

(2009) 03 BOM CK 0149

Bombay High Court

Case No: Writ Petition No. 2682 of 1991

Dudhasingh Bala Chavan

APPELLANT

Vs

Shri Murlidhar Gyanba Kudale
since deceased through his legal
heirs (Smt. Kamal @ Prema
Murlidhar Kudale, Mr. Milind M.
Kudale and Mr. Mukund M.
Kudale)

RESPONDENT

Date of Decision: March 2, 2009

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 11(3), 12, 12(2), 12(3)
- Constitution of India, 1950 - Article 227

Citation: (2009) 3 BomCR 165 : (2009) 111 BOMLR 1851

Hon'ble Judges: A.M. Khanwilkar, J

Bench: Single Bench

Advocate: P.S. Dani, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

A.M. Khanwilkar, J.

This Writ Petition under Article 227 of the Constitution of India takes exception to the Judgment and decree passed by the VI Additional District Judge, Pune dated 8th February, 1991 in Civil Appeal No. 1048/1988 confirming the Judgment and decree passed by the 7th Additional Judge, Small Causes Court, Pune dated 17th September, 1986 in Rent Act Suit No. 1756/1985 whereby the Respondent-landlord's suit for possession of the suit premises and for recovery of rent of Rs. 170/- for the period from 1-12-1982 to 30-9-1985 is allowed. Although the suit for possession was filed by the Respondent-landlord on different grounds, however, the decree confirmed by the two Courts below is on the ground of arrears of rent within the

meaning of Section 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Act") only.

2. The brief facts for considering the controversy in the present petition are that: the suit property is situated in CTS No. 427/A/1 at Somwar Peth, Pune-11 on the Ground Floor consisting of one room of two khans admeasuring 10 feet X 10 feet. The plaintiff-respondent Murlidhar Kudale is the owner of the suit premises. The Petitioner-tenant was in possession of the said premises on monthly rent of Rs. 5/- plus education cess and other municipal taxes etc. The tenancy starts on first day of each month and ends at the end of same month as per British calender. It is the case of the landlord that the tenant was in arrears from 1-12-1982 for which reason the landlord issued Demand Notice on 23-8-1985 calling upon the tenant to pay arrears of rent for the period from 1-12-1982 to 30-9-1985, total amount of Rs. 170/- at the rate of Rs. 5/- per month. Since the tenant failed to offer the said amount as demanded in the suit notice or to file standard rent application disputing the amount mentioned in the suit notice within one month from service of the said notice, the landlord instituted suit for possession against the tenant on different grounds including arrears of rent. The plaintiff as well as defendants produced oral evidence as well as documentary evidence. The plaintiff produced the office copy of the notice dated 23-8-1985 which was sent by the plaintiff to the defendant (Exhibit 26). Plaintiff also produced postal acknowledgment evidencing service of the said notice (Exhibit 27); counter foils of the rent receipts issued by the plaintiff to defendant-tenant and other tenants (Exhibit 23). Defendant produced ration card (Exhibit 45) and coupons of money order sent by him from time to time (Exhibit 30 to Exhibit 40). Defendant also produced copy of the letter dated 8-7-1984 (exhibit 42) which was sent by one Mahadu Babu Kadam; rent receipt for the month of August 1963 (Exhibit 43) and Receipt No. 33 dated 11-7-1982 for Rs. 10/- (Exhibit 44).

3. According to plaintiff, he received rent in respect of suit house only upto 30-11-1982 and whenever rent was offered, receipts were duly issued to the tenant. As aforesaid, on service of Demand Notice on the tenant as the outstanding rent was not offered within one month, landlord instituted suit for possession. The defence of the tenant was that since landlord did not issue receipts inspite of payment made towards rent paid by him, he started sending the rent of the suit premises by money order from time to time. The first of such money order was sent on 13-12-1983 (Exhibit 30) for a sum of Rs. 10/- and the last is dated 31-12-1985 (Exhibit 31) for Rs. 120/-. The tenant has produced money order coupons (Exhibit 30 to 40) to buttress his stand that he was always ready and willing to pay the amount towards rent. The said coupons produced by the tenant were as follows:

4. Relying on the above said money orders, the tenant asserts that he was always ready and willing to pay the rent in respect of suit premises for which reason no cause of action had arisen so as to invoke ground of arrears of rent. Besides, tenant has asserted that he had not received copy of the Demand Notice Exhibit 26,

whereas he received blank envelope (Exhibit 40) (which did not mention the name of the sender) and that the said envelope instead contained a letter dated 8-7-1984 sent by one Mahadu Babu Kadam (Exhibit 42) for which reason also the suit cannot proceed against the tenant.

