

GUJARAT HIGH COURT

Shah Ambalal Chhotalal

Vs.

Shah Babaldas Dayabhai

Civil Revn. Applns. Nos. 86 and 98 of 1960 and 8 of 1961

(J.M. Shelat and M.R. Mody, JJ.)

12.04.1962

JUDGMENT

Shelat, J.

1. This application and Civil Revision Applications Nos. 96 of 1960 and 8 of 1961, though involving different facts raise common questions of law on the construction of Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, LVII of 1947. (hereinafter referred to as the Act) and can expediently be disposed of by a common judgment. Though questions arising in these applications have been previously dealt with in several applications of this kind, there have been so many opinions diversely expressed in reported as well as unreported judgments that we think it desirable that the law laid down in Section 12 of the Act needs to be restated.

2. We propose to first take up Civil Revision Application No. 86 of 1960, as it is in that application that the learned advocates concerned therein as also others interested in the other applications urged their various points of view and pointed out to us expressions of opinions in several judgments, both reported and unreported.

3. In Civil Revision Application No. 86 of 1960 the petitioner took over the premises in question on October 13, 1952, as a monthly tenant at Rs. 25/- as rent per month. He paid the rent upto July 12, 1954, but did not pay any rent thereafter. On December 21, 1954, the respondent gave notice demanding arrears of rent and terminating the tenancy. In spite of that notice the petitioner did not pay the arrears nor did he file an application for fixation of the standard rent. It was only on August 8, 1955, that he filed such an application, being application No. 144 of 1956 for fixation of the standard rent. The petitioner, however, did not deposit any amount towards the payment of the arrears due by him. On September 5, 1955, the respondent filed the present suit for recovery of possession and arrears due. On December 22, 1955, he appeared in Court in answer to the

summons. On February 10, 1956, he filed his written statement but did not deposit any amount in Court together with his written statement. The suit was fixed for hearing on March 22, 1956. On that day, the petitioner deposited a sum of Rs. 75/- and between that date and the 25th of April, 1957, he deposited diverse amounts in Court aggregating in all to Rs. 900/-. On April 26, 1957, he deposited a further amount of Rs. 30/- in Court. On April, 25, 1957, which was the first day of the actual hearing of the suit, issues were raised and evidence taken and on April 26, 1957, the trial Court delivered the judgment and passed the decree allowing the respondent's suit and ordering the petitioner to hand over possession.

4. The petitioner was in arrears from July 13, 1954 to April 12, 1957, a period of 33 months and at the rate of Rs. 25/- per month, the arrears due and payable by him by the date of the decree, viz., April 26, 1957, came to Rs. 825/-. Besides the amount of Rs. 825/- he was also liable to pay the costs of the suit which were determined at Rs. 112-7-0. In all he was liable to pay to the respondent Rs. 937-7-0. Obviously, therefore, the amounts deposited by him by the first day of the hearing, viz., April 25, 1957, were short by Rs. 37-7-0. The learned trial Judge passed the decree as aforesaid against the petitioner holding that he had not performed the conditions laid down in Sub-Section (3)(b) of Section 12 of the Act and ordered him to deliver up possession to the respondent. The petitioner filed an appeal against the aforesaid judgment and decree in the District Court. While the appeal was pending, he deposited various amounts commencing from July 1, 1957, to July 14, 1958, aggregating in all to Rs. 399/-. The learned District Judge dismissed the petitioner's appeal holding that Sub-Section (3)(b) was not complied with and, therefore, the decree for possession was rightly passed by the trial Court, The petitioner filed the present Civil Revision Application against the aforesaid order of dismissal of his appeal by the learned District Judge.

5. Two principal contentions were raised by Mr. Shastri on behalf of the petitioner :

"(1) that by the time the trial Court passed the decree, that is, April 26, 1957, the tenant had satisfied all arrears, due till then and had in fact deposited a little more than the arrears of standard rent due and therefore he was a tenant who had paid up all arrears and in any event was a tenant who had shown his readiness and willingness to pay the standard rent and permitted increases and, therefore, Section 12(1) of the Act applied to him and no decree of eviction could be passed against such a tenant.

