

Mohan Laxman Hede

Vs

Noormohamed Adam Shaikh

Civil Appeal No 1449 of 1987

(CJI R.S. Pathak, M.H. Kania, N.D. Ojha JJ)

07.04.1988

JUDGMENT

KANIA J. –

1. This is an appeal by a tenant against a decree for eviction passed against him at the instance of the respondent who is the landlord. The appeal has been preferred pursuant to special leave granted by this Court under Article 136 of the Constitution.

2. In view of the short controversy before us, the relevant facts can be very briefly stated.

3. The appellant took the tenancy of the premises in question namely, shop in a house bearing CTS No. 168, Bhavant Peth, Satara City in Maharashtra on an agreed rent of Rs. 22 per month. Apart from the rent, a sum of Rs. 2.20 per month was payable on account of Education Cess. The respondent purchased the said house on December 3, 1976 and on the next day the previous owner of the said house informed the appellant that the property was sold to the respondent and the tenancy was attorned and further stated that the appellant was in arrears of rent from June 1, 1976 to November 30, 1976. On January 11, 1977, the appellant received a notice from the respondent dated January 10, 1977 demanding the arrears of rent from the appellant. On January 17, 1977, the appellant sent a money order to the respondent for the arrears of rent but the money order stated that the payment was being made to the respondent as the Muktyar or agent of the previous landlord. This money order was refused by the respondent. On February 14/15, 1977 the appellant filed a standard rent application in the trial court for fixing the standard rent of the premises under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which we shall refer to hereinafter as "the Bombay Rent Act". The respondent filed a suit, being Regular Civil Suit No. 123 of 1977, in the Court of Civil Judge, Junior Division, Satara claiming arrears of rent and possession of the suit premises on the ground of non-payment of arrears of rent and bona fide requirements as contemplated under Section 12(3) and Section 13(1) respectively of the Bombay Rent Act. The issues in the said suit were framed by the trial court on September 12, 1978, and that is accepted as the first day of hearing of the suit. Although the appellant made applications on December 24, 1977, January 15, 1980, December 9, 1980 and January 27, 1981 for fixation of interim rent, the trial court passed an order only on January 27, 1981 fixing the interim rent at Rs. 20 per month and gave directions to the appellant to pay all the arrears of rent on or before February 10, 1981. The appellant deposited all the arrears of rent at the rate fixed by the court for the period from June 1, 1976 to January 31, 1981 in the trial court on January 29, 1981, that is, within two days from the date of order fixing the rent. The appellant thereafter deposited the rent in the trial court as set out in the following manner :

No.	'C' Receipt Date	Amount	Particulars	No.
1269	1094 29-1-81	1158.60	June 1976 to February 1981	1416
1208	25-2-81	20.00	March, 1981	113
12	2-4-81	60.00	April, May, June, 1981	409
366	8-7-81	60.00	July, August, September, 1981	849
755	5-10-81	60.00	October, November, December, 1981	1322
1166	11-1-82	60.00	January, February, March, 1982	51
8-4-82		60.00	April, May, June, 1982	682
630	10-8-82	60.00	July, August, September, 1982	1153
1055	1-11-82	60.00	October, November, December, 1982	1728
1596	7-2-83	40.00	January, February, 1983	107
100	12-4-83	60.00	March, April, May, 1983	528
484	14-7-83	40.00	June, July, 1983	998
910	28-9-83	40.00	August, September, 1983	1213
1203	7-11-83	40.00	October, November, 1983	1689
1603	11-1-84	20.00	December, 1983	1635
1551	5-1-84	20.00	January, 1984	2079
1952	15-3-84	100.00	February to June, 1984	354
316	26-6-84	120.00	July to December, 1984	434
256	18-12-84	240.00	January to December, 1985	56
290	17-12-85	240.00	January to December, 1986	

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The trial court held that the respondent had failed to prove that he was in bona fide need of the suit premises but passed a decree for eviction on the ground that the appellant had committed default in payment of rent as contemplated under Section 12(3)(b) of the Bombay Rent Act. On an appeal by the appellant, these findings were confirmed by the Additional District Judge, Satara and the appeal was dismissed. Being aggrieved, the appellant filed a writ petition, being Writ Petition No. 6028 of 1986, in the High Court of Bombay. This writ petition was dismissed by a learned Single Judge of the High Court by a short order taking the view that the appellant was in arrears and had committed default in payment of rent and there was no reason for the High Court to interfere with the decisions of the courts below. The present appeal is directed against this decision.

4. It was submitted by Mr. Tarkunde, learned counsel for the appellant that the appellant had deposited well within time the entire arrears of rent on the basis of the interim rent fixed by the trial court and had thereafter deposited the amount of accruing rent in court with substantial regularity and in view of this, no decree for eviction could be passed against the appellant under the provisions of Section 12(3)(b) of the Bombay Rent Act read with the other provisions contained in Section 12. It was, on the other hand, contended by Mr. Joshi, learned counsel for the respondent, that there was irregularity in the deposit of the interim rent after the initial deposit of arrears was made by the appellant, and he was not entitled to the protection of the Bombay Rent Act and was liable to be evicted on the ground of default in payment of the rent. In order to appreciate these arguments, we have to consider the relevant provisions of Section 12 of the Bombay Rent Act. The material portion of Section 12 runs as follows :

12(1) 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, insofar as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882.