5. The trial Court as well as the Appellate Court addressed the plea taken by both sides with regard to ground of arrears of rent and after elaborately analysing the relevant documentary and oral evidence have concurrently found that the plaintiff-landlord has established the fact that no rent was offered by the tenant in respect of the suit premises for the period from "1-12-1982" and that the suit notice was duly served on the tenant inspite of which the tenant failed and neglected to pay the amount as demanded in the suit notice within one month nor raised any dispute regarding standard rent. As a consequence of that finding decree u/s 12(3)(a) of the Act was inevitable.

6. In so far as the defence of the tenant is concerned, both the Courts below have rejected the same as not substantiated. The Courts below have concurrently found that presumption of service of the demand notice on the tenant sent by the landlord has not been rebutted by the tenant. The Courts below have found as of fact that envelope containing demand notice was duly received by the tenant, was indisputable. The Courts below have found that the tenant has raised frivolous contention that the envelope did not contain the Demand Notice but some other letter without substantiating the said fact. The Courts below have discarded the said stand of the tenant regarding the non-service of demand notice and have held that even if the envelope did not mention the name and address of the sender, even then the acknowledgment which has been duly signed by the tenant by way of acceptance of the envelope would indicate the name of the sender, for which it can be inferred that the tenant had knowledge about the name of the sender. Inspite of that the tenant did not bother to make any enquiry with the landlord nor made any complaint to the landlord about the purported letter dated 8-7-1984 received in the said envelope. The Courts below have also noted that the tenant made no enquiries with the said Mahadu Babu Kadam, whose address was available in the stated letter to clarify the doubt, if any. The Courts below have also found that the landlord had good cause for refusing to accept the amount sent by money orders. Besides, it has been found that money orders pertained to different periods but did not cover the entire arrears of rent from "1-12-1982 till December 1983" at the agreed rent of Rs. 5/- per month towards monthly rent excluding permitted increases.

7. Taking over all view of the matter both the Courts below have concluded that in the fact situation of the present case, decree for possession on the ground of arrears of rent within the meaning of Section 12(3)(a) of the Act was inevitable. In so far as finding of fact recorded by the two Courts below on the factual matrix is concerned, the same is unexceptionable. The said finding of fact cannot be said to be manifestly wrong or perverse. It is not open for this Court in exercise of writ

jurisdiction to take a different view even if it was possible to hold that another view on the basis of same evidence could be taken. That is not the scope to exercise writ jurisdiction.

8. To get over this position, the argument of the Petitioner, is that, the landlord having refused to accept the money orders sent from time to time was precluded from invoking the ground of default and arrears of rent against the tenant who was continually remitting the amount towards rent by money orders from time to time. It was argued that refusal to accept money orders sent by the tenant from time to time will have to be treated as due acceptance of that rent by the landlord and considering the aggregate amount remitted by the tenant on different dates, the same is almost Rs. 560/- which far exceeds the amount demanded by the landlord towards outstanding rent in the suit notice which is only Rs. 170/-. If it is so, there was no cause of action to proceed against the tenant on the ground of arrears of rent u/s 12(3)(a) of the Act. It was also argued that even if the Court may find that the amount towards monthly rent was payable by the tenant even then no decree for possession can be passed in the fact situation of the present case as the landlord has refused to accept the money orders sent by the tenant. For, the fact of remitting amount by money order from time to time evidences factum of readiness and willingness of the tenant and, therefore, in such a case, the question of proceeding u/s 12(3)(a) of the Act would not arise.

