(1958) 06 BOM CK 0021

Bombay High Court

Case No: Civil Revision Application No. 195 of 1957

Kalidas Bhavan		APPELLANT
	Vs	
Bhagvandas Sakalchand		RESPONDENT

Date of Decision: June 25, 1958

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 12

Citation: (1958) 60 BOMLR 1359

Hon'ble Judges: M.C. Chagla, C.J

Bench: Single Bench

Judgement

M.C. Chagla, C.J.

The tenant, who is the respondent before me, was in arrears of rent from July 1954 and therefore the landlord, the petitioner, served upon him a notice on September 5, 1954, terminating his tenancy. The two grounds stated in the notice were arrears of rent and subletting. On January 6, 1955, the petitioner filed a suit for eviction and arrears of rent. The written statement was filed by the respondent on June 20, 1955, and the first date of the hearing was June 26, 1955. On August 23, 1955, the tenant deposited Rs. 112 in Court and on August 26, 1955, he deposited Rs. 125 in Court. It is not disputed that these two amounts were more than the arrears due by the tenant on August 26, 1955. On August 31, 1955, the learned trial Judge passed a conditional decree that if all arrears of rent till the end of September 1955 were deposited by the tenant in Court before September 30, and costs of the suit, the decree for possession which the learned Judge was passing should not be executed and he should continue to remain in possession of the premises as the plaintiff''s tenant. This decree was challenged by the landlord before the District Court and the learned Assistant Judge dismissed the appeal. The landlord has come now on this revision application.

2. Mr. Rele has strenuously relied on a judgment of Mr. Justice Shah reported in Laxminarayan Nandkishore Shravagi Vs. Keshardev Baijnath Narsaria, . Now, as

Section 12 of the Rent Act constantly comes up for consideration before the Courts in the districts, I think it would be worthwhile to look at that section again and to see what is the scheme underlying that section. Before a Court construes a section of any statute it must bear in mind the object of the legislation. The Bombay Rents, Hotel and Lodging House Rates Control Act was passed for the benefit of the tenant. It fixed fair and reasonable rents to be paid by the tenants, it gave protection to the tenants, and it prevented landlords from evicting their tenants except in certain cases. Therefore, the legislation was clearly intended for the benefit of tenants and not landlords and every section of the Act must be construed bearing in mind that object. Section 12(1) is a bar or an impediment in the way of a landlord recovering possession of his premises, but that bar or impediment only subsists so long as the tenant pays or is ready and willing to pay the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy in so far as they are consistent with the provisions of this Act. In other words, the Court is debarred from passing a decree in favour of the landlord so long as the tenant satisfies these conditions. But it may be pointed out that Section 12(1) does not impose any obligation upon the Court to pass a decree in favour of the landlord if these conditions are not satisfied. If the Court has a discretion not to pass a decree under certain circumstances, that discretion has not been taken away by Section 12. Ordinarily, the Court would pass a decree in favour of the landlord, but to suggest that there is a statutory obligation upon the Court to pass a decree in favour of the landlord u/s 12(1) if the tenant does not comply with the conditions laid down is to read much more in the sub-section than the Legislature enacted. Sub-section (2) is unnecessary to be considered in this context. Then we come to Sub-section (3)(a) which deals with the statutory notice to be served by the landlord for non-payment of rent by the tenant and this statutory notice can only be served provided the arrears of rent are for six months or more and the tenant must fail to comply with the notice within one month. Then the Legislature expressly provides that the Court may pass a decree for eviction in any such suit for recovery of possession, and a Division Bench of this Court has taken the view-and I am bound by that view-that "may" must be construed as "shall". Therefore, in Sub-section (3)(a) of Section 12 the discretion of the Court has been taken away and the Court is bound to pass a decree if the conditions laid down in Sub-section (3)(a) are satisfied with regard to statutory notice and default by the tenant. When we turn to Sub-section (3)(b), the language used by the Legislature is entirely different. That sub-section provides:

In any other case, no decree for eviction shall be passed in any such suit 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 thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court.

This is again a provision debarring the Court from passing a decree for eviction if the tenant satisfied the conditions laid down in this sub-section, and those conditions are that he must pay or tender in Court the rent on the first day of the hearing or before such other date as the Court may fix, and he must continue to pay or tender in Court the rent due till the suit is finally decided, and if the Court directs that he should pay the costs of the suit he must also pay them.

3. Now, the first important aspect of this sub-section which one has to notice is that whereas Sub-section (3)(a) casts an obligation upon the Court to pass a decree if the tenant fails to comply with the conditions laid down in that sub-section, no such provision is made in Sub-section (3)(b). The Legislature does not call upon the Court to pass a decree for eviction if the tenant does not satisfy the conditions laid down in Sub-section (3)(b). All that the Legislature says is that if the tenant satisfies the conditions laid down, the Court shall not pass a decree for eviction. The difference between the two positions is clear. In the one case the Court has the discretion not to pass a decree for eviction. It may or it may not pass a decree for eviction. It may take circumstances into consideration and not pass a decree for eviction. In the other case, no discretion is left in the Court. The Court cannot take any factor into consideration and pass a decree in favour of the landlord if the tenant has complied with the conditions laid down in Sub-section (3)(b). The other aspect which is apt to be overlooked is that the emphasis in Sub-section (3)(b) is not payment on the first day of the hearing, but what the Legislature intended was that the arrears should be paid before judgment was delivered in the suit. The alteration made in the law was that whereas under the old law, an appeal being looked upon as a continuation of the suit, it was open to a tenant to pay the arrears right up to the appellate stage and payment of arrears conferred the discretion upon the Court to relieve him from forfeiture, the Legislature now said that you cannot go beyond the stage of the suit itself; but the emphasis was not that the payment should be made on the first day; the emphasis was that the payment should be made before the suit came to an end. The tenant should deposit the arrears on the first day or he must take the permission of the Court and deposit the arrears on such subsequent day as the Court may fix. Of course, technically the Court had the discretion not to allow him to pay arrears on a subsequent date, but the Court would exercise that discretion very rarely indeed against the tenant. Even after he had deposited the arrears it was not sufficient. He must go on paying rent as it became due and the Court could go further and direct him also to deposit the costs of the suit. If he did all this, the tenant was completely protected and the Court was deprived of its jurisdiction to pass a decree for eviction. But it is a far cry from this position to say that if the tenant did not do all these things the Court was compelled to pass a decree for eviction against him.

