

(1978) 07 BOM CK 0025**Bombay High Court****Case No:** Special Civil Application No's. 430 and 637 to 641 of 1978

Prabhudas S. Thakkar

APPELLANT

Vs

M.D. Shah

RESPONDENT

Date of Decision: July 3, 1978**Acts Referred:**

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 11, 12
- Constitution of India, 1950 - Article 227

Citation: (1979) 81 BOMLR 328**Hon'ble Judges:** Kanade, J**Bench:** Single Bench**Judgement**

Kanade, J.

These are the six petitions filed by the petitioners tenants under Article 227 of the Constitution challenging the decision of the Additional Chief Judge, Court of Small Causes at Bombay dated December 14, 1977.

2. The petitioners in all these Special Civil Applications are tenants in the building known as "Raj-Hans" situated at Dr. Ambedkar Road, Mulund (W) Bombay 400080, and respondents Nos. 1 to 3 are the landlords-owners in respect of the said building. It appears that the respondents issued a demand notice u/s 12(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (hereinafter referred to as the Bombay Rent Act). All the petitioners-tenants having received the notice under Sub-section (2) of Section 12 of the Bombay Rent Act, submitted an application u/s 11(3) of the Bombay Rent Act for fixing the standard rent of the suit premises. Sub-section (3) of Section 11 of the Bombay Rent Act applies only where the tenant has received a notice under Sub-section (2) of Section 12. The tenant can apply to the Court for fixing the standard rent and/or determining the permitted increases. Such an application has got to be made by the tenant before the expiry of the one month after the receipt of the notice referred to in Sub-section (2) of Section

12 of the Bombay Rent Act. On the receipt of such an application, the Court is called upon to decide forthwith the interim rent pending the disposal of the said application. Obviously, the said order can be passed after perusal of the affidavits filed by the respective parties. The Court has to fix up the date to deposit such rent. The Court is further called upon to pass an order directing the tenant to deposit the amount in the Court or to directly pay to the landlord. This provision of Section 11(3) of the Bombay Rent Act is enacted to protect the rights of the tenants. This application is to be made in order to show that the tenant is ready and willing to pay the standard rent. Explanation I of Section 12 lays down that:

Explanation I:- In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in Sub-section (2), he makes an application to the Court under Sub-section (3) of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court.

3. If the interim rent so fixed by the Court is not deposited by the tenant, the consequence is provided, viz. that he cannot take a plea that he was ready and willing to pay the standard rent and avoid the decree u/s 12(3)(a) of the Act.

4. Sub-section (4) of Section 11 of the Act contemplates a case where the landlord had filed suit for the recovery of rent with or without a prayer for possession of the premises. Under Sub-section (4) of Section 11, the landlord is protected if the tenant, on frivolous and vexatious grounds, makes an application for fixing standard rent and does not pay the amount due by way of arrears of rent or permitted increases. But, if the Court is satisfied that the tenant is withholding the rent or permitted increases on the ground that the rent is excessive then, the Court shall and if it appears that it is just and proper to make such an order, the Court may, make an order directing the tenant to deposit in Court forthwith such amount of the rent as the Court considers to be reasonably due to the landlord, or at the option of the tenant an order directing him to pay to the landlord such amount thereof as the Court may specify. A specific direction could be given by the Court under Sub-section (4) of Section 11 of the Act that the tenant shall deposit in Court periodically such amount as it considers proper as interim standard rent or at the option of the tenant an order to pay to the landlord such amount thereof as the Court may specify during the pendency of the suit. The consequence of failure or default to deposit the amount is also provided under Sub-section (4) of Section 11 of the Act, If the tenant fails to deposit the amount within such time as may be allowed by it, he shall not be entitled to appear in or defend the suit except with the leave of the Court, which leave may be granted subject to such terms and conditions as may be specified.

5. It is true that there is no specific provision in Sub-section (3) of Section 11 empowering the Court to direct the tenant to deposit in Court periodically such

amount as the Court considers proper as interim standard rent. The omission is obvious. As stated above, Sub-section (3) of Section 11 is attracted or operates where there is no suit pending against him for the recovery of rent, with or without the claim for possession of the suit premises. The tenant may be in arrears of rent for more than six months, and if his case falls within the ambit of Section 12(3)(a) he can make an application within one month from the date of the receipt of the notice showing that he is ready and willing to pay the standard rent of the suit premises and that the agreed rent is excessive and the Court shall decide and finally determine the standard rent. If he does not make such an application, then he may not be entitled to contend in the suit that he was ready and willing to pay the standard rent. If at all the tenant wants to take the benefit of the section, he should make an application under the provisions of Sub-section (3) of Section 11 of the Bombay Rent Act showing his readiness and willingness to pay the standard rent.