(3) (a) 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 the period of one month after notice referred to in sub-section (2), the court shall pass a decree for eviction in any such suit for recovery of possession.

(b) 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.

5. The provision of Section 12(1) has already been set out. In the present case, the provisions of clause (a) of sub-section (3) of Section 12 have no application as there was a dispute regarding the amount of standard rent. Hence the provisions which we have to consider are those contained in clause (b) of sub-section (3) of Section 12 of the Bombay Rent Act. This clause read in the context makes it clear that no decree for eviction can be passed in a suit for recovery of possession on the ground of non-payment of standard rent or permitted increases instituted by the landlord against the tenant, if on the first day of the hearing of the suit or on or before such a date, as the court may fix, the tenant pays or deposits in court the standard rent and permitted increases then due and thereafter continues to pay or deposits in court regularly such rent and permitted increases till the suit is finally decided and also pays the costs of the suit as directed by the court.

6. In the present case, both sides accepted the position that the appellant had deposited in court the entire arrears of rent on the basis of interim rent fixed well within time as directed by the court. It is common ground that until the application of standard rent made by the tenant is finally decided, the interim rent fixed by the court must be regarded as the standard rent. The only question, therefore, is whether it can be said that the appellant, after the first deposit, of the arrears of rent, continued to deposit in court the rent and the permitted increases "regularly" till the suit was finally decided as contemplated under Section 12(3)(b) of the Act. In *Mranalini B. Shah v. Bapalal Mohanlal Shah* ((1980) 4 SCC 251 : AIR 1980 SC 954) a Division Bench of this Court was called upon to consider the very provisions of Section 12(3)(b) of the Bombay Rent Act which fall for consideration in the present case before us. In dealing with these provisions, Sarkaria, J., speaking for the Court stated as follows : (SCC p. 254, para 13)

The above enunciation, clarifies beyond doubt that the provisions of clause (b) of Section 12(3) are mandatory, and must be strictly complied with by the tenant during the pendency of the suit or appeal if the landlord's claim for eviction on the ground of default in payment of rent is to be defeated. The word "regularly" in clause (b) of Section 12(3) has a significance of its own. It enjoins a payment or tender characterised by reasonable punctuality, that is to say, one made at regular times or intervals. The regularity contemplated may not be a punctuality, of clock-like precision and exactitude, but it must reasonably conform with substantial proximity to the sequence of times or intervals at which the rent falls due. Thus, where the rent is payable by the month, the tenant must, if he wants to avail of the benefit of the latter part of clause (b), tender or pay it every month as it falls due, or at his discretion in advance. If he persistently defaults during the pendency of the suit or appeal in paying the rent, such as where he pays it at irregular intervals of 2 or 3 or 4 months - as is the case before us - the court has no discretion to treat what were

manifestly irregular payments, as substantial compliance with the mandate of this clause, irrespective of the fact that by the time the judgment was pronounced all the arrears had been cleared by the tenant.

7. If we examine the chart of deposits made by the appellant in the court set out earlier, it shows that during the period January 29, 1981 to December 17, 1985 the appellant has been depositing the rents in court for two or three months at a time. In respect of some months, there are undoubtedly a few defaults in the sense that the deposits have been made a few days later than directed. In this connection, it must be noticed that trial court directed that in respect of accruing rent after the order for deposit of arrears was passed, the monthly rent must be deposited on the fifth day of each month which, it is undisputed, must mean the fifth day of each succeeding month. On this basis there are undoubtedly, a few defaults committed by the appellant in the sense that in respect of the first month to which the deposit relates, there is some delay amounting to from two or three days up to a maximum of 23 days. But, on the other hand, the rent for most of the months has been deposited in advance. In these circumstances, applying the principle laid down in the aforesaid decision referred to, we are of the view that the rent has been deposited by the appellant with reasonable punctuality and hence the appellant-tenant can be regarded as having deposited the rent 'regularly' as contemplated in clause (b) of sub-section (3) of Section 12 of the Bombay Rent Act. We are of the view that the courts below were in error in taking the view that exact or mathematical punctuality was required in the deposit of rent by a tenant to take advantage of the provisions of Section 12(3)(b) of the Bombay Rent Act.

8. In these circumstances, we set aside the decree for eviction passed by the courts below and order that the suit filed by the respondent shall stand dismissed.

9. So far as the costs of this appeal are concerned, however, that is a different question. It has been pointed out to us by the learned counsel of the respondent that the appellant has been persisting in his unjustified stand that the respondent was not his landlord in respect of the premises in question and on that ground he opposed the withdrawal by the respondent of the amount deposited by the appellant in the trial court. We agree that this stand was unjustified. Mr. Tarkunde, however, made it clear that the appellant unconditionally accepts the title of the respondent to the suit building and also accepts that he is the landlord of the appellant and that the respondent is entitled to recover the amount of rent from the appellant. If any rent remains deposited by the appellant in the trial court, the respondent shall be at liberty to withdraw the same forthwith.

10. In these circumstances, we direct that the entire costs through out shall be borne and paid by the appellant.

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