Sd. Umar Sd. Ahmed Vs Dedamiya Husenbhai and Others

Court: Bombay High Court

Date of Decision: July 25, 1975

Acts Referred: Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 â€" Section 11(1), 11(3), 12, 12(2), 12(3)

Citation: AIR 1976 Bom 336 : (1977) MhLj 261

Hon'ble Judges: Joshi, J

Bench: Single Bench

Advocate: B.P. Apete, for V.N. Ganpule, for the Appellant; M.L. Pendse, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. I propose to dispose of all these special civil applications preferred under Article 227 of the Constitution of India by the original tenant by a

common judgment. The few facts material for their disposal, stated briefly,

2. Respondent No. 1 Dadamiya and other co-sharers brought three different suits in the Court of the Civil Judge, Junior Division, Ahmednagar, on

24-4-1968 against the present petitioner, a tenant, on three different premises forming part of the same property situate at Ahmednagar.

Possession was claimed on the ground of reasonable and bona fide requirement, nuisance and default. The learned trial Judge rejected the claim

for possession but made decrees for the arrears of rent claimed in the three respective suits. Against these decrees the landlord went in appeal to

the District Court and the appeals were respectively numbered as 179, 181 and 184 of 1971. The learned District Judge, while maintaining the

finding on the question of standard rent debated before the lower Court and the order for the arrears of rent, allowed the appeals and decreed

possession in favour of the landlord, by his order dated 10-9-1971.

3. Before these three suits were instituted by the landlord for possession and arrears of rent, the tenant-petitioner had already preferred

Miscellaneous Application No. 166 of 1966 on 7th November. 1966, for fixation of standard rent. On 2nd March, 1967, he moved the Court for

fixation of interim rent and the lower Court by its order of even date fixed the interim rent for the three different premises at Rs. 4/- 4/-, and 5/-

respectively, as against the agreed rent of Rs. 10/-, 8/- and 10/-. This proceeding was heard as a companion proceeding to the three suits and

evidence was recorded in the regular sits. The learned trial Judge concluded that the agreed rent would be the standard rent. This was the order

made in Miscellaneous Application No. 166 of 1966 also. Against this order the tenant preferred Civil Revision Application No. 6 of 1969. The

learned District Judge, on confirming the findings of the lower Court on the issue of standard rent, rejected the same. Against the decision in Civil

Revision Application No. 6 of 1969. Special Civil Appln. No. 2792 of 1971 is filed. Thus it would be apparent that the tenant is impugning the

order made by the learned District Judge in the application for fixation of standard rent and the three decrees obtained by the landlord in the

different suits referred to above.

4. Before touching the various points urged it would be quite necessary to refer to few facts which are mostly undisputed or otherwise may be

taken as duly proved by the affidavits filed in this Court. NO doubt, the tenant, probably forestalling some action on the part of the landlord,

rushed to the Court with an application for fixation of standard rent u/s 11 of the Bombay Rent Act on 7th November, 1966. After four months he

filed an application (Ex. 9) for fixation of interim rent on 2nd March, 1967 and the interim rent came to be fixed at Rs. 13/- in aggregate for the

three premises in the above-said suits. While making this order the lower Court gave clear-cut direction to the tenant in the following words:

The interim standard rent is fixed at Rs. 5/- per month of the open space (premises in Suit No. 181 of 1968) and interim standard rent of five

Khans (premises in the remaining two suits) it fixed at Rs. 8/- p. m., pending the decision of the application. The application to deposit all the

arrears of rent as per above rate with in 4 days from today and should pay regularly as and when it falls due every month.

After this order was passed, the tenant did deposit Rs. 169/ the arrears due till then, on 3rd March, 1967, i.e., within four days of the order as

directed by the Court.

5. What happened thereafter is worthy of note. The tenant, it is the grievance of the landlords --- and they are right in their submissions ---

observed this order in breach so far as the regularity in payment was concerned. The tenant did not care to mae any deposit of the rent at this rate

when it became due i.e., on 1st of every calendar month till 15th June, 1968. So, for nearly fifteen months he never cared to comply with this

order. Even thereafter the subsequent deposits were made at irregular intervals. The deposits, as revealed by the record, were on 17-9-19678,

10-3-1969, 7-4-1969,17-6-1969,4-8-1969 and so on.