(2) that in the alternative, he had performed the conditions laid down in Sub-Section (3)(b) of Section 12, and, therefore, was entitled to protection under that Sub-Section."

While dealing with these contentions it becomes necessary to appreciate the true effect of the provisions of Section 12 of the Act. Under Section, in of the Transfer of Property Act, there are various modes of determination of lease available to a landlord. Once a lease is determined by anyone of such modes, except by forfeiture under clause (g) of Section 111, a landlord under the ordinary law of landlord and tenant becomes entitled to recover possession and the tenant cannot

resist the landlord's claim for possession. On the other hand under Section 114 of the Transfer of Property Act where a lease of immoveable property has been determined by forfeiture for non-payment of rent and the lessor sues to eject the lessee, if, at the hearing of the suit the lessee pays or tenders to the lessor the rent in arrears, together with interest thereupon and the costs of the suit or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court has the discretion in lieu of making an order for ejectment to pass an order relieving the lessee against forfeiture and thereupon the lessee holds the property leased as if the forfeiture had not occurred. But the relief against forfeitures for non-payment of rent contemplated by Section 114 applies only to a case where the lease has been determined under clause (g) of Section in of the Transfer of Property Act and not where it has been determined under clause (h) of that section, namely, by a notice to quit the property leased. In England, from very old times, equity regarded a forfeiture clause for non-payment of rent as security for the rent, granted relief whenever compensation could be given and even the Courts of Common Law restrained acts for ejectment for non-payment of rent on the lessee bringing the rent in Court. This relief was given upon the principle that, as the right of entry was intended merely as security for the rent, the lessor thereby recovered full compensation and was placed in thy same position as if rent had been paid to him as it was originally due. This principle of equity was recognized by various statutes and finally by Section 146 of the Law of Property Act, 1925. Section 114 of the Transfer of Property Act also recognizes this principle by statutorily providing for relief against forfeiture for non-payment of rent while other cases of forfeiture are dealt with in Section 114-A of the Transfer of Property Act. The Court in such a case grants relief to the lessee by putting him on terms to make full compensation to the lessor, i.e., by asking him to pay all rent in arrear with interest and full costs of the lessor's suit. But a distinction should always be borne in mind between the determination of tenancy under clause (g) of Section in and the determination of tenancy under clause (h) of that section by giving a notice terminating the tenancy. In a case falling under clause (g) of Section 111, the right of forfeiture is exercised while the tenancy is still subsisting; while in a case falling under clause (h) of Section 111, the lease is determined by a notice to quit. The lease is no more subsisting and therefore no question of relief against re-entry by forfeiture can arise.

6. As we have said, under the ordinary law of landlord and tenant, as soon as a landlord determines the tenancy by any of the modes available to him under Section in except by forfeiture, he becomes entitled to recover possession and the tenant has no right to resist his claim for possession. In view, however, of shortage of accommodation and the apprehension that landlords might take, undue advantage of such shortage, the Legislature passed the Act. As is clear from the preamble of the Act, the object of enacting it was to afford protection to tenants against their evictions by the landlords and therefore, notwithstanding their right to recover possession under the ordinary law of landlord and tenant, the Act placed certain restrictions on the landlord's right to recover possession. These restrictions are inter alia to be found in Section 12 of the Act.

7. Sub-Section (1) of Section 12 provides that a landlord shall not be entitled to recover 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. Sub-Section (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 standard rent or permitted increases due, until the expiration of one month 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. Sub-Section (3) is divided into two parts and in part (a) it provides 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 permitted 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 may pass a decree for eviction in any such suit for recovery of possession. Though the Legislature has used the word "may" in Sub-Section (3)(a), it has been used in its compulsory, obligatory sense and means 'shall' or 'must' as decided in *Kurban Hussein v. Ratikant Jankar*¹, Sub-Section (3)(b) provides that 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. The explanation to Section 12 enacts a presumption and provides that in any case where there is a 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.

