
(2003) 04 BOM CK 0086

In the Bombay High Court

Case No : Letters Patent Appeal No. 9 of 1994

Tulshiram Bhumayya Shriram and Others

APPELLANT

Vs

Akbarkhan Mujafarkhan and Another

RESPONDENT

Date of Decision : 08-04-2003

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11(3), 12(3), 13(1)

Citation : (2004) 3 ALLMR 279 : (2004) 2 BomCR 389

Hon'ble Judges : V.G. Munshi, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : D.A. Gursahani, for the Appellant; V.S. Bedre, for the Respondent

Final Decision : Dismissed

Judgement

Marlapalle B.H., J.—This letters patent appeal arises from an order summarily rejecting Writ Petition No. 1545/1994, by the learned Single Judge. We proceed to state the undisputed facts germane for the present purpose.

2. Appellants are the tenants of residential property bearing Municipal House No. 3914 (City Survey No. 5234) and admeasuring about 17 x 23 fts. (i.e. 391 sq.ft.). The monthly rent was fixed at Rs. 7/- and, thus, the tenancy was on monthly basis (as per English calender). Notice dated 18-1-1983 (Exhibit 30) was served on the tenants by the plaintiffs (landlords) for recovery of arrears of rent for the period from 13-8-1981 onwards. The tenants did not pay the arrears of rent or the monthly rent within one month even after receipt of the said notice and, therefore, the plaintiffs (landlords) moved Regular Civil Suit No. 150/1983, in the Court of the learned Civil Judge, Senior Division at Ahmednagar, on or about 4-3-1983, for recovery of rent as well as possession of the suit premises. The possession was claimed on two grounds, namely, (1) default in payment of rent, and (2) personal and bona fide requirement of the landlord, and thus, attracting the provisions of sections 12(3) and 13(1)(g) of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 (for short, referred to as the

Bombay Rent Act). By filing a written statement, the suit was opposed and, while the suit was pending, the provisions of section 12(3) of the Bombay Rent Act came to be amended by Maharashtra Act No. 18/1987 and the amendment was brought into force from 1-10-1987. After considering the evidence brought on record, the trial Court passed eviction decree vide its judgment and order dated 30th of August, 1988, and directed the defendants to pay Rs. 167/- towards the arrears of rent and to deliver vacant possession of the suit premises within three months. Mesne profits, at the rate of Rs. 7/- per month, from the date of filing of the suit till delivery of possession, was also directed to be paid to the plaintiffs. This decree was challenged in Regular Civil Appeal No. 524/1988, which was dismissed by the learned third Additional District Judge at Ahmednagar on 20th of January 1994. The lower Appellate Court held that the suit premises were required for the personal and bona fide occupation of the landlords and the tenants were wilful defaulters in payment of rent. The orders passed by the courts below came to be challenged in Writ Petition No. 1545/1994. It was urged by the tenants that, they could not be held to be defaulters as the payment was, at the first instance, sent by money orders, which were returned and, secondly, in any case, the amount towards the rent was deposited in the Court. It was also contended that the notice of eviction was served on some of the four defendants and it could not be treated as notice to all the four defendants and, therefore, it was not a valid notice. The personal and bona fide requirement was also challenged on the ground that the landlords had alternative accommodation at more than one place within the Municipal limits of Ahmednagar. All these issues raised by the tenants did not find favour with the learned Single Judge and, for the reasons set out in the order, which is subject matter of this Letters Patent Appeal.

3. There is no dispute as to the relationship between the parties. The defence taken by the tenants was on the basis of money orders purportedly sent for the payment of rent. The lower Appellate Court, on the examination of record, had noted the instances of three money orders, as claimed by the tenants. The first one was on 29-1-1981 for an amount of Rs. 28/- and this was found to be irrelevant because the period of default commenced from 13-8-1981. The second instance was that of 1-6-1983 for an amount of Rs 70/-. The notice served by the landlord was dated 18-1-1983 and, therefore, even if this instance was presumed to be correct, it had no consequence as the money order was purportedly sent after about five months from the date of the notice. The third instance of money order was purportedly in March, 1982, for an amount of Rs 49/-. All these money order coupons, though brought on record, were not proved. Merely bringing on record money order coupons, along with the amount covered by each such coupon was not sufficient. It was necessary to bring on record the period for which the said amount was supposed to be the rent, the date on which it was offered to the landlords by the postman and their refusal, as claimed by the tenants. Nothing to this effect was brought on record by way of evidence and the money order coupons were not, in fact, exhibited. So far as the

issue of deposit in the Court is concerned, we need to refer to provisions of section 12(3) as they stood on the date of filing of the suit and on amendment w.e.f. 1-10-1987 when the suit was still pending. On receipt of the notice dated 18-1-1983, the course available to the tenants was to invoke the provisions of section 11(3) of the Bombay Rent Act for fixation of standard rent or to apply u/s 11(1) before the notice was received. None of these actions were resorted to. In the case of Jaypal Bandu Adake and another v. Basavali Gurulingappa Mhalank and another 1982 Mh.L.J. 512, a Division Bench of this Court held that a decree for eviction u/s 12(3)(a) can be prevented only if an application for standard rent is made u/s 11(3) within one month of the notice u/s 12(2) or by filing an application u/s 11(1) before such a notice is received. By raising a dispute regarding standard rent, in reply to notice u/s 12(2), the Court could not be prevented from passing a decree u/s 12(3)(a) of the Bombay Rent Act, ruled this Court.