6. The trial Court delivered the judgments in all these proceedings on 30-10-1969 and just a month before that it appears, all the arrears at the

interim rate were deposited but no steps were taken to clear the decorate dues with they costs forthwith.

7. After the appeals were filed by the landlords and the matter was taken in revision to the District Court by the tenant, and although the standard

rent was fixed at the agreed rate, no steps were taken by the tenant to make any deposits as decreed by the lower Court. Nor did he move the

appellate Court for re-fixing the interim rent and giving him the same latitude which the lower Court had done while deciding the miscellaneous

application for fixation of standard rent. No doubt in preferring the revision application the tenant was challenging the finding on the issue of

standard rent, but it did not prevent him from either depositing the rent for the subsequent period or seeking suitable orders for fixing the interim

rent as he did in March, 1967. He kept quiet till the appeals as well as the revision application were likely to come for hearing on board. The

learned District Judge has disposed of these appeals and the revision application on 10-9-1971. A month prior to it, vix., 6-8-1971 he deposited

all the arrears of rent. The costs were deposited on 12-8-1971. It would be evident that the payment was anything but regular, not only in the

lower Court, but even in the first appellate Court.

8. After the learned District Judge decreed the claim for possession by allowing the three appeals and rejected the revision application confirming

the order of the standard rent. the tenant preferred these civil applications in this Court on 13-2-1971. On the very day be obtained a rule and

interim stay regarding delivery of possession on the usual terms. By clause (b) of these applications he gave a specific undertaking in the following

terms:

(b) That the petitioner shall deposit all the arrears if any and shall go on depositing the future rent as and when it becomes due and payable during

the tendency of this petition.

When these petitions were admitted and stay was granted on usual terms, it is implicit that the petitioner was required to deposit the arrears or the

dues of rent as and when the they became payable to the landlord.

9. Despite this express undertaking and promise held out to the Court, the tenant, it seems, made the payment of rent upto May, 1974. This is

what he had stated in his affidavit filed before this Court in reply to the affidavit made by the landlord who bitterly complained of non payment.

From May. 1974, onwards till June 1975, no payment was made. To explain these laches, in paragraph 2 of cycle shop which he was running in a

part of the suit premises, had to be kept closed because the premises were in a dilapidated condition and it was impossible to work, as there were

leakage"s in the monsoon. Moreover, he was ill in the month of December, 1974 and January, 1975, and was otherwise in grave financial

difficulties. Next he submitted that he had deposited all the arrears of rent upto the end of June, 1975, but he did not mention the date of the

deposit in his affidavit in reply which was filed on 22-7-1975. This reply has its own background. On 17th June, 1975, the landlord put in an

affidavit setting out the above defaults and made a grievance that the tenant had flouted the orders of this Court and neglected to deposit the rent

regularly in the Court below as well as in this Court. He further stated that as the tenant was in arrears of a pretty large amount he was entitled to

no reliefs. A copy of this affidavit was served on the tenant and for a month and more he seems to have kept mum and when all these matters were

on board for hearing, appears to have taken this step of deposit as a last straw to stave off the evil consequences.

10. To recapitulate, it would be quite manifest that the orders made by the lower Court in the miscellaneous application were not complied with

fairly and squarely. Except the first deposit which was made immediately after the order, the subsequent payments were most irregular. They were

made at the sweet will and pleasure of the tenant. During the pendency of the appeal and civil revision application no steps whatsoever were taken

by the tenant to make the deposit despite the decision against him fixing the standard rent at the agreed rate. So long as this order was not modified

on any interim application which the tenant could have preferred either in the appeals or in the civil revision application, the tenant was bound to

make the payment regularly till the disposal of these appeals. This aspect has some bearing when I proceed to consider the language of Section 11

and 12 which cover the point at issue. Thirdly, on filing the special civil application in the High Court, he obtained the interim rule and on his own

gave an undertaking to make the deposits regularly. He however, observed the undertaking in breach. It is only when the landlord rushed to the

High Court with his affidavit dated 17th June, 1975, that he seems to have deposited the arrears on or about 22nd July, 1975, i. e., a couple of

days before these matters reached the actual hearing. It would be patent that the tenant has proved to be a contumacious defaulter.

