
(1970) 01 BOM CK 0023
In the Bombay High Court
Case No : Spl. C. A. No. 1644 of 1967

Vishwanath Sadashiv Karandikar

APPELLANT

Vs

Gokuldas Ramdas Gujar

RESPONDENT

Date of Decision : 28-01-1970

Acts Referred:

Citation : (1970) MhLj 738

Hon'ble Judges : S. B. Bhasme, J

Bench : Single Bench

Advocate : K. J. Abhyankar, for the Appellant; Raghavendra A. Jahagirdar, for the Respondent

Final Decision : Allowed

Judgement

S. B. Bhasme, J.—The petitioner is a tenant in respect of the suit premises which is a cinema theatre in Satara City. The petitioner had agreed to pay from October 24, 1950 Rs. 425, as the monthly rent to the opponent-landlord. On December 21, 1965 the landlord served a notice on the petitioner terminating his tenancy, inter alia, on the ground of non-payment of rent. The petitioner received the notice on December 23, 1965. On January 18, 1966 the petitioner made an application u/s 11 (3) of the Rent Act requesting the Court to fix the standard rent on the ground that the agreed rent was excessive.

2. During the pendency of this application, as no further steps were taken by the petitioner, the opponent gave an application purporting to be also u/s 11 (3) of the Rent Act asking the Court to dismiss the petitioner's application for fixation of standard rent. The opponent in the application urged that the petitioner had failed and neglected to get the interim rent fixed; the petitioner had not even sought orders from the Court regarding the deposit of rent; the petitioner had not tendered any amount from month to month on account of the rent to the opponent-landlord; and that in view of the amended provisions of Section 11 (3) the petitioner's application for fixation of standard rent be dismissed in limine. The petitioner resisted this application on the ground that the Court had not

passed any order fixing the interim rent and for that reason he could not deposit any amount in the Court. He also pleaded that a larger amount was due to him from the opponent-landlord on account of the expenses incurred by him for the upkeep of the suit premises. There were also other money dealings between the parties. Finally the petitioner requested the Court to fix the interim rent and expressed his willingness that he would go on depositing the monthly rent even at the rate of Rs. 425 per month. The learned trial Judge, on a consideration of the facts and circumstances of the case, and the amended provisions of section II of the Rent Act, came to the conclusion that it would not be just and equitable to dismiss the petitioner's application. The learned trial Judge fixed the interim rent at Rs. 425 pending the final disposal of the application. The opponent-landlord invoked the revisional powers of the District Court Under the Rent Act on the ground that the learned trial Judge had acted contrary to law and the express provisions of section 11 of the Act. The learned Assistant Judge, Satara, who heard the revision application, was inclined to take the view that u/s 11 (3) of the Rent Act it was the duty of the petitioner-tenant to have the interim rent fixed or to pay the contractual rent from month to month. If the tenant-applicant fails to follow this course and fails to deposit the amount of rent his application should be dismissed. Accordingly the learned Assistant Judge allowed the revision application, set aside the order passed by the learned trial Judge and directed the dismissal of the petitioner's application u/s 11 (3) of the Rent Act. The petitioner has approached this Court with a grievance that the learned Assistant Judge has acted contrary to the express provisions of section 11 (3) of the Rent Act and that his order deserves to be set aside and that of the learned trial Judge restored.

3. Mr. Abhyankar for the petitioner argues that on a plain reading of section 11 (3) there is no warrant for the view that the tenant-applicant must take some steps for getting the interim rent fixed by the Court. That subsection provides that if the tenant-applicant fails to deposit the interim rent fixed by the Court, then only his application shall be dismissed.

4. Mr. Jahagirdar for the opponent-landlord, on the other hand, argues that the sub-section casts an obligation on the tenant to take steps for getting the interim rent fixed or to go on paying the contractual rent till the final disposal of the application. If the tenant merely files an application u/s 11 (3) and fails to get the interim rent fixed or to pay the contractual rent, then the only order which the Court can pass is to dismiss his application without considering his case on merits. In support of this interpretation of section 11 (3) Mr. Jahagirdar has relied upon a decision of this Court in Karamsey Kanji Vs. Velji Virji, . In that case Chief Justice Chagla was considering, along with several other civil revision applications, Civil Revision Application No. 1380 of 1952. At page 627 the facts of this Civil Revision Application are stated. The learned Chief Justice had to decide a similar question arising out of an application u/s 11 (3) of the Rent Act in the light of the prevailing practice in the Court of Small Causes at Bombay. It must be remembered that section 11 (3) is substantially amended after this decision.

