

(2001) 07 BOM CK 0090

In the Bombay High Court

Case No : Writ Petition No. 3741 of 1989

Ujwalabai @ Meena Shantaram Apte since married now Mrs.
Swati Rahul Datay and Others

APPELLANT

Vs

Namdeo Dnyanoba Shingare

RESPONDENT

Date of Decision : 12-07-2001

Acts Referred:

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

Citation : (2001) 4 ALLMR 637 : (2002) 2 BomCR 767 : (2001) 4 MhLj 545

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

Bench : Single Bench

Advocate : Hirlekar, instructed by B.P. Apte, for the Appellant; Ranjit V. More, for the Respondent

Judgement

A.M. Khanwilkar, J.—This writ petition, under Article 227 of Constitution of India, takes except the order passed by the Additional District Judge, Sangli dated 7th February, 1989 in Regular Civil Appeal No. 101 of 1983.

2. The petitioners are the landlords in respect of premises consisting of one room admeasuring 12" x 10" situated in City Survey No. 701, Gaon-Bhag, Sangli. The respondent was inducted as the tenant in the suit premises in or around 1970. According to the petitioners-landlords contractual rent was Rs. 35/- per month and the tenant was also liable to pay other charges towards permitted increases on month to month basis. The petitioner gave notice thereby calling upon the respondent-tenant to pay permitted increases at the rate of Rs. 3.13 ps. for the period between April 1976 to December 1976 and rent along with permitted increases at the rate of Rs. 47-85 ps. from January 1977 to March 1977. This notice was issued by the petitioner on 1-3-1977 which was admittedly received by the tenant on 3-3-1977. It is common ground that respondent No. 2 failed to offer the rent as demanded by the suit notice within stipulated time of one month nor filed any standard rent application within such period. However, the standard rent application was filed by the respondent-tenant being Regular Civil

Misc. Application No. 42 of 1977 only on 11-4-1977, which is after the specified period. Accordingly, the petitioners landlords instituted a suit against the respondent for possession of the suit premises on the ground of default within the meaning of section 12 of Bombay Rent Act. The said suit was filed before the 2nd Joint Civil Judge, J.D., Sangli being Regular Civil Suit No. 212 of 1977. The respondent-tenant resisted the said suit contending that he was not a defaulter. According to the tenant the demand made in the suit notice was excessive and the said matter was already subjudice in the standard rent proceedings instituted by him. The trial Court on analysing the evidence on record by judgment and order dated 23rd February, 1982 held that demand made by the petitioners-landlords was valid and justified and that the respondents-tenants was liable to pay monthly rent inclusive of permitted increases which amount would work out to Rs. 47-85 ps. per month. Accordingly the trial Court held that the respondent tenant was a defaulter and therefore decreed the suit and ordered delivery of possession to the petitioner-landlord.

3. Against this judgment the respondent-tenant preferred an appeal before the District Judge, Sangli being Regular Civil Appeal No. 101 of 1983. The Appellate Court, however reversed the decree and held that the respondent tenant was not a defaulter. According to the Appellate Court the tenant did not admit the fact that he was a defaulter. Besides the said reason the Appellate Court proceeded to observe that there was no evidence to the effect that prior to issuance of the suit notice the landlord had ever demanded water tax at increased rate. On the other hand the landlord had accepted the rent inclusive of water tax upto the period ending December 1976 without any protest. The Appellate Court proceeded on the assumption that this was a case falling u/s 12(3)(b) of Bombay Rent Act and therefore proceeded to hold that in the fact situation of the present case no decree could be passed.

4. The petitioner-landlord has therefore taken exception to the order passed by the Appellate Court in this writ petition under Article 227 of the Constitution of India.