8. Analyzing Section 12, without for the time being resorting to the various decisions cited at the bar, it appears that the Legislature desired to lay down certain restrictions against the landlord's right to recover possession under the Transfer of Property Act and the law of landlord and tenant. Sub-Section (1) of Section 12 lays down the first of such restrictions which is not a restriction against his right to file a suit but against his right to recover possession so long as the tenant pays or is ready and willing to pay the standard rent and permitted increases, if any and so long as he observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of the Act. Even when a landlord gets over that restriction, a second restriction is placed upon him by providing in Sub-Section (2) of Section 12 that such a landlord would not be entitled to institute a suit for recovery of possession against the tenant on the ground of non-payment of standard rent or permitted increases due, until the expiration of one month 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. Thus, even if a

tenant has not paid the standard rent and the permitted increases, the Legislature provides for a *locus ponitentiae* by prescribing that a notice of one month's duration shall be given before the institution of the suit for possession and it is only after the expiry of one month that a suit may lie for possession. If there is a dispute as to the amount of standard rent or permitted increases payable by a tenant, it is open to the tenant to make an application for fixation of the standard rent and the pendency of the application for fixation of the standard rent and the payment or tender by the tenant of the amount specified in the order that the Court passes in that behalf, is presumptive evidence of the tenant's readiness and willingness to pay rent. Even when these two restrictions were got over by the landlord, the Legislature considered it necessary to provide for a third restriction by enacting Sub-Section (3) which originally provided that no decree for eviction shall be passed in any suit for recovery of possession if at the hearing of the suit the standard rent or permitted increases then due together with the costs of the suit were paid by the tenant or tendered by him in Court. The High Court of Bombay interpreted the words "at the hearing of the suit" in Sub-Section (3), to mean that the tenant could get the protection of that Sub-Section he paid or tendered the standard rent or permitted increases together with the costs of the suit, not merely at the hearing of the suit but also

159 Bom LR 158 : (AIR 1959 Bom 401)

at the hearing of the appeal on the ground that the word 'suit' include" 'appeal' and appeal being a continuation of the suit. Possibly disagreeing with this view or thinking it not to be one intended by it, the Legislature by Act 61 of 1954 substituted Sub-Section (3), as it then stood, by splitting it into the present Sub-Section (3)(a) and Sub-Section (3)(b). It appears that the Legislature wanted to declare that in its judgment cases falling under Sub-Section (3)(a) were gross cases and, therefore, took away the discretion of the Court by laying down that the Court shall pass a decree for eviction in a suit for recovery of possession falling under that part of Sub-Section but in cases not falling under Sub-Section (3)(a), the Legislature gave a further safeguard by providing in Sub-Section (3)(b) *locus pointentiae*, namely, that even if the tenant was in arrears at the date of the suit and could not be considered ready and willing to pay the standard rent or permitted increases so as to attract the protection of Section 12(1), he could after the date of the suit pay or tender the arrears on the first day of hearing of the suit or on or before such other date as the Court might fix and thereafter continue to pay or tender in Court regularly such rent or permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court. As observed before, the explanation to Section 12 creates a fiction enabling the tenant to bring his case under Section 12(1) providing thereby a safeguard that where there is a dispute as to the amount of standard rent or permitted increases, 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 the notice referred to in Sub-Section (2), he makes an application under Section 11(3) and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court. It is thus clear that the provisions contained in Sub-Section (1), Sub-Section (2), Sub-Section (3)(b) and the explanation are intended to be safeguards against or restrictions on a landlord's right to recover possession on the determination of tenancy by him under any of the modes set out in Section 111 of the Transfer of Property Act except by way of forfeiture. The tenant can therefore

resist, notwithstanding the general law, the landlord's claim to recovery of possession if he can bring his case under any of these provisions. In other words, these provisions give the tenant the status of irremovability commonly known as statutory tenancy as distinguished from contractual tenancy, the basis of which is the contract of tenancy. It follows that since the status of irremovability or of a statutory tenancy is the creation of statute after the contractual tenancy has come to an end, the right of a statutory tenant is only personal and only that which he can deduce from the statute. Such a tenant therefore would be entitled to continue in possession only and so long as he complies with the terms of the statute and to the limited extent that he is protected by the statute. Therefore, when the landlord has determined the tenancy otherwise than under clause (g) of Section 111 of the Transfer of Property Act and the case, of the tenant does not fall under the provisions of Section 12, the general law of landlord and tenant as to the landlord's right to recover possession must prevail, the tenant cannot resist such a claim to possession and the court would have no jurisdiction to refuse to grant a decree for possession, to the landlord. There is no provision in the Rent Act which confers any jurisdiction on the Court to decline to pass a decree for possession in favour of the landlord in such an event. The principle of equity as to relief against forfeiture obviously does not apply as the determination of tenancy in such cases is not by forfeiture under Section 111(g) of the Transfer of Property Act under clause (h) of that section where the tenancy is determined by a notice to quit and the landlord becomes entitled thereupon to possession unless, as we have said, the case of the tenant for irremovability, notwithstanding the determination of the tenancy, falls within any of the safeguards conferred upon him by the Rent Act.