4. We then have a decision of three Judge Bench of the Apex Court in the case of Harbanslal Jagmohandas and Another Vs. Prabhudas Shivilal, , wherein it has been held that, in order to avoid operation of section 12(3)(a) of the Bombay Rent Act, the dispute in regard to standard rent or permitted increases must be raised at the latest before the expiry of one month from the date of service of notice u/s 12(2) of the Act and it is not enough to raise a dispute for the first time in the written statement.

5. Even for depositing the rent amount in the Court, if the tenant so wanted, a motion is required to be moved so that the Court could fix a date for deposit and, merely the action of depositing the rental amount, suo motu, would not be sufficient to hold that the obligation for payment of rent was duly discharged and even otherwise, to get over the default payment of such rent has to be made within a specific period and the deposit of such amount at any time during the pendency of the suit does not cure the disqualification suffered by the tenant, so as to hand over the possession of the suit property. Amendments effected to the provisions of sub-section (3) of section 12 of the Bombay Rent Act w.e.f. 1-10-1987 have also been considered by the learned Single Judge. The amended section 12(3) reads thus :

"12(3) : No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases 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 together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine per cent per annum; and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the Court: Provided that, the relief provided under this sub-section shall not be available to a tenant to whom relief against forfeiture was given in any two suits previously instituted by the landlord against

such tenant."

The Supreme Court, in the case of Arjun Khiamal Makhijani and Others Vs. Jamnadas Tuliani and Others, has held that the amended provision as applicable prospectively i.e. from 1-10-1987. The amended provision states that no decree for eviction shall be passed for recovery of possession on the ground of arrears of standard rent and permitted increases 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 together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine per cent per annum and thereafter, continues to pay or tenders in the Court regularly such standard rent till the suit is finally decided.

6. Shri Gurusahani, the learned Counsel appearing for the tenants, invited our attention to the observations made by the lower Appellate Court regarding the amounts having been deposited in the Court by the tenants. This was a submission made before the learned Single Judge as well and it was pointed out that no motion was moved by the tenants before the lower Appellate Court or before the trial Court pursuant to the said amended provision for depositing the rental compensation or permitted increases, as the case may be. The learned Single Judge held that unless such motion was moved and orders were passed by the Court below, the tenants could not take the benefit of the said provision. We do not find any reason to take a different view.

7. On the ground of personal and bona fide requirement, it appears that, on 14-1-1994, the tenants moved an amendment to the appeal memo. The appeal has been decided on 20-1-1994 i.e. within a week from filing of this amendment application. The learned Judge of the lower Appellate Court has considered even this amended grounds regarding the availability of alternative residential premises to the landlords. In fact, one of the landlords, who was examined before the trial Court, had clearly admitted that his father had a house in Govindpura with two rooms, another house with three rooms near Municipality and other two houses in Mukundnagar and Panch-Peer-Chawadi. He had stated that he was staying separately in a rental accommodation admeasuring 10 x 10 fts. Similarly, the plaintiff No. 2 was also staying in a rented room admeasuring 8 x 8 ft. By the amendment dated 14-1-1994, it was pointed out that the plaintiff No. 2 also had constructed a house in Fakirwadi area and he was staying in the same with his family members and, therefore, the requirement of the suit premises ceased to continue. The courts below have noted that the said premises admeasures about 297 sq. fts. and there were more than eight family members, with three brothers, their wives and minor children. The plaintiff No. 2 had accepted the existence of this accommodation in his name and stated that it was not sufficient and he continued to stay in the rented room. It is well established in law that it is the landlord who has to decide regarding the availability of the accommodation, the type of accommodation and the convenience of his family members when he seeks to regain the possession of the rented premises and it

is noted the tenants who could dictate the terms. Shri Gurusahani, the learned Counsel for the tenants, has referred to the case of Ramesh Kumar Vs. Kesho Ram, . There can be no dispute that the events that were sought to be brought on record by the amendment application dated 14-1-1994 have been considered by the lower Appellate Court and it has been held that, these events did not come in the way of the landlords in seeking the eviction decree. The learned Single Judge has concurred with the said findings and we agree with the same.

7-A. In the case of Kanhaiyalal Srivastava Vs. Bapurao Nandanwar, , a Division Bench of this Court has considered the term "family" and held that it must always be liberally and broadly construed so as to include near relatives of the head of the family and it would include not only the members of the landlord family but also those persons who are dependent upon him and whose responsibility he had accepted. This view of the Division Bench has been considered by the Apex Court recently in the case of Dwarkaprasad Vs. Nirranjan and Another, , and the term "for occupation by himself" u/s 13(1)(g) of the Bombay Rent Act has been held to mean that it does not confine literally to the landlord alone and it is required to be construed as himself and the members of his family. The Apex Court stated thus:

"9. The ground of eviction contained in sub-section (sic Clause) (g) of section 13(1) of the Act has to be liberally construed. Confining it to the landlord alone will defeat the very object of the provision. At this stage, we may refer to some of the judgments of this Court as well as of various High Courts which almost unanimously take the view that such a provision has to be liberally construed."

8. We have also noted that when Writ Petition No. 1545/1994 was summarily dismissed by the impugned order, the tenants had requested for three months time to vacate the premises and the said request was turned down by this Court. However, in this Letters Patent Appeal, eviction was stayed and said order continued. Shri Gurusahani, the learned Counsel, has placed on record the receipts towards deposit of rent in the Court below, from time to time. We, therefore, deem it appropriate to grant some reasonable time to the tenants to hand over the vacant and peaceful possession of the subject premises to the landlords.

9. In the result, this Letters Patent Appeal fails and the same is hereby dismissed. The eviction decree is confirmed and the tenants are directed to hand over the vacant and peaceful possession of the suit premises to the landlords within a period of two months and the tenants shall submit an undertaking to this effect with the Registry of this Court, within a period of two weeks.