9. To buttress the above argument, Counsel for the Petitioner has relied on the latest decision of the Division Bench reported in [Sitaram Maruti Nagpure Vs. Fakirchand Purushottam Dhase](#), which is the opinion recorded by the Division Bench on the reference in the present petition which was heard alongwith Writ Petition No. 935/1994. Significantly, the said Writ Petition No. 935/1994 has lateron been withdrawn. Be that as it may, in the said Writ Petition No. 935/1994, this Court had referred the matter to a larger Bench in view of the conflict of decisions in the case of [Suka Ishram Chaudhari Vs. Jamnabai Ranchodas Gujarathi and Others](#), and 84 Bombay Law Reporter 646 in the case of the Abdul Gani Dinalli Momin v. Mohamed Yusuf Mohamed Isak which are decisions of Single Judge of this Court. The Division Bench while answering the reference has upheld the opinion recorded in Suka Ishram Chaudhari's case, which the later decision in Abdul Gani's case (supra) had held is impliedly overruled in view of the Supreme Court decision. The Division Bench of our High Court in the case of Sitaram Maruti Nagpure (supra) applying the observations of the Apex Court in the case of [Smt. Priya Bala Ghosh and others Vs. Bajranglal Singhania and another](#), has held that the view taken by Bhole, J in Suka Ishram Chaudhari v. Ranchhoddas Manakchand Shet Gujarathi was the correct view whereas the view taken by Jahagirdar, J in Adbdul Gani Dinalli Momin v. Mohamed Yusuf Mohamed Isak reported in LXXXIV BLR 646 is overruled. The reference was made in terms of order passed in [Sitaram Maruti Nagpure Vs. Fakirchand Purushottam Dhase](#), which came to be answered on the above terms.

10. Besides relying on the above said decisions, reliance is also placed on the unreported decision of our Court in Writ Petition No. 3227/1987 decided on June 8, 2000 in the case of Madhukar Govind Vaidya v. Narayan H. Surve as well as reported decision in the case of [Smt. Kamalabai Baburao Kabade Vs. Smt. Laxmibai Janardan Jagtap and Others](#) .

11. Having considered the argument canvassed by the Counsel for the Petitioner I would straightway advert to the exposition of the Division Bench of our High Court in the case of Sitaram Maruti Nagpure (supra) It will be appropriate to reproduce Paragraph 14 to 17 of this decision:

14. After having heard the learned Counsel for both sides in the above and after perusal of all the aforesaid judgments, it is very clear that Section 12 makes it abundantly clear that if tenant pays or ready or willing to pay standard rent or permitted increases, then no ejectment will be made. To put it in other words, the landlord will be entitled to recover possession of the premises only if the tenant fails to pay the standard rent and permitted increases. In fact the said Section 12 clearly contemplates in a negative manner that no suit for recovery of possession shall be instituted by the landlord unless the landlord satisfies that he tenant was not ready and willing to tender and had not paid the standard rent and permitted increases for over a period of six months and in the event, the tenant was not ready and willing to tender standard rent and permitted increases, and that he has been in arrears of over a period of six months, then the landlord has to issue notice terminating the tenancy and demand the standard rent and permitted increases within a month after service of the notice. Even Section 12(3)(a) makes it clear that where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of period of one month after the notice as referred in Sub-section (2), the Court may pass a decree for eviction in any such suit for recovery of possession. By way of explanation, in the said section, it is provided that in any case where there is 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. To put it in other words, the explanation is with regard to the procedure, when there is a dispute with regard to the standard rent. Where there is no dispute with regard to the standard rent, the tenant has to show that he was always ready and willing to tender rent and he must not be in arrears for more than six months and in the event, the tenant was in arrears for more than six months, the landlord has the right to serve notice of termination and demand rent and permitted increases, and if the tenant does not pay the same within one month, in such a case, the landlord will be

entitled for a decree of eviction.

15. In view of the clear explanation of Section 12, if the tenant raises a dispute with regard to the standard rent and permitted increases, he has to approach the Court within a period of one month from the notice of termination and make deposit within a period of one month in the Court. On the contrary, if there is no dispute, the tenant must show his readiness and willingness to pay rent and permitted increases and must keep regularly tendering the same, even by money order and no landlord can take advantage, neither by refusing to accept the same nor say that the tenant had not paid the rent or tendered the rent. This fact has been rightly pointed out by the Hon"ble Supreme Court in the case of Priya Ghosh and Ors. v. Bajranglal Singhanian and Anr. and it is held that the landlord will be easily able to trap the tenant by refusing to accept and turn round and to file a suit against the tenant. That is why, the Hon"ble Supreme Court has clearly observed that the law has to be construed in a fair manner and it is not intended to trap the tenant into a situation so that he landlord can evict the tenant.

16. Under the aforesaid facts and circumstances of the case, we are clearly of the view that the view taken by Bhole, J is correct and the view taken by Jahagirdar, J is overruled and the same does not lay down the correct law.