9. Two points of view were, however, urged before us in respect of Sub-Section (1) of Section 12, viz., (1) that Sub-Section (1) is operative at the date of the decree and therefore if the tenant has by that time paid all the arrears due or has shown by that time his readiness and willingness, he has a right to protection under the Sub-section notwithstanding the fact that he has committed default by not paying the standard rent and permitted increases on the due dates and no decree in that event can be passed against him. (2) On the other hand it was urged that if the tenant wishes to avail himself of the protection of Sub-Section (1), he has to establish that he had performed the conditions therein at the date of the institution of the suit. In other words the time when Sub-Section (1) is to be considered is the time when the suit is instituted and the Court while disposing of the suit has to ascertain whether the tenant had been paying or was ready and willing to pay the standard rent and permitted increases and has been performing and observing the other conditions of tenancy at the date of the suit. If this is established, Sub-Section (1) gives protection to such a tenant by providing that in such a case the Landlord shall not have the right to recover possession.

10. In order to determine which is the correct interpretation of Sub-Section (1), it is necessary to see what exactly Sub-Section (1) does. As already observed, this Sub-Section confers a personal right on the tenant to resist the landlord's claim to possession on the termination of the contractual tenancy as long as he pays or is ready and willing to pay the standard rent and

permitted increases and performs the other conditions of the tenancy. The status of irremovability or statutory tenancy continues so long as the tenant performs the conditions laid down in this Sub-Section. But no sooner the tenant fails to perform these conditions, the landlord can file a suit for eviction and recover possession under the right conferred upon him by the law of landlord and tenant. The failure on the part of the tenant to perform these conditions removes the restriction therein laid down and gives a cause of action to the landlord to file a suit against the tenant. It would follow therefore that it is at the date of the suit that it has to be seen whether the tenant is entitled to get the protection and benefit of Sub-Section (1), in other words, whether he is a tenant who has paid or has been ready and willing to pay the standard rent and permitted increases. The right to recover possession being dependent upon whether or not a tenant has paid or has been ready and willing to pay and has performed the other conditions of the tenant, the question must always arise whether at the date when the landlord filed his suit he was in a position to establish that the tenant was not one who was entitled to the benefit of Sub-Section (1) inasmuch as he had not paid or was not ready and willing to pay the standard rent and permitted increases when the suit was instituted. It is only when a landlord is in a position to establish that the tenant forfeited his right to protection under this Sub-Section that the landlord would have a cause of action to file a suit for ejection. Therefore, it is at the date when such a cause of action accrues to the landlord that the Court has to ascertain whether the prohibition against the landlord laid down in Sub-Section (1) against his right to recover possession existed or not. This position becomes clear also from the provisions of Sub-Section (2) which lays down an obligation on the landlord to serve a notice in writing of the demand of the standard rent and permitted increases and the necessity of one month expiring even after such a notice has been served upon the tenant. Sub-Section (2) thus lays down a condition precedent and evidently it is done to give an opportunity to a defaulting tenant to pay up the arrears and save himself from being evicted. If the tenant pays up the arrears within the time prescribed in Sub-Section (2), he gets the protection of Sub-Section (1). The effect of Sub-Sections (1) and (2), therefore, is two-fold :

- (a) if the tenant has paid or has been ready and willing to pay the standard rent and permitted increases, he is protected by Sub-Section (1) and he cannot be evicted, and
- (b) even if he has committed default but pays up within the time laid down in Sub-Section (2), which would be before the institution of the suit, he would still be protected under Sub-Section (1).

