

Jaywant S. Kulkarni and Others

Vs

Minochar Dosabhai Shroff and Others

Civil Appeal No. 258 of 1982

(Sabyasachi Mukharji JJ)

09.08.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This is an appeal by the tenant. It arise out of an order of eviction passed by the Civil Judge, Thane and confirmed by the learned Assistant Judge of Thane on or about July 24, 1976. The High Court of Bombay on or about November 3, 1981 dismissed an application under Article 227 of the Constitution challenging the said decision. Civil Suit No. 176 of 1974 was filed by the respondent-landlord against the appellants for possession of the building called Jamshed Villa at Thane. The ground floor of the building consists of one hall, two bedrooms, two side rooms and a kitchen. The said premises was let out to one Shri S. H. Kulkarni the deceased father of the appellants some years ago by the respondent on the rent of Rs. 50 per month. The former owner, it is stated, terminated the tenancy of the appellants on June 20, 1975, and the deceased Shri Kulkarni continued to occupy it as a statutory tenant. On the sale of the suit property the tenancy of Shri S. H. Kulkarni was duly attorned to the present plaintiff, Shri S. H. Kulkarni then expired. On January 11, 1973 the respondents served the notice upon the appellants requiring them to vacate the suit premises on various grounds. By the said notice the respondent also called upon the appellants to pay the arrears of rent for the period from September 1, 1971 to December 31, 1972 at the rate of Rs. 50 per month. The total arrears came to Rs. 800. Indubitably, the amount claimed in this notice was not paid by the appellants to the respondent. the appellants replied to the notice. In that reply, several contentions were urged. It may be mentioned that the suit was filed on various grounds, namely, that the appellants have created a nuisance and they are irregular in paying the rent further it was stated that the respondent required the suit premises reasonably and bona fide for his personal use and occupation. The learned Trial Judge after framing the issues, on all issues held in favour of the tenant except the issue of the arrears of rent. The learned Trial Judge held that the appellants had failed and neglected to pay the arrears of rent within the statutory period in spite of the notice under Section 12 (2) of the Bombay Rents, Hotel and Loading House Rates Control Act, 1947 (hereinafter called 'the Act'). The trial Court, however, on the question whether the appellants have raised a substantial plea that the rent is excessive, did not go into this aspect in view of the decision of this Court in Harbanslal Jagmohandas v. Prabhudas Shivilal. Accordingly, the Trial Judge decreed the suit on the ground that the appellants are in arrears of rent. There was an appeal from the said decision of the Trial Judge to the learned Assistant Judge, Thane. The learned Assistant Judge affirmed the order of the learned Trial Judge but reiterated that the tenant could claim protection from the operation of Section 12 (3) (a) of the Act, only if the tenant had made an application within one month from the service of the notice under Section 12 (2) of the Act terminating the tenancy wherein a dispute was raised regarding the standard rent. It is common ground that the appellants in this case did not make any application within one month from the service of the notice

under Section 12 (2) of the Act terminating the tenancy wherein a dispute was raised regarding the order for eviction. The learned Assistant Judge, therefore, confirmed the order for eviction. The appellants moved to the Bombay High Court. The Bombay High Court by the judgment under appeal on November 3, 1981 dismissed this application holding that neglect on the part of the appellants in making payment as mentioned in Section 12 (3) (a) of the Act has to be decided on the facts of each case. The High Court reiterated that after considering all the facts and circumstances both the courts below have rightly come to the conclusion that there was neglect on the part of the appellants within the meaning of Section 12 (3) (a) of the Act, meriting a decree for eviction.

2. Shri Bhasme appearing for the appellants contended before us that the High Court was wrong and did not properly consider the conduct of the respondent in not giving receipts. Before we consider this contention, it may be appropriate to refer to the provisions of Section 12 of the Act. It provides that the 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 the Act. Sub-section (2) of Section 12 also stipulates that no suit for recovery of possession shall be instituted by a landlord against a 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 Sub-Section (3) (a) and (b) of Section 12 of the Act are important and set out hereunder:

(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 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 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.