5. After considering the rival submissions and going through the pleadings and evidence on record, the admitted facts that emerge are that on 1-3-1977 the petitioners landlords issued the suit notice to the respondent-tenant demanding rent at the rate of Rs. 47-85 ps. per month for period between January 1977 to March 1977 and permitted increases at the rate of Rs. 3-13 per month for period from April 1976 to December 1976. It has been held that amount towards permitted increase was payable on month to month basis. It is not in dispute that respondent-tenant neither offered the said amount nor raised the dispute regarding standard rent within one month. In such a situation the case would ordinarily be covered u/s 12(3)(a) of Bombay Rent Act and in which case the Court will have no option but to decree the suit against the tenant on the ground of default. However, in the present case since the respondent-tenant had disputed the quantum of rent as well as liability to pay permitted increases as

demand, by way of standard rent application, the courts below examined the matter even in the context of provision of section 12(3)(b) of the Act. However, it is not in dispute that in the standard rent proceedings instituted by respondent-tenant have been decided against the tenant and the Court by its order dated 19th June, 1985 held that monthly rent or contractual rent of the suit premises was Rs. 35/- per month and permitted increases of Rs. 12-85 per month from the date of filing of the application. In other words, in the standard rent proceedings, the Court has taken the view that demand made by the petitioner landlord was not excessive or invalid. It is also not in a dispute that the said decision rendered by the rent Court in the standard rent proceedings has attained finality after the dismissal of the revision application by the District Court on 7-2-1989. In the circumstances, since the standard rent proceeding has been decided against the respondent-tenant, the undisputed position is that demand made by the petitioner landlord under the suit notice cannot be said to be excessive or invalid. In other words, the courts below have concurrently found that the amount towards permitted increases was also payable on month to month basis. Understood thus, after the suit notice demanding arrears of permitted increase for a period more than six months, which were payable monthly, the tenant was obliged to offer the amount so demanded in the suit notice within one month from the receipt of the notice or raise a dispute within the same time; failing which he would be liable to be evicted in view of the mandate of section 12(3)(a) of the Act. In such a situation the Court has no option but to decree the suit within the meaning of section 12(3)(a) of Bombay Rent Act. In the present case admittedly, the tenant has neither offered the demanded amount nor raised any dispute within one month from the date of receipt of the suit notice.

6. The learned Counsel for the respondent however, contends that the courts below have not examined the matter in the context of liability of the tenant as per section 12(3)(a) of the Act. He submits that though the respondent-tenant was liable to pay amount towards permitted increases the said liability was on year to year basis and not payable on month to month basis. According to him if the permitted increases were not payable on month to month basis, section 12(3)(a) will have no application to such a situation. This submission clearly over-looks that the courts below, in the present proceedings as well as in standard rent proceedings, have proceeded on the basis that permitted increases were payable on month to month basis. That approach has been adopted by the courts below obviously because no dispute was raised on behalf of the respondent-tenant about the liability to pay amount towards permitted increases on month to month basis. Understood thus, it is too late in the day for the respondent-tenant to contend before this Court that amount towards permitted increases was not payable on month to month basis. Accordingly, the conclusion reached by the trial Court decreeing the suit for possession could not have been interfered with, for the matter would be squarely covered by provisions of section 12(3)(a) of Bombay Rent Act and in that case the Court has no option but to decree the suit.

7. The learned Counsel for the respondent then contends that the courts below have not adjudicated the question as to whether the case is covered u/s 12(3)(a) or 12(3)(b). This submission is also devoid of any merits. On examining the rival contentions and record it is more than clear that the case would be covered u/s 12(3)(a) of Act. No doubt the Appellate Court has misdirected itself in proceeding on the assumption that the case would attract the provisions of section 12(3)(b), but as observed earlier-that approach was totally inappropriate and not in accord with the pleadings and the record. In the circumstances the submission raised on behalf of the respondent that the case is not covered u/s 12(3)(a) cannot stand the test of judicial scrutiny. Accordingly, this petition succeeds and the order passed by the Appellate Court is set aside and instead the decree for possession passed by the trial Court is restored.

8. Rule is made absolute with costs.

9. At this stage the learned Counsel for the respondent prays for reasonable time to vacate. He submits that the only ground is of default and since the respondent has been occupying the suit premises for last about 30 years, he may be granted some reasonable time. The learned Counsel for the petitioners fairly submits that some reasonable time to vacate be granted but not beyond 6 months. In the circumstances, respondent is granted time to vacate the suit premises till the end of February 2002 subject to respondent as well as other major occupants in the suit premises filing usual undertakings within four weeks from today. It is however, made clear that if undertakings are not filed within the aforesaid period, it will be open for the petitioners landlords to proceed with the execution of the decree for possession.