

(1955) 11 BOM CK 0053

Bombay High Court

Case No: Civil Revision Application No. 1212 of 1950

Ramrao Raoji Palkar

APPELLANT

Vs

Amir Kasam Bhagwan

RESPONDENT

Date of Decision: Nov. 4, 1955

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 12
- Transfer of Property Act, 1882 - Section 114

Citation: (1956) 58 BOMLR 284

Hon'ble Judges: Gokhale, J; Chainani, J

Bench: Division Bench

Judgement

Chainani, J.

The facts in this case briefly are that applicant No. 1, original defendant No. 1, is the tenant of the opponent-plaintiff since several years. In November 1952, the plaintiff filed a suit against the two defendants for recovering possession of the suit premises, arrears of rent and future mesne profits. He alleged in the plaint that defendant No. 1 had agreed to pay him rent at Rs. 10 per month and that he was in arrears of rent since August 15, 1947. Applicant No. 2 was joined as defendant No. 2, as she was living in the suit premises along with defendant No. 1. Defendant No. 1 contended that the standard rent of the premises was Rs. 4 per month, that the rent claimed by the plaintiff was excessive and that rent only for three months, September, October and November 1952, was in arrears.

2. The trial Court found that the standard rent was Rs. 6 per month and that defendant No. 1 was not ready and willing to pay this rent. The trial Court, therefore, passed a decree for possession of the suit premises and for arrears of rent in favour of the plaintiff.

3. The defendants appealed to the District Court, while the plaintiff filed cross-objections. The learned District Judge came to the conclusion that the

standard rent of the premises was Rs. 7 per month. He also found that the rent was in arrears from August 1947. He, however, decided to give relief to the defendants u/s 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act of 1947 and directed that the decree for eviction passed against the defendants should be set aside, if they paid all the arrears of rent at Rs. 7 per month from August 15 1947,. Against this order, the present application has been filed by the defendants.

4. The only point, which has been urged by Mr. Padhye in this application, is that the learned Judge was not competent to direct defendants to pay arrears of rent, the recovery of which was barred by limitation on the date of the suit, viz. November 3, 1952.

5. Clause (6) of Sub-section (3) of Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, provides that no decree for eviction shall be passed in any suit for recovery of possession instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases then due, 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 or 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. The question for consideration is, what meaning should be given to the words "standard rent then due."

6. According to Webster's Dictionary, the word "due" means "owed or owing as a debt". In Murray's Dictionary, Vol. III, several meanings of this word are given-Some of these are:

That is owing or payable, as an enforceable obligation or debt; that which is due or owed to anyone; that to which one has a right, legal or moral.

In Wharton's Law Lexicon, 14th edn., the meaning given to this word is:

...anything owing. That which one contracts to pay or perform to another; that which law or justice requires to be paid or done.

In Stroud's Judicial Dictionary, 3rd edn., Vol. I, p. 889, the learned author observes:

A debt is still "due" notwithstanding that the Statute of Limitations may have run against it, for that statute only bars the remedy and does not extinguish the debt.

The authority cited in support of this proposition is Ex parte Cawley (1889-90) 84 Solicitor's Journal & Reporter, 29. In that case the judgment-debtor had taken out a summons against the creditor asking for an account of what was due to the judgment-creditor. The Court of Appeal held that the effect of the Statute of Limitations was only to bar the remedy for the debt but not to destroy...the debt, that the debt still remained due and that as the order obtained on the application of the judgment-debtor himself directed an account of what was due to the

judgment-creditor, the debtor could not avail himself of the statute, though he might have used it as a defence to proceedings against him taken by the creditor. In *Moss In re: Hallet, Ex parte* [1905] 2 K.B. 307 it was held that after a debtor became bankrupt, the debt from him was no longer "due". Darling J. in his judgment expressed the opinion that "money can only be said to be due in a legal sense, when it can be recovered in an action." According to Stroud, the words used by Darling J. are "probably too wide." In *Hibernian Bank v. Yourell* ILR (1919) 310 the word "due" in Section 24, Sub-section 8, of the Conveyancing and Law of Property Act, 1881, which directed that a receiver of mortgaged property should, after paying the prior outgoings, pay the interest accruing due in respect of the principal money, was held to mean "due and legally recoverable". O'Connor M.B., who decided the case in his judgment recognised that the word "due" in its technical sense, "connotes a debt even though it should be irrecoverable by action." (p. 315). This is also clear from the following observations (p. 313):