17. In the light of the above, both the above petitions may be placed before the appropriate bench for being heard on merits, since we have only answered the question of law which was referred to us.

12. Indeed, the above decision expounds that if there is no dispute regarding the standard rent, the tenant must show his readiness and willingness to pay rent and permitted increases and must keep regularly tendering the same even by money order and no landlord can take advantage neither by refusing to accept the same nor say that the tenant had not paid or tendered the rent. At the end, the Division Bench has approved the opinion of the Single Judge in Suka Ishram Chaudhary's case (supra). We shall, therefore, have to go back to the opinion of Bhole, J in the case of Suka Ishram (supra). Notably, in that case the Court went on to hold that the tenant was ready and willing to pay the rent in the facts of the case before it. It is held that the tenant was not in arrears of rent voluntarily for the relevant period and remained in arrears because of the conduct of the landlord for a period of six months or more. The opinion of Bhole, J was in the context of the fact that tenant had sent amount towards rent for the "relevant period" by money order but the landlord refused to accept the same. The question was whether the tenant was still in arrears of rent? In that context the Court found that if the landlord had accepted the money order, the tenant certainly would not have been in arrears for a period of over six months and there could not have been any cause of action for issuance of demand notice to the tenant. It is held that because the landlord refused to accept the rent for the relevant period, the tenant was said to be in arrears for the relevant period. In fact, no cause of action arose having regard to the fact that the date of

demand notice was within six months from the date of refusal of money order by the landlord. In other words, this observation has been made in the context of the fact established by the tenant that he had sent money order which indicated that lumpsum amount remitted was for period beginning from 1-11-1964 to 1-5-1965 but the same was refused by the landlord, whereas a Demand Notice was issued soon thereafter on 1-6-1965. In other words, the Court proceeded on the footing that having refused to accept the money order covering the rent for the "relevant period" from 1-11-1964 to 1-5-1965, the notice issued on 1-6-1965 was without accrual of cause of action. For, the tenant was neither in arrears nor could be said to be unwilling to pay the rent for the "relevant period" due to the conduct of the landlord. Similar view is taken in the unreported decision pressed into service in the case of Madhukar G. Vaidya (supra), following the exposition in Suka Ishram Choudhary's case. Even in that case, just before the issuance of demand notice in June 1980 the tenant had offered rent for the "relevant period" on April 22, 1980, which was refused by the landlord. Once again the Court proceeded on the premise that intentional refusal by the landlord of money order remitting rent for the "relevant period" would entail in deemed acceptance of rent for that period thereby depriving the landlord of resorting to action on the ground of arrears of rent. Even in the reported decision in Kamlabai B. Kabade (supra) it is noticed that money order sent by the tenant towards rent was for period from 1-1-1973 to 29-2-1976, whereas the demand notice was issued on March 1, 1976- shortly after the money order was refused by the landlord. Therefore, the Court took the view that the landlord cannot be permitted to take advantage of his own wrong having refused with oblique motive to accept the amount remitted by the tenant towards monthly rent for the "relevant period". Even in this decision, reliance is placed on the exposition in the case of Suka Ishram Chaudhary (supra).

13. As aforesaid, the observation of the Division Bench of our High Court which is reproduced herein before, will apply to the fact situation of a case such as obtaining in Suka Ishram Chaudhary and other two decisions referred to above. The question is, whether the view noted in the case of Suka Ishram Chaudhary (supra) which has been approved by the Division Bench, is applicable to the fact situation of the present case. In the present case, as has been concurrently found, the last of the money order sent by the tenant was on 31-12-1984 (Exhibit 31) in the sum of Rs. 120/- which covered arrears of rent only for the period from 30-12-1983 to December 1984. Moreover, it is not the case of the Petitioner that the refusal of this money order was within the proximity of six months from the date of the demand notice. The fact remains that no rent has been offered by the tenant at any time for the period from 1-12-1982 till December 1983 and in any case for December 1984 till August 1985, whereas the Demand Notice covered that period. The defence of the tenant that he used to pay the rent regularly but no receipt was issued has been concurrently rejected by the two Courts below. Once that finding is held to be unexceptionable, it necessarily follows that no rent has been offered by the tenant

for the said period from December 1982 till December 1983 and again for the period after December 1984 till August 1985. 14. Thus understood, the money orders sent by the tenant, as has been rightly found by the two Courts below, would be of no avail. For, the tenant showed no willingness to pay the outstanding arrears of rent for the period from "December 1982 till December 1983" and again for the period "from December 1984 till August 1985" without any cause whatsoever. It necessarily follows that readiness and willingness of the tenant to pay the "entire arrears of rent" as demanded by the landlord in the demand notice was lacking-rather absent.