But the material words of section 11 (3) which were considered by the learned Chief Justice have not undergone any change, and the ratio of that decision is certainly relevant while interpreting section 11 (3) as it stands today. The learned Chief Justice has explained the scheme of the Rent Act in these words (p. 627):

"Let us look at the scheme of the Rent Act. Sub-section (3) of section 11 permits the Court to fix an interim rent which the tenant is liable to pay when he applies for fixation of standard rent after he has received a notice from his landlord u/s 12 (2). The scheme of section 12 is that a landlord cannot institute a suit for recovery of possession of the demised premises on the ground of non-payment of rent until the expiration of one month next after notice in writing of the demand of the rent has been served upon the tenant. If after this notice the tenant has still failed to pay rent, he would be liable to be ejected u/s 12 (1) because in that case it could be said that he was not ready and willing to pay rent. Now, in order to protect the tenant the Legislature has enacted subsection (3) of section 11 and the scheme of that sub-section is that as soon as the tenant gets notice he can go to Court and apply for fixation of standard rent, but while the application is being heard and disposed of the Court orders him to pay an interim rent. If he does not pay this interim rent, he would be liable to be ejected u/s 12 (1). Therefore the scheme of the Act seems to be fairly clear, that there is an obligation upon the tenant to pay rent at all times and he is liable to be ejected if he fails to pay rent after notice has been given to him u/s 12 (2). The only right he has is, in cases where he complains that the contractual rent is not the proper rent, to get an interim rent fixed by the Court, but the obligation to pay that interim rent continues throughout, and if that obligation is not discharged, he would be liable to be ejected u/s 12 (1)."

After explaining the scheme of the Rent Act, the learned Chief Justice points out that in all cases under the Rent Act either before or after the tenant receives a notice u/s 12 (2) of the Rent Act, if he makes an application u/s 11 (3) of the Act he must get the interim rent fixed or pay the contractual rent. If he fails to do either, he will have to face the consequences of the notice given to him by the landlord u/s 12 (2) of the Rent Act. There cannot be any dispute about this proposition, but that does not precisely answer the question now argued before me about the interpretation of section 11 (3) of the Act. As stated above, section 11 (3) is to some extent amended by additional words and section 11 (4) is newly introduced by the amendment which was effected by the Maharashtra Act 14 of 1963. An important addition made in section 11 (3) is to the effect that if the tenant fails to deposit or pay to the landlord the interim rent fixed by the Court, his application shall be dismissed. In fact, the additional words seek to fill up a lacuna which was noticed by Chief Justice Chagla while deciding the Case referred to above. Similarly, sub-section (4) is newly added extending the provisions of section 11 (3) to other cases where a dispute about standard rent arises between the landlord and tenant, particularly when a suit is filed by the landlord for recovery of rent with or without claiming possession of the premises.

Even in such a suit it would be open to the tenant to say, in answer to the claim for arrears of rent made by the landlord, that the agreed rent is excessive and the Court should fix first the standard rent and then only pass a decree for arrears of rent on the basis of the fixation of the standard rent. Sub-section 4, provides that the" Court in such a suit, if satisfied that the tenant is withholding the rent on the ground that the rent is excessive and standard rent should be fixed, may, if it thinks just and proper, make an order directing the tenant to deposit in Court forthwith such amount of rent as the Court considers reasonably due to the landlord or at the option of the tenant directing to pay to the landlord a certain amount to be specified by the Court, The Court is further empowered to make an order directing the tenant to deposit in Court periodically such amount as it considers proper as interim standard rent or at the option of the tenant such amount as the Court may specify during the pendency of the suit. The Court may also direct that if the tenant fails to comply with the order so made within the time allowed by it, then the Court will be at liberty to strike out the defence of the defendant-tenant or grant conditional leave to defend the suit.

5. It is evident that the provisions of Section 11 (3) and II (4) of the Rent Act are identical in terms and deal with the same subject-matter, viz. the dispute raised by the tenant about the fixation of standard rent. The only difference between the two provisions is that u/s 11 (JJ) the tenant makes the original application for fixation of standard rent and u/s 11 (4) the tenant-defendant in the suit filed by the landlord raises a dispute about the fixation of the standard rent. In other words, the two sub-sections require the tenant to pay the interim rent fixed by the Court as a condition precedent for a consideration of his dispute on merits. If he fails to make the deposit, then in one case his application is liable to be dismissed and in the other case his defence is liable to be struck off or the Court might grant him conditional leave to defend the suit. We will have to adopt the same rule of interpretation for the two sub-sections of section 11. The Legislature, no doubt, has made a provision to safeguard the interests of the landlord by preventing the tenant from raising a mere dispute and then avoiding the liability to pay the arrears of rent due to the landlord. If this is so, then it is reasonable to assume that the Legislature intended to enact similar provisions in the two sub-sections. It is only when the Court in the application or in the suit, as the case may be, fixes the interim rent and calls upon the tenant to pay the same, that there is an obligation on the tenant to comply with the order and if he fails to comply with the order then he will have to face the consequences mentioned in the two sub-sections.

6. On a consideration of the scheme of the Act and the relevant provisions of section 11, I am of the view that the tenant-applicant's application cannot be dismissed merely on the ground that either he has failed to deposit the rent in Court or failed to move the Court for fixation of the interim rent pending the disposal of his application. In the present case the tenant-applicant had not moved the Court with a request to fix the interim rent. But Sub-section (3) of section 11 requires the Court to forthwith pass orders about the amount of

deposit or the fixation of the interim rent. It was open to the opponent-landlord to draw the attention of the Court to this provision of law and get the interim rent fixed. In the absence of any order passed by the Court the tenant-applicant cannot be penalised by dismissing his application in limine without consideration of the dispute on merits.

7. In the result the application succeeds, the order of the learned Assistant Judge is set aside and the order of the learned trial Judge is restored. In the circumstances of the case there will be no order as to costs in this Court. The applicant will, however, be entitled to get the costs in the lower appellate Court. The rule is accordingly made absolute.

8. There will be no orders on the Civil Application and no order as to costs.