4. Now, what is the position here. The tenant has paid the deposit of the full arrears before judgment was delivered. It is true that he did not deposit this amount on the first day. It is equally true that he did not formally apply to the Court for fixing some

other date, nor did the Court pass any formal order fixing some other date on which he could make the payment. But I agree with the learned Assistant Judge that when the Court accepted the two deposits, in the eye of the law the Court has permitted the tenant to make these deposits and to make them on the dates on which these deposits were accepted. A deposit cannot be made in Court without the permission of the Court and the Court if knowing that the tenant has not made the deposit on the first day permits him to make the deposit on the subsequent date would in doing so, in substance if not in form, be permitting the tenant to make the deposit on the date on which it accepted the deposit. Therefore, if a strict compliance with Sub-section (3)(b) was necessary, in my opinion there is such a compliance in this case. The arrears of rent have been deposited on the two dates and the Court must be deemed to have fixed those two dates as the dates on which the tenant should pay the arrears.

5. Now, what is said is that Mr. Justice Shah''s judgment runs counter to the views I have just expressed. Sitting here singly, I consider myself bound by the judgment of Mr. Justice Shah, and if I felt any doubt about the correctness of that judgment I would refer it to a Division Bench, but I would not even think of taking a view contrary to the view expressed by the learned Judge in that judgment. But, in my opinion, the view I have expressed is not opposed to the decision of Mr. Justice Shah. All that Mr. Justice Shah has held in that judgment is that it is not competent to a Court to pass a conditional decree u/s 12(3)(b). In other words, a decree may deny possession, or the Court may pass a decree for possession, but the Court cannot pass a decree for possession and lay down a condition that if the tenant pays arrears of rent or costs by a particular time, the decree for possession shall not be executed; or, to put it in a different language, the Court cannot in its decree provide that if the tenant does not pay the arrears of rent and costs by a particular date, the decree for possession shall be executed. Applying that judgment, it is perfectly true that the conditional decree passed by the trial Court was not a proper decree. Unfortunately, the learned Judge''s attention was not drawn to the fact that the tenant had made the deposit on August 26, 1955, of Rs. 125. If his attention had been drawn to that fact, no question of a conditional decree being passed would have arisen. It will be noticed that in the case before Mr. Justice Shah arrears of rent had not been deposited before the date of judgment and therefore the question that I am now considering was never considered by the learned Judge. There the arrears were directed to be paid by the decree and they were paid subsequent to the decree. It is on those facts that Mr. Justice Shah held that a conditional decree could not be passed by him. The tenant was not protected by Section 12(3)(b) in the case before Mr. Justice Shah because he had neither paid the arrears on the first day of the hearing, nor on any subsequent date before the final decision. I cannot understand how that case can be relied upon for the proposition that although a tenant has paid all arrears before judgment is delivered, the Court has no discretion to pass a decree refusing the landlord possession, because what was argued before

the District Court was not the validity of the conditional decree as such, but what was argued was that the tenant not having satisfied the conditions laid down in Section 12(3)(b) the trial Judge was bound to pass a decree for eviction in favour of the landlord, and this is the argument that was rejected by the learned District Judge. In my opinion, the learned District Judge was quite right in rejecting that contention, because as I read Section 12(3)(b) and as I read the scheme of the Rent Act, I cannot accept the view that although the tenant has paid arrears in full before the judgment is delivered in the suit, there is an obligation cast upon the Court to pass a decree for eviction because there has not been at best a technical compliance with the provisions of Section 12(3)(b), although in my opinion on the facts of this case, if it is necessary to go in into that question, there has been a compliance of the provisions of Section 12(3)(b).

6. The second contention urged by Mr. Rele is that the costs which were directed to be paid by the decree had not yet been paid. This is a question that does not arise on this revision application. If the costs have not been paid, that is a matter to be agitated in the execution of the decree, and the landlord will be entitled to possession if the tenant has failed to carry out the conditions laid down by the learned Judge.

7. The third submission made by Mr. Rele is that the Courts below were in error in holding that there was no subletting by the tenant. This is a question of fact and I have before me the concurrent finding by both the Courts below. It is not open to the landlord to re-agitate this question in revision.

8. Therefore, although following Mr. Justice Shah''s judgment, I hold that the conditional decree passed by the trial Court was bad, I see no reason to interfere with the decision of the learned Assistant Judge dismissing the appeal, because, as I have pointed out, what was urged in substance before him was that the trial Judge should have passed a decree for eviction in favour of the landlord. As I am clearly of the opinion that a decree for eviction should not have been passed against the tenant on the facts of this case, the revision application must

9. Rule discharged with costs.