11. On these facts Mr. Apte for the tenant raised three contentions. In the first instance he submitted that is case is covered by Section 12(1) of the

Bombay Rent Act and as the petitioner-tenant has expressed his readiness and willingness to pay the rent, the landlord is entitled to no decree for

possession. On this very score, according to Mr. Apte, the decree for possession will have to he set aside. The next contention taken was that the

interim rent was fixed not by any order made in the suit but in his own application preferred u/s 11(3) of the Bombay Rent Act which would be

hereafter referred to as the Act". The provisions contained in sub-section (4) of Section 11 of the Act are totally irrelevant so far as these

applications are concerned and he could not be a defaulter. Thirdly, it was submitted that the present case is covered by Section 12(3) of the Act

which inter alia lays down that if there be a dispute about the standard rent and the tenant pays the dues on the 1st day of hearing or any other date

fixed by the Court, he is entitled to a relief against forfeiture, an expression used by the Transfer of Property Act. What is of considerable

importance is not the payment on the first day of hearing, but the clearance of arrears before the judgment is delivered in the suit for eviction. In

support of such a submission he relied upon certain observations in the case of Kalidas Bhavan Vs. Bhagvandas Sakalchand, .

12. The points raised by Mr. Apte necessitate a scrutiny of the scheme of the Bombay Rent Act and in particular the provisions contained in

Section 11 and 12. Section 11 makes a provision for fixation of standard rent and permitted increases in certain cases. Sub-section (1) envisages

cases for fixing the standard rent in a given set of circumstances, which are five in number out of which we are concerned with the last covered by

clause (3) which relates to any dispute between the landlord and the tenant regarding the amount of standard rent. In simple words, the tenant can

rush to the Court exercising jurisdiction under the Bombay Rent Act, for getting the standard rent fixed if there be any dispute between him and the

landlord. No doubt the present petitioner has availed of this opportunity Sub-section (2) speaks of the dispute regarding the amount of permitted

increases, and the Court is empowered to fix the same on getting an application either from the landlord or from the tenant. From the language of

these two sub-sections, it would be obvious that these cases are not covered by the provisions of Section ''12 to which I would make a reference

shortly.

13. Now sub-section (3) of Section 11 deals with an application for fixing the standard rent or determining the permitted increases on an

application made by a tenant who has received a notice from his landlord under sub-section (2) of Section 12. The Court, on getting such an

application, is also empowered to fix interim rent and make an order directing the tenant to deposit such amount in Court pending the final decision

of the application. If the order is not complied with, i.e., the tenant fails to make the deposit as ordered the application is liable to he dismissed.

Sub-clause (4) speaks of similar remedies which could be availed of by the tenant who moves the Court u/s 11 at any stage of a suit for recovery

of rent whether with or without a claim for possession of the premises. But in such a matter the tenant has to move the Court for fixing the interim

rent and if an order is made he has to deposit the amounts as directed by the Court. In case of default the defence is likely to be streak off. Sub-

section (5) lays down that no appeal shall lie from any order made under sub-section (3) or (4), whereas sub-section (6) speaks of an application

being made jointly by all or any of the tenants interested in respect of the premises situated in the same building. An analysis of this section and

particularly sub-section (3) would reveal that it comes into operation only where a tenant who has received a notice under sub-section (2) of

Section 12 applies to the Court for fixation of standard rent. If he makes such an application before the expiry of one month after notice referred to

in sub-section (2) of Section 12, and pays or tenders the amount of rent as ordered by the Court u/s 11 (3), he will be deemed to be ready and

willing to pay the standard rent within the meaning of Explanation I to Section 12.

14. When no notice u/s 12(2) has been given to the tenant, the tenant can make an application for fixation of standard rent either under sub-section

(1) or (2) of Section 11 and this is what the present tenant has done. This aspect has some bearing, because Mr. Apte has been repeatedly

emphasizing Explanation I to Section 12 and claiming protection under sub-section (1) of Section 12 in contending that the moment he makes an

application and obtains an interim order, it is tantamount to his readiness and willingness to pay the rent and the Court is precluded from making a

decree for possession. I will have to refer to this part of his argument which, to my mind, does not carry the merit of plausibility. I may refer at this

stage to sub-section (4) are attracted provided that suit is one for rent with or without a claim for possession. May it be mentioned here that sub-

section (3) was substituted for the original sub-section (3) by Maharashtra Act 14 of 1963.

