tople (Smt)

RESPONDENT

Date of Decision : 04-03-1993

Acts Referred:

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

Citation : (1993) 2 JT 176 : (1993) 1 SCALE 753 : (1993) 2 SCC 256

Hon'ble Judges : B.P. Jeevan Reddy, J;A. S. Anand, J

Bench : Division Bench

Advocate : Subodh Markenday, Pankaj Kalra and Shanti Swarup Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

1. This appeal is preferred by the tenant against the judgment and order of the learned Single Judge of the Bombay High Court allowing the writ petition filed by the respondent-landlady. The eviction petition filed by the landlady was dismissed by both the courts below but on a writ petition filed by her it was allowed by the High Court. The matter arises under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "Bombay Rent Act").

2. The appellant is the tenant of Flat No. 2, 'F' Building, Vijay Colony, Juhu Lane, Andheri (West), Bombay on a monthly rent of Rs. 100/- exclusive of water charges, education cess and charges for amenities. The appellant had advanced a sum of Rs. 10,000/- by way of construction loan to the original landlord. The said loan and the terms of repayment are recorded in a registered agreement dated December 15, 1962. According to the agreement, the landlord agreed to adjust Rs. 65/- per month out of the rent payable towards the loan. The tenant was to pay the balance Rs. 35/- in cash. The respondent purchased the flat on January 7, 1963, subject to the said agreement.

3. On April 10, 1965 the respondent-landlady filed a suit - 668 of 1965 - for eviction of the appellant on the ground of sub-letting and her own bonafide requirement. The suit was decreed on August 30, 1971 on the ground of sub-letting alone. The appellant filed an appeal on October 15, 1971 which was allowed on July 12, 1973.

4. Soon after the decree of the Trial Court in the aforesaid suit, the landlady issued a notice terminating the tenancy for non-payment of permissible increases for the period March 1, 1969 to March -29, 1972 in a sum of Rs. 2,483.94 p. On March 3, 1972 she filed the suit for evicting the tenant and for recovery of the said permissible increases. It is this suit we are concerned with in this appeal. Sometime in early 1975, the landlady applied for expediting the hearing of the suit. On April 4, 1975 the Trial Court passed an order directing the tenant to deposit the entire amount due till then on account of permissible increases within six weeks of the said order. In default, it was stated, the court will consider the request for expeditious trial of the suit. The order further directed that the tenant should continue to deposit, the said charges every month. The appellant did not deposit either the arrears or the monthly rent for the period subsequent to the order. On June 4, 1976 the appellant filed an application seeking extension of time to deposit the amount which he was asked to deposit under the order dated April 4, 1975 and for the period subsequent to the said order. He was permitted to do so on June 8 and on the same day, he deposited a sum of Rs. 2,082.75p representing the total amount due till that date. The appellant says further that on March 8, 1979 he also deposited the amount which was not claimed in the suit on the ground that it was barred by time. In other words, even the amount which was not recoverable in law was also deposited by him. The issues were framed in the suit on April 4, 1972.

5. Even subsequent to the order dated June 4, 1976 the appellant was regular in depositing the amounts. It is recorded in the order of the High Court that he deposited a sum of Rs. 143.70p on November 15, 1976, a sum of Rs. 71.85p on January 7, 1977 and a sum of Rs. 23.94p on February 9, 1977. (The permissible charges payable by the appellant per month were determined in a separate proceeding at Rs. 23.94p). Subsequently, he deposited the said amounts on June 1, 1977, August 1, 1977 and November 3, 1977. All these deposits were no doubt made with the permission of the court.

6. By his judgment and decree dated September 29, 1977, the Trial Court dismissed the suit. The court found that the case was governed by Clause (b) of Sub-section (3) of Section 12 of the Bombay Rent Act and not by Clause (a) of the Act. Inasmuch as the appellant has deposited the amount due as entire contemplated by the said clause, it held, a decree for eviction/possession cannot be made. It, however, passed a decree for money. The landlady preferred an appeal which was dismissed by the Appellate Court. The Appellate-Court too was of the opinion that the appropriate clause of Section 12(3) applicable in the present case is Clause (b) and not Clause (a). Inasmuch as the appellant

deposited the amount due as contemplated by the said clause, it affirmed the decree of the Trial Court. It is the said order which was questioned by the landlady by way of a writ petition in the Bombay High Court. The learned Judge noticed the irregular manner in which the appellant was depositing the permitted increases during the pendency of the suit and observed that the appellant has singularly failed to abide by the order dated April 4, 1975. He neither deposited the arrears as per the said order nor did he deposit the amount payable every month regularly thereafter. This conduct of the tenant, according to the learned Judge, indicated that he was not ready and willing to clear his rental liability. Accordingly, he held that the appellant is not entitled to the benefit of Clause (b) of Section 12(3). He rejected the other arguments urged by the appellant, the first of which is not being pressed before us and need not be referred to. The other ground urged by the tenant was that in view of the construction loan advanced by him which had not been fully discharged by the date of the suit, it may not be said that he was in arrears of the amount representing permissible increases. Some facts and figures were brought to our notice to show that by the date of suit a substantial amount was still due and outstanding to him on account of the said loan. The learned Judge said and rightly in our opinion that the said amount cannot be taken into account divorced from the stipulations contained in the loan agreement. According to the loan agreement, the said loan is repayable not at once but only @ Rs. 65/- per month to be adjusted out of the rent payable. In such a situation the learned Judge held that the fact that a part of the loan was outstanding on the date of the suit or during the period the suit was pending, makes no difference.

