

(1924) 12 BOM CK 0028

Bombay High Court

Case No: O.C.J. Suit No. 3379 of 1924

Dhanrajgirji Narsingirji

APPELLANT

Vs

W.G. Ward

RESPONDENT

Date of Decision: Dec. 1, 1924

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13(a)

Citation: AIR 1925 Bom 400 : (1925) 27 BOMLR 877

Hon'ble Judges: Pratt, J

Bench: Single Bench

Judgement

Pratt, J.

The plaintiff is the owner of a building in Bombay known as Watson's Annexe which is let out in flats,

2. The defendant is a tenant of one of those flats on a monthly rental of Rs. 97. The plaintiff gave notice to quit on February 4, 1924, terminating the tenancy as from April 1, 1924. The defendant claims the privilege of Section 9 of the Rent Act, and also contends that the rent that he is paying is in excess of the standard rent.

3. The main issue in the suit is what is the standard rent of the premises and in order to ascertain that, it is necessary to state briefly the terms on which the premises have been held.

4. The whole building known as Watson's Annexe is situated on a property which was leased by the Port Trust to the plaintiff for a term of fifty years. The plaintiff leased the whole building to one Dr. Billimoria on March 24, 1915, at a rental of Rs. 2,850, besides Rs. 649 ground-rent and Rs. 980 taxes, making a total of Rs. 4,479. Dr. Billimoria sub-let the premises in different flats to different tenants and the premises which are now in the occupation of the defendant were first sub-let before January 1, 1916, at a rental of Rs. 75 in September, 1915.

5. The tenancy of Dr. Billimoria was terminated by a consent decree as from July 31, 1923, and from August 1, 1928, the defendant held directly under the plaintiff as his tenant. The standard rental of the flat if calculated on the first letting prior to January 1, 1916, would have to be calculated on a basic rent of Rs. 75, but at the same time the flat was also part of the whole building which was held by Dr. Billimoria at a rental of Rs. 4,479.

6. In the calculation of the standard rent, the first question that arises is whether the standard rent should be calculated on the actual basic rent of Rs. 75 or whether it is to be ascertained by an apportionment of the rent which Dr. Billimoria the lessee of the whole building was then paying to the plaintiff? The plaintiff's contention is that the standard rent is to be calculated on the basic rent of Rs. 75 and the defendant contends that the standard rent should be calculated by an apportionment of Rs. 4,479. The defendant's contention is based on the case of Chapsey Umersey v. Keshavji Damji I. L. R.(1920) Bom. 744 : 23 Bom. L. R. 133 . In that case, a godown was leased to the plaintiff at a rental of Rs. 305 and the plaintiff again sub-let the same godown at a rental of Rs. 275. Question then arose as to what was the standard rent and Setalvad J. decided that in a case of concurrent letting there could not be two standard rents, following the case of King v. York [1919] W. N. 59 where it was said that the Act operated in rem and not in personal, and that there should be one standard rent for the premises and not different standards with respect to different lettings to different individuals. Setalvad J., therefore, decided that although the same godown was let two different individuals for two different sums, the standard rent was the rent for which the godown was let for the first time. So here it is contended that the standard rent should be the rent at which the premises were first let to Dr. Billimoria and that that rent should be ascertained by apportionment. There seems to me to be this distinction between the cases, that, whereas in Chapsey Umersey v. Keshavji Damji the same premises were let a second time, here the premises that are let a second time are not the same premises. No doubt the defendant's flat is a part of the whole building of Watson's Annexe but although it is a part of the whole building, it is obvious that the premises constituting the whole building are different from the premises constituting a part of the building. The case is not one in which jurisdiction to apportion rent arises u/s 13 (a) of the Act; for that section contemplates a case where there was no letting of the part at the period at which the basic rent has to be determined but the whole is let at that period and the basic rent or standard rent of the part has to be ascertained with reference to the letting of that whole. So here, if, prior to the Rent Act coming into operation, this flat had not been let but the whole building only had been let to Dr. Billimoria, then the standard rent would have to be apportioned as prescribed by Section 13 (a). It seems to me, therefore, that the case does not fall either within the rule in Chapsey Umersey v. Keshtivji Damji (1820) I. L. R. 45 Bom. 744 or within Section 13 (a) of the Rent Act.

7. The Rent Act itself in the definition of the premises refers to part of the building separately let as premises of which the standard rent has to be determined and such standard rent must be determined with reference to those premises in the manner specified by Section 2 (1) (a) of the Act. The standard rent, therefore, must be ascertained on the admitted basic rent of Rs. 75. Any other system of ascertainment would lead to extraordinary difficulties. For instance, in the present case, if the lease by the Port Trust to the plaintiff had not been merely a lease of the site but had been a lease of the site and the building, there would have been two concurrent leases of which the apportionment could be claimed and there was no principle on which one lease should be taken into calculation instead of the other. Again, if the head lease instead of being as here the lease of one building consisting of flats had been a lease of a large number of buildings constituting a large estate, it would be almost impossible to make a correct apportionment of the rent. I do not think it was the intention of the Rent Act that landlords and tenants should be driven to do a difficult and expensive process of valuation and calculation before their rent could be ascertained.

8. I, therefore, decide the standard rent must be ascertained on the basic rent of Rs. 75.

9. Mr. Taleyarkhan admits that he is unable to prove that notice of increase had been given. The standard rent is, therefore, Rs. 75 plus Rs. 15 = Rs. 90. Mr. Taleyarkhan does not press for eviction on the understanding that arrears of rent will be paid on or before the 6th instant.

10. Decree, therefore, for plaintiff for arrears of rent and compensation from September 1, 1923, to November 30, 1924, at the rate of Rs. 90 per mensem. In default of such sum being paid on or before the 6th instant decree for possession. If such sum is paid defendant to continue as a statutory tenant. No order as to costs.