15. On this analysis, so far as the factual aspects before me are concerned, the point that is required to be determined is whether a tenant who has

already made an application u/s 11(1) of the Bombay Rent Act is required to make any further or separate application u/s 11 so as to bring his

case under sub-section (3) of Section 11 after getting a notice from the landlord contemplated by sub-section (2) of Section 12, or whether he can

make a request to the Court already entertaining his application to fix the interim rent. On this point this Court has held in the case of Karamsey

Kanji Vs. Velji Virji, that if an application is already pending when the suits are filed or when the notice u/s 12(2) is issued by the landlord, no

separate application need be made. Agreeing, with respects, with this view expressed by the then learned Chief Justice Chagla, I think it was

redundant on the part of the tenant to make a fresh application u/s 11(3) of the Act. The old application could be treated or be deemed as an

application preferred on receipt of the notice issued by the landlord u/s 12(2) of the Bombay Rent Act and he can obtain an order for fixation of

interim rent and comply with the same. Another factual aspect which cannot be lost sight of, so far as these proceedings are concerned, is that by

common consent this miscellaneous application and the three suits were treated as one proceeding. From this point of view also it could be said

that the miscellaneous application, although preferred earlier than the issuance of the notice u/s 12(2) by the landlord, could be treated as an

application u/s 11(3) of the Act and the order made therein will have the same effect and consequences contemplated by Section 11(3) In simpler

words, it could be said that it would be an application after notice was issued by the landlord terminating the tenancy on the ground of non-

payment of rent.

16. This takes me on to Section 12. Sub-section (1) lays down that a landlord shall not be entitled to the recovery of possession of and premises

so long as the tenant pays or is ready and willing to pay the amount of standard rent and permitted increases. The rest of the sub-clause is not

material for the purposes of these proceedings. What amount to readiness and willingness is laid down in Explanation I which runs thus:

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.

17. Mr. Apte oversimplified these provisions by a somewhat curious submission that the moment a tenant makes an application he should be

deemed to be ready and willing to pay the arrears of rent and, therefore, the landlord is disqualified from recovering possession. His readiness and

willingness is exhibited by filing the application for fixation of standard rent as defined by Explanation I. I am afraid, Mr. Apte is half-reading the

explanation or does not desire the Court to tae into account the second requirement which is more stringent. The language of Explanation I is quite

plain and clear and admits of no ambiguity. It contemplates two contingencies; firstly, the filing of an application before the expiry of the period of

one month after the notice referred to in sub-section (2) and secondly, the payment of rent as specified in the order made by the Court. Without

recounting what I have already observed in the foregoing paragraphs I take it that the petitioner fulfils the first condition viz., of having made an

application under sub-section (3) of Section 11. But he has miserably failed to establish that he has paid or tendered the amount as specified in the

order made by the Court which is reproduced in one of the foregoing paragraphs. ON the facts summarised at the outset and the notable defaults

committed by the tenant and the lame excuses put forth in this Court, it would be pretty clear that he has not at all complied with the second

condition and, therefore, the argument of Mr. Apte deserves to be dismissed without further considerations. By no stretch of imagination on these

facts it could be said that the tenant has established his readiness and willingness so as to disentitle the landlord to the relief of possession.

18. This finding by itself is sufficient to dispose of all these applications; but much was made by Mr. Apte that the conditions requiring regular

payments are not attracted and there is ample discretion in the Court to condone the delay in making the payment. The case, in his opinion, is

covered by Section 12(3)(b) and as observed in Kalidas Bhavan Vs. Bhagvandas Sakalchand, if the arrears are paid before the judgment is

delivered, it is a fair compliance with the statutory provisions. This authority seems to be considerably shaken by the subsequent pronouncement of

the Supreme Court as well as of this Court. IN Vora Abbasbhai Alimahomed Vs. Haji Gulamnabi Haji Safibhai, , it has been pointed out that the

tenant cannot remain content by raising a defence of there being a dispute about standard rent so as to bring his case within the four corners of

Section 12(3)(b), but if he is keen on getting the protection under the said section, he must move the Court at the earliest, soon after the written

statement is filed, to fix the interim rent and should go on making deposits till the disposal of the suit at the rate of the interim rent. IN case the

standard rent is fixed at a higher rate, than the interim rent, then the Court should give him reasonable time to make good the deficit and if he fails a

decree for possession should follow. It has been further observed in this case that in all such matters the proper procedure would be to take up the

question of standard rent in the first instance and to make suitable orders for interim rent, its deposit, and on hearing the parties to fix the standard

rent. After fixing the standard rent, the tenant should be called upon to clear all the arrears together with the costs, if any, which the Court may

intend to award, and it is only on such complete clearance the tenant would be entitled to relief against forfeiture, an expression proverbially used in

the Transfer of Property Act which is tantamount to telling the tenant that he would not be evicted or his possession would be protected.