7. It is submitted by Sri Karanjwala, learned Counsel for the appellant that the delay in complying with the order dated April 4, 1975 both with respect to arrears as also with respect to the amount payable every month thereafter must be deemed to have been condoned by the order of the Trial Court dated June 4, 1976, whereunder he was permitted to deposit the entire amount due on June 8 (Rs. 2,082.75p) and by his deposit of the said amount on June 8, 1976. He submitted that the appellant, to show his bonafides, deposited even the amount which was barred by limitation. This he did on March 8, 1979. He submitted that the learned Judge of the Bombay High Court has not at all referred to the order dated June 4, 1976. He merely referred to the order dated April 4, 1975 and on that basis held that the tenant has failed to comply with the said order. Had the learned Judge taken into consideration the order dated June 4, 1976, he submitted, he would not have held the appellant guilty of non-compliance with the order of the Trial Court. Counsel submitted that in the circumstances, Section 12(3)(b) should be deemed to have been complied with, in which event a decree for eviction could not have been passed. He also reiterated the other contention that in view of the large amount in deposit (construction loan) with the landlady, question of default in paying a lesser sum or lesser sums, as the case may be, does not arise. Learned counsel further submitted that the alleged failure of the tenant to deposit the amount representing permissible increases every month

subsequent to June, 1976 was never in issue and, therefore, cannot and could not have been made a basis for ordering eviction.

8. With a view to clear the ground, we may first deal with the argument based upon the outstanding construction loan. We agree with the learned Judge of the Bombay High Court that in view of the agreement relating to the said loan the said outstanding amount was not liable to be adjusted towards the amount claimed in the suit. The said loan was repayable only in the manner stipulated in the agreement namely @ Rs. 65/- per month.

9. Now coming to the main question whether the appellant was guilty of non-compliance with the requirement of Clause (b) of Section 12(3) it would be appropriate to read the said sub-section here. (Sub-section (3) was substituted in its entirety by the Maharashtra Amendment Act 18 of 1987. In this case, however, we are concerned with the unamended Sub-section (3). It read thus:

(3)(a). Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such a rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in Sub-section (2), the Court may pass a decree of eviction in any such suit for recovery of possession, (b) In any other case no decree for eviction shall be passed in any suit if on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court.

10. A reading of Clause (b) clearly shows that for obtaining the benefit provided by it the tenant has to pay not only arrears of rent and permissible increases but must also continue to pay or tender in court regularly such rent and permitted increases till the suit is finally decided.

11. In this case admittedly the tenant-appellant was in arrears of the permitted increases on the date of suit. After receiving the suit notice too, he made no effort to deposit the rent as required' by Section 12(3)(b). The landlady applied for expeditious hearing of the suit whereupon the court made an Order on April 4, 1975 directing the tenant to deposit the arrears of the amount representing permitted increases within six weeks of the said order. The order further directed the tenant to deposit the monthly amount regularly. The tenant failed to deposit the monthly amount regularly. The tenant failed to deposit the arrears as well as the amount due for the months following the order. More than a year later, he made an application, on June 4, 1976, for permission to deposit the amount in accordance with the Order dated April 4, 1975. On June 8, he was permitted to do so. He deposited the amount due till then on that day. A copy of the order dated June 4, 1976 has not been placed before us. We, therefore, cannot say

that the court had condoned the delay in depositing the amount of arrears in accordance with the earlier order or that it has condoned the consecutive defaults committed every month since April, 1975 in depositing the monthly amount. Merely because it is stated that the court had permitted the tenant to deposit the said amount, it cannot be construed that the court had condoned the delay in depositing the same. We are not holding that the court does possess such a power. On this question, we do not wish to express any opinion though it has been held in *Mranalini B. Shah and Another Vs. Bapalal Mohanlal Shah*, that the court has no such power. Assuming that the court has the power to condone the delay in depositing not only the arrears but also the consecutive defaults in depositing the monthly amount over a period of more than one year, the fact remains that no order condoning the delay is proved to have been made. Not only this-even for the period subsequent to June, 1976, the tenant has been highly irregular in depositing the amount as would be evident from a reading of the order of the High Court. The learned Judge has pointed out that after June, 1976 the tenant made the next deposit of Rs. 143.70p on November 15, 1976. The next deposit in a sum of Rs. 71.85p was made on January 7, 1977. Rs. 23.94p was deposited on February 9, 1977 and different amounts on June 1, 1977, August 1, 1977 and November 3, 1977. Though it is stated that these deposits were also made with the permission of the court, it is not shown to us that the court had condoned the delays in depositing these various amounts. In the absence of the orders of the court being placed before us, we cannot say that the court had condoned the same either expressly or by necessary implications - again assuming (but without so holding) that the court does possess such a power.

12. For the above reasons, we see no reason to interfere in this appeal. The appeal is accordingly dismissed. No orders as to costs.