... It is argued, in the first place, that interest is due even though it cannot be recovered by action by virtue of the bar imposed by the Statute of Limitations. No doubt this is so, if the strictly technical meaning is to be given to the word "due" as used in the statute.

It also appears from this judgment that in Section 21 of the same Act, which regulated the distribution of the proceeds of sale by a mortgagee and provided for the payment, after discharging the costs of sale, of the mortgage money, interest and costs, and other money, if any, "due" under the mortgage, the word "due" has been judicially construed as meaning "all moneys due, even though barred by the Statute, of Limitations." In *Hansraj Gupta v. Official Liquidators, Dehra Dun-Mussoorie Electric Tramway Co.* (1932) L.R. 60 IndAp 18 : 35 Bom. L.R. 319 the words "any money due" in Sub-section (1) of Section 186 of the Indian Companies Act were construed "in view of the place and the context in which they were found" to mean moneys due and recoverable in a suit by the company. One of the reasons given by their Lordships for their decision is that the section created no new rights, and only enabled the liquidator to resort to summary proceedings against debtor contributories.

7. The word, "due" is, therefore, used in two different senses. In some statutes it has been held to mean all moneys owed or payable, even though their recovery may be barred by the law of limitation. In other statutes, a more restricted meaning has been given to this word and that is, moneys legally recoverable or those which can be recovered by action.

8. The question for consideration now is which of these two meanings should be given to the word "due" in Clause (b) of Sub-section (3) of Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This Sub-section embodies the equitable principle judicially recognised both in England and in India that if the defaulting tenant pay to the landlord the rent in arrears and his full costs of the suit,

the landlord should be deemed to have received full compensation and to have been put in the same position as if the rent had been paid to him when it became due. As pointed out by Sir Dinshaw Mulla in his commentary u/s 114 of the Transfer of Property Act, in England equity from very early times regarded a forfeiture clause for non-payment of rent as security for the rent and granted relief whenever compensation could be given. Relief was given upon the principle that, as the right of entry was intended merely as security of the rent, the lessor thereby recovered full compensation and was, put in the same situation as if rent had been paid to him when it was originally due. The Courts in India applied this" principle and gave relief against forfeiture for non-payment of rent even before the enactment of Section 114. The benefit of this equitable principle can be availed of, when the lessor has received full compensation and this will be, when he is paid the entire amount of rent in arrears. Sub-section (1) of Section 12 of the Act provides:

A landlord shall not be entitled to the recovery of possession of any premises 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.

This Sub-section also makes it clear that the Legislature intended to give relief to only those tenants, who are ready and willing to pay the rent due and to observe and perform the other conditions of the tenancy. The section is not intended for the benefit of those tenants, who evade their obligations or who are not willing to Pay the rent due from them. We are accordingly of the opinion that the word rent then due in Clause (b) of Sub-section (3) of Section 12 should be construed to mean all rent in arrears or outstanding, including rent which cannot be recovered through the process of the Court owing to the bar imposed by the Limitation Act. A similar view has been taken by the "Madras High Court in Vasudeva Udpa v. Krishna Udpa ILR (1920) 44 Mad. 629 in which the Madras High Court had to interpret Section 114 of the Transfer of Property Act, which also contains provisions for relieving tenants against forfeiture for non-payment of rent. It was held in this case that u/s 114 a tenant can be relieved against forfeiture of lease incurred by non-payment of rent only on payment of all arrears of rent, including such as may be barred by limitation, together with such interest as might be legally due thereon.

9. The view taken by the District Judge was, therefore, correct. The rule will, therefore, be discharged with costs.