6. A very interesting point has been raised by Mr. Jawahar J. Thakkar, the learned advocate appearing for the petitioners in these petitions, that there is no jurisdiction in the Court to pass an order directing the tenant to deposit the periodical rent and that Sub-section (3) of Section 11 contemplates only one order, viz., the order at the time of the fixation of the interim standard rent and that thereafter the Court ceases to have jurisdiction to pass any further order. Consequently, Mr. Thakkar submits that the tenant has got a right to withhold payment of rent for more than six months after the interim rent is determined by the Court on the application of the tenant and the tenant deposits the same, and that, thereafter, the tenant need not make any payment to the landlord and such a conduct on the part of the tenant is protected under Sub-section (3) of Section 11 of the Bombay Rent Act.

7. There is no substance in the above submission of Mr. Thakkar. As stated above, under Sub-section (5) of Section 11, the Court, on the receipt of the application from the tenant shall forthwith specify the amount of rent and permitted increases. Obviously such a rent cannot be arbitrarily fixed at the hands of the

8. Court. The Court may fix up the interim standard rent by perusing the affidavits filed on behalf of the respective parties and the documents produced on the record. Once the Court specifies the amount of the interim standard rent to be paid by the tenant to the landlord, it has to direct the tenant to deposit the amount of standard rent in Court or at the option of the tenant to make an order to pay the landlord such amount thereof as the Court may specify pending the final decision of the application. The said sub-section further provides that, out of any amount deposited in Court, the Court may make an order for payment of such reasonable sum to the landlord towards payment of rent or permitted increases due to him as it thinks fit.

9. Having regard to the provisions of Sub-section (3) of Section 11, there is, no doubt, in my mind that there is ample authority and/or power to the Court to direct the tenant to deposit the entire arrears of rent at the rate specified as the interim standard rent or as and when the amount of rent becomes due. Undoubtedly, the

rent has got to be paid periodically,

10. Having regard to the aforesaid connotation of rent, it can very well be inferred that the Court has specific or implied authority to fix up the interim standard rent and direct the tenant to deposit the arrears of rent or the rent due or which may become due during the pendency of such an application. This power is incidental to the powers expressly granted to the Court by the subsection. I cannot persuade myself to accept, the submission made by Mr. Thakkar that under Sub-section (3) of Section 11 the tenant can postpone payment of standard rent for an indefinite period, till the disposal of the application. As a matter of fact, the said provision is enacted to protect the rights of tenant so that he may get the benefit of the provisions of Section 12(1) and 12(5)(a) of the Act. If he fails to pay that amount or makes default in the payment of rent, he cannot take advantage of Explanation (1) to Section 12 and thereby may incur a penalty of eviction u/s 12(1) or Section 12(3)(a) of the Bombay Rent Act.

11. The second submission made by Mr. Thakkar is that the petitioners had made an application to the Municipal Corporation of Greater Bombay u/s 499 of the Bombay Municipal Corporation Act for permission to carry out repairs and the permission had been granted. The said application was made by the petitioner along with other tenants jointly in respect of the said building "Raj-Hans". He submitted that, if the amount that may be deposited by the tenants is allowed to be withdrawn by the landlord, they would be put to a great hardship as there cannot be repairs to the building which are so essential for the maintenance of the said building in proper condition.

12. I do not find from the judgements of the lower Courts that they have applied their mind to this aspect of the case. If really the building requires repairs as alleged by the petitioners and if really there is permission granted by the Bombay Municipal Corporation of Greater Bombay, then the lower Court must consider as to whether the petitioners can be directed to deposit the amount in Court or to pay the said amount to the landlord. If the amount is deposited by the tenants in the Court, the trial Court shall consider as to whether the said amount should be paid to the landlord-fully or in part - or whether it should be allowed to be deposited in some nationalised bank. There is no discussion in the judgments of both the Courts below in respect of this aspect of the case. The learned Judge shall consider as to whether the amount should be paid to the landlord or allowed to be deposited in some nationalised bank. The learned Judge of the lower Court shall give an opportunity to, both the parties to file affidavits in support of their respective claims, and then decide the point in accordance with law.

13. At this stage, Mr. Thakkar submits that certain amounts which are deposited by the tenants have been allowed to be withdrawn and part of the said amount is still lying in the Court. The lower Court is directed to consider as to whether the aforesaid amounts should be allowed to be withdrawn or should not be paid to the

landlord in view of the observations made above.

14. With these observations, the rule granted by this Court will have to be discharged.

15. There will be no order as to costs.