3. This question, as to how a payment is to be made under Section 12 (3) (a), has been considered by this Court in Harbanslal Jagmohandas. There both the appeals raised a common question as to whether a tenant in order to resist passing of a decree of eviction under the provisions contained in Section 12 (3) (a) of the Act must dispute the standard rent within one month from the date of receipt of the notice from the landlord terminating the tenancy on the ground of arrears of rent or whether a tenant can raise such a dispute in the written statement. There was difference of opinion between Bombay and Gujarat High Courts. The Gujarat High Court took the view that the dispute as to standard rent had to be raised within one month from the service of the notice on the tenant. The Bombay High Court had taken a contrary view and held that the tenant could raise a dispute as to standard rent in his written statement in answer to the suit and in such a case the provisions of Section 12 (3) (a) of the Act would apply. In the Gujarat case, the High Court found that the tenant did not raise the tenancy, inter alia, on the ground of arrears of rent for more than 6 months. In the

Bombay appeal the dispute was not raised within one month from the date of the receipt of the notice. It was, however, raised in the written statement. Under Section 11 of the Act, the court had power to determine standard rent when there was a dispute between the landlord and tenant regarding the amount of standard rent. It was held by this Court that under Section 12 of the Act the landlord is not entitled to recover possession of the premises so long as the tenant pays or is ready and willing to pay the amount of standard rent and permitted increases. Section 12 (2) provides that no suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent until the expiration of one month next after notice in writing of the payment of the standard rent. This Court held that the view of the Bombay High Court was erroneous and the view of the Gujarat High Court was correct. Sub-section (3) (a) of Section 12 categorically provided that where the rent was payable by the month and there was no dispute regarding the amount of standard rent or permitted increases, if such rent or increases were in arrears for a period of six months or more and the tenant neglected 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. In the instant case, as has been found by the court, the rent is payable month by month. There is no dispute regarding the amount of standard of rent or permitted increases. Such rent or increases are in arrears for a period of six months or more. The tenant had neglected to make payment until the expiration of the period of one month after notice referred to in sub-section (2). The court was bound after notice referred to in any such suit for recovery of possession. In terms of the decision of this Court in Harbanslal Jagmohandas, the eviction order had to follow by operation of law.

4. Shri Bhasme, however, submitted before us that here there was no question of negligence in proper light because he drew our attention to several letters whereby the tenant offered to pay the rent to the landlord. The tenant's case was that the landlord was not granting receipts. The landlord was not demanding "rent" but was demanding "compensation" for use and occupation. He drew our attention to several decisions and urged that the tenant was willing to pay the rent provided receipts were granted to him. Shri Bhasme urged that the landlord did not comply with the request to give written receipt. He was punishable with fine which might extend to one hundred rupees under sub-section (2) of Section 26 of the Act. Shri Bhasme submitted that in this case, the landlord was acting mala fide and by his mala fide act he was preventing the tenant from performing his obligation. He further urged that this was not a case of bona fide need. The landlord was affluent and the tenant was poor. There was a great shortage of accommodation. In view of the decision of this Court in Harbanslal Jagmohandas v. Prabhudas Shivlall and the provisions of Sections 12 (3) (a) and (b) and in the background of the facts and circumstances of the case, we must hold that the courts below were right.

5. Our attention was drawn to a decision of this Court in Mohan Laxman Hede v. Noormohamed Adam Shaikh, where this Court reiterated that to take advantage of protection from eviction under Section 12 (3) (b) of the Act it cannot be said that exact or mathematical punctuality was required in the deposit of rent by a tenant. The tenant had been depositing the rents in that case in court for two to three months at a time. There the court was concerned with the expression "regularly" as contemplated in clause (b) of sub-section (3) of Section 12 of the Act. It was not concerned with clause (a) of sub-section (3) of Section 12 of the Act. It was not concerned with the question of total failure or neglect on the part of the tenant to pay the rent. It may be instructive in this connection to note that in sub-section (3) (a), the expression "court shall pass a decree" was substituted for the words "court may pass a decree" by an amendment passed in 1963, making it mandatory to pass the decree. When the legislature had made its intention clear in specific terms, there was no scope for Shri Bhasme's appeal to 'the spirit of the law' and not to the strict letter of the law.

6. In the aforesaid view of the matter, this appeal fails and it is accordingly dismissed. But in the facts and circumstances of the case, the parties will pay and bear their own costs. Furthermore, in order to cause less hardship in the situation, we direct that the appellants will have six months time to vacate the premises in question, provided they file an undertaking within six weeks from this date to this Court that they will deliver vacant possession of the premises to the landlord after the expiry of six months from date and to go on paying rent compensation until possession is given and not to induct or let anybody in the premises in question, in the usual terms.

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