15. A priori, the exposition in the case of Suka Ishram Chaudhari (supra) would be of no avail to the fact situation of the present case. For, it is not the case of the tenant that just before issuance of the demand notice on 23-8-1985 he had offered amount exceeding Rs. 170/- to the landlord, that too within the proximity of less than six months. It is only then the argument of the Petitioner tenant that the cause of action for proceeding against him on the ground of arrears of rent had not accrued to the landlord having refused to accept money order just prior to issuance of demand notice may be available. Suffice it to observe that in the fact situation of the present case, the exposition in the case of Suka Ishram Chaudhary and other cases referred to above will be of no avail.

16. To get over this position, Counsel for the Petitioner submits that the Petitioner had offered outstanding rent from time to time by money orders and the aggregate amount of all these money orders, if reckoned, was Rs. 560/-, far exceeded the amount demanded in the suit notice. It was argued that applying the principle of deemed acceptance, it would mean that the tenant had already offered the amount to the landlord for the period even posterior to issuance of demand notice and for that reason also, it will have to be held that no cause of action had accrued to the landlord. The argument deserves to be stated to be rejected. In as much as, the tenant is extricated from the rigours of Section 12(3)(a) only if he were to pay the entire amount demanded in the suit notice within one month from the receipt thereof. It would be a case of deemed acceptance or payment if the landlord were to unjustly refuse to accept the money order sent by the tenant. However, the principle of deemed acceptance so as to extricate the tenant and disentitle the landlord to initiate action on the ground of arrears of rent, cannot be extended to a case where the tenant fails to comply with his statutory obligation after the service of notice and moreso when he is not in a position to establish that he had infact remitted the amount as demanded by the landlord in the notice shortly before the date of demand notice but unjustly refused by the landlord within the proximity of less than six months before issuance of such demand notice. Moreover, in the present case the argument that total amount sent by money orders from time to time by the tenant and refused by the landlord, if taken together would mean that the tenant has already paid amount i.e. Rs. 560/-, which far exceeds the amount demanded in the suit notice and would cover rent even for the period far beyond the date of suit notice, clearly overlooks the stand taken by the defendant that the money order

sent from time to time were in respect of payment of arrears of rent for specific period and the last such offer was for rent only between December 1983 to December 1984 sent by money order dated 31-12-1984 (Exhibit 31). In other words, the remittance by money orders was for overlapping period as the earlier money orders were refused by the landlord. Be that as it may, the argument of deemed acceptance so as to disentitle the landlord to institute action on the ground of arrears of rent, could be invoked only if it were to be a case of unjust refusal by the landlord to accept the money order sent by the tenant covering the amount of rent for the relevant period within the proximity of six months before the date of issuance of the Demand Notice-so as to hold that cause of action to proceed against the tenant on the ground of default had not accrued to such a landlord.

17. It was also contended that the fact that the tenant was remitting amount by money orders repeatedly would indicate that he was always ready and willing to pay the rent for which reason it was not open to pass decree for eviction but at best decree for money claim of the landlord could be considered. Firstly, the assumption that the tenant was ready and willing to pay the entire outstanding rent is unavailable in the facts of the present case for the reasons already recorded hitherto. Moreover, this argument clearly overlooks the mandate of Section 12(3)(a) of the Act, as was applicable at the relevant time. The Apex Court while construing the said provision has authoritatively held in catena of decisions that if the tenant fails to comply with his obligation u/s 12(3)(a) of the Act of paying the arrears of rent as demanded in the notice within one month or to file standard rent application disputing the quantum of rent demanded by the landlord within the same time, the Court will have no option but to decree the suit for possession against such defaulting tenant. It is, therefore, not open to the Court to pass any other order much less only restrict the decree to arrears of rent claimed by the landlord, which relief will be only incidental to the substantive relief of possession of the suit premises on the ground of arrears of rent.

18. Taking any view of the matter, the Petition is devoid of merits. The same ought to fail.

19. Hence, it is dismissed with costs.