19. The next case on the point is to be found in Venkatrao Anant Pai Vs. Narayanlal Bansilal, which had to consider the ambit of Section 12 with

particular reference to sub-section (2) and the remaining two clauses of sub-section (3). On referring to certain observations made by the Supreme

Court in Abbasbhai''s case AIR 1964 SC 1314 the Division Bench pointed out that if the appeal of revision Court altered the standard rent by

increasing it, further time should be given by that Court. This eventuality does not arise in this case. Patel. J., speaking for the Court, further

observed that when the trial Court has fixed in its judgment the standard rent, it would be obligatory on the tenant to pay the said amount during the

pendency of the appeal and non-payment of the rent fixed by the trial Court cannot be defended by saying that be filed an appeal or revision and

the question was still under dispute. Commonsense suggests that such disputes may go on for years and ten years'' period is by no means unusual

and it could not be intended by the Legislature to punish the landlords by keeping them out of the rents because of the disputes. If the standard rent

is fixed and is pending in revision before the District Court, High Court the tenant must continue to pay the standard rent then determined and

increases as determined by the operative judgment and if he does not do so, Section 11(4) and 12(3)(b) read with the Explanation are not satisfied

and he is not entitled to the protection. IN the instant case sub-section (4) of Section 11 does not come into play, but the principle would be still

applicable to these facts. With due respects whether this Court could bind down the proceedings before the Supreme Court or not I may only add

that so long as the matter is seized either by the appellate Court or by the High Court, in such or similar proceedings it would be the bounded duty

of the tenant to comply with the lower Court''s decree on the point of standard rent; otherwise he will have to be deemed not to qualify himself to

the protection of Section 12(3)(b).

20. This aspect is made all the more clear in the subsequent Supreme Court case in Shah Dhansukhlal Chhaganlal Vs. Dalichand Virchand Shroff

and Others, . This was also a case of ejectment under the Bombay Rent Act, possession having been sought on the ground of default. A dispute

about standard rent was raised. When there is no such dispute, the case is covered by Section 12(3)(a) with which we are not concerned. As the

case falls u/s 12(3)(b), I may refer to the pertinent observations made by the Supreme Court which run thus:

To be within the protection of Section 12(1) of the Bombay Rents. Hotels and Lodging House Rates Control Act, 1947, where a tenant raises a

dispute about the standard rent payable, he must make an application to the Court u/s 11(3) of the Act and thereafter pay or tender the amount of

rent and permitted increases, if any, specified in the order made by the Court. .....

To be within the protection of that provision, the tenant must not only pay all the arrears due from him on the first day of hearing of the suit, but he

must thereafter continue to pay or tender in Court regularly the rent and the permitted increases till the suit is finally decided.

It would be thus clear from these observations that the emphasis is on regular payment of rent and permitted increases as ordered by the Court and

not a consolidated payment just before the delivery of the judgment. IN view of these observations of the Supreme Court, very little doubt can

now be entertained about the scope of Section 12(1) read with the Explanation. It has been further pointed out that by merely taking a defence and

sitting tight on the hedge the tenant cannot kill the time and tell the Court at the last moment that as he was uncertain about the result of the standard

rent, he was waiting for the final verdict and the moment it is out he has deposited or cleared all the arrears. To give such a latitude to a chronic

defaults would be tantamount to adding a premium on his defaults and frustrating the very object of the Legislation. By Section 12 certain inroads

are made on the landlord''s rights and there is a departure from the general law. While construing these provisions the Courts are required to take a

stringent view. No doubt the enactment is meant for the protection of tenants, but it should not be so read or construed as to punish the landlords.

To make such a concession as claimed by Mr. Apte in these proceedings would be nothing short of a punishment to the landlord and deprivation

of his vested rights to tae possession forthwith the default was committed. For these reasons all these applications will have to be rejected.

21. Before parting with these proceedings I must add a word about costs. Generally in such proceedings the Courts are inclined to make no order

as to costs; but this is a singular proceeding and a class by itself. The tenant has exploited all possible means to defeat the equities of the landlord

and the landlord is entitled to the costs in this Court also.

22. Rules in these four applications discharged with costs.

23. Applications dismissed.