(1962) 11 BOM CK 0014

Bombay High Court

Case No: Civil Revision Application No. 1838 of 1959

Babulal Talakchand Shah		APPELLANT
	Vs	
Purshottam Shridhar Joshi		RESPONDENT

Date of Decision: Nov. 16, 1962

Acts Referred:

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

Citation: (1963) 65 BOMLR 434 : (1963) MhLj 670

Hon'ble Judges: Shah, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Shah, J.

This is a sub-tenant's application against the tenant who had filed a suit for ejectment of the former on the ground that he had fallen in arrears of rent for a period exceeding six months. The sub-tenant contended that during the pendency of the application for fixation of standard rent he had paid a sum of Rs. 350 to his pleader Datar on April 2, 1957, for the purpose of being paid over to the tenant in payment of the rents which had accrued due so far. The trial Court rejected this contention and also disbelieved the evidence both of the sub-tenant and his pleader Datar in that behalf and passed a decree for ejectment in favour of the tenant. The sub-tenant then took an appeal to the District Court and the learned Extra Assistant Judge, who heard the appeal, carefully went through the evidence recorded in the case and, concurring with the findings of the trial Court, dismissed the appeal with costs. The sub-tenant has filed the present revision application against the dismissal of his appeal in this Court.

2. Mr. Chitale, the learned advocate for the sub-tenant, contended that both the lower Courts were in error in disbelieving the evidence of Datar to the effect that the sub-tenant had paid to him a sum of Rs. 1,900 out of which Rs. 350 was to be paid to

the tenant. Mr. Chitale vehemently urged that his client, the sub-tenant, should not suffer on account of the default committed by his pleader Datar in paying the amount of Rs. 350 to the tenant. Mr. Rege, the learned advocate for the tenant, contended that whatever might have happened between the sub-tenant and his pleader with regard to the sum of Rs. 350, his client''s claim to the decree for eviction could not be affected, so long as arrears of rent were not paid to him. In my opinion, Mr. Rege''s contention must be accepted. Assuming that the sub-tenant, as alleged by him, paid Rs. 350 to the pleader with a direction that the amount should be paid over to the tenant towards arrears of rent and the pleader Datar failed to carry out that direction, either intentionally or otherwise, the sub-tenant might have a valid claim against Datar for the recovery of the amount, but in so far as the claim for eviction was concerned, negligence or default on the part of Datar who was in no better position than an agent of the sub-tenant would be a default or negligence of the principal, the sub-tenant, and accordingly, the sub-tenant could be very well said in law to have committed default in payment of the arrears of rent to the tenant. In my opinion, therefore, apart from the question as to whether Datar''s evidence was true or false, and on the assumption that the sub-tenant had paid a sum of Rs. 350 to Datar for being paid over to the tenant in payment of arrears of rent, as alleged by the sub-tenant, so long as the tenant did not receive that amount from Datar, the tenant''s right, to a decree for eviction could not be affected. Accordingly, in my view, the learned Extra Assistant Judge, who dismissed the sub-tenant''s appeal mainly on this ground, was perfectly right in his conclusion.

3. It was then urged by Mr. Chitale that although by the tenant''s notice the demand for the arrears was for a period of more than six months, the standard rent was fixed only a few days before the date of the notice and that, therefore, the case did not fall within the purview of Section 12(3)(a) of the Rent Act. I do not think this contention can be accepted. Mr. Chitale did not dispute that during the pendency of his client''s application for fixation of standard rent, no application was made by him for fixation of interim rent nor was any payment of rent made to the tenant on the basis of the contractual rent. Accordingly, although the standard rent was fixed only a few days before the tenant gave notice to the sub-tenant demanding arrears of rent from October 1, 1956, to July 31, 1957, at the rate of Rs. 35 per month, which was the standard rent fixed by the Court, it could not be held that the effective demand for the arrears of rent would only be for the short period between the date of the fixation of the standard rent and the date of the notice. As a matter of fact, the tenant had sent a notice dated August 3, 1957, to the sub-tenant by registered post but the latter had refused to accept it. On the refusal of this notice the tenant got a copy of the notice affixed on the premises in question on August 6, 1957, and further he also sent two copies of the notice under certificate of posting, one to the home address of the sub-tenant and the other to his business address. Thus, the sub-tenant, though he could avoid the knowledge of the contents of the notice by refusing the registered packet, must be deemed to have had the knowledge of the

contents of the notice, both from the copy affixed to his premises and also through the copies sent to him under certificate of posting, because, so far as the latter are concerned, the law presumes that the letters sent under certificate of posting must be deemed to have been received by the addressee unless the addressee by positive evidence showed that he had not received them. Inspite of the knowledge of the contents of the notice the sub-tenant failed to pay arrears of rent as demanded by the notice within one month from the date of the receipt of the letters sent to him on August 6, 1957. If the sub-tenant had any justification for his contention that he did not pay any rent to the tenant because his application for fixation of standard rent was pending, surely, there was no such justification for non-payment of the arrears of rent after the standard rent was fixed by the Court on July 26, 1957. The very fact that he failed to make any payment within one month from the date of the receipt of the notice by him clearly shows that he was not ready and willing to pay the arrears of rent due from him to the tenant. On his failure to pay the arrears or to send a reply to the tenant, the tenant filed the present suit on September 9, 1957, for a decree for eviction and also for the arrears of rent that had become due to him so far, and it was only on November 9, 1957, about two months after the filing of the suit, that he paid Rs. 420 into the Court towards arrears of rent. In these circumstances, I have no doubt that the case, fell within the purview of Section 12(3)(a) of the Rent Act, and since under that sub-section the landlord acquired a right to a decree for eviction, no concession could be made in favour of the sub-tenant by way of relief from forfeiture of tenancy or otherwise even though he paid all the arrears within two months after the filing of the suit. In my opinion, therefore, the decision of the trial Court, as confirmed by the learned Extra Assistant Judge, was perfectly right in the circumstances of the case and there is no reason why I should interfere with that decision. In the result, the application fails and the rule is discharged with costs.

4. The tenant, however, shall not execute the warrant for possession of the premises in the suit until December 31, 1962.