The Legislature has then gone one step further by providing in Sub-Section (3)(b), in cases not falling either under Sub-Section (1) on the one hand and Sub-Section 3(a) on the other, a further opportunity and safeguard if the defaulting tenant pays up the arrears at the first day of the hearing of the suit or on such other date that the Court may fix and continues to pay thereafter regularly. Thus the Legislature has created safeguards for the tenant available to him at three different stages :

- (1) If he has been paying or has been or is deemed to be ready and willing to pay the

standard rent and permitted increases at the date of the suit, Sub-Section (1) protects him,
(2) Even if he has not been paying or has not been ready and willing to pay and has in fact committed default, to pay before the date of the suit within the time prescribed by Sub-Section (2), in which event Sub-Section (1) again safeguards him, and
(3) Even if he has not paid or has not been ready and willing to pay and has in fact committed default, except in cases falling under Sub-Section (3)(a), he is still safeguarded by Sub-Section (3)(b), if he makes payment on the first day of hearing or on or before such date fixed by the Court.

11. This analysis of Section 12 should make it clear that the protection afforded by Sub-Section (1) is to be determined from the circumstances existent at the date of the institution of the suit and not at the date of the decree. If Mr. Shastri were to be right in his construction of Sub-Section (1) and if that Sub-Section was intended to mean that even if the tenant has committed default but has paid up the arrears by the time when it comes to pass decree, he can still get protection under Sub-Section (1), there was no necessity for the Legislature to have enacted Sub-Section (3) as it stood prior to March 31, 1954 and thereafter Sub-Sections (3)(a) and (3)(b). Again, if Mr. Shastri's interpretation were to be accepted, it would make Sub-Section (3)(b) in any event superfluous because the tenant even in a case falling under Sub-Section (3)(b) can always pay, not at the first date of hearing or on the date, that may be fixed by the Court, but at any time before the time comes for passing the decree. Such a construction would be inconsistent with the scheme and object of Sub-Section (3)(b) because Sub-Section (3)(b) not only lays down that, the tenant has to pay all arrears and costs as determined, by the Court on the first day of hearing but that he must continue to pay the standard rent and permitted increases on due dates until the suit is finally decided, Sub-Section (3)(a) also would be rendered nugatory if it were to be held that even, if the tenant were to pay at any time before the decree, he would be safeguarded by Sub-Section (1). The effect of such a construction would be anomalous because that would be putting a tenant who has not paid the arrears on the first day of hearing in a better position than the one who complies with the provisions of Sub-Section (3)(b) because under Sub-Section (1), he would be entitled to pay later than the one who complies with Sub-Section (3)(b) and secondly, he would not be called upon to pay the costs of the suit which had to be instituted only because of his default. Sub-Section (3)(a) also would be rendered superfluous if even in a case falling thereunder, a tenant can always say that he is protected under Sub-Section (1) if he were to pay up the arrears before the decree is passed. Besides the construction canvassed by Mr. Shastri were to be accepted, it would be impossible to find any case falling under Sub-Section (3)(b) which would also not fall under Sub-Section (1). Such a result could never have been contemplated by the legislature. It is a well settled canon of construction that the Legislature does not enact anything superfluous, the presumption being that when the Legislature enacts something in a statute, it enacts something which has not been said immediately before.

12. In our view, it is only if Sub-Section (1) is construed to mean the state of things existent at the date of the institution of the suit and not at the date of the decree which affords protection that

Sub-Section (1) and Sub-Section (3)(b) can be reconciled and made harmonious. It would also appear that the interpretation sought by Mr. Sastri would make Sub-Section (2) superfluous because if the legislature wanted to protect under Sub-Section (1) a tenant committing default but making payment of arrears at the last minute before the decree is passed, there would have been no necessity for compelling the landlord to give notice and give time to the tenant till one month after he receives notice and then seek protection under Sub-Section (1). It would seem that the service of notice under Sub-Section (2) was made compulsory and a condition precedent to the institution of the suit because if the tenant paid up within the time prescribed therein, the landlord would have no cause of action to institute a suit for ejectment. Further, if one examines Sub-Section (3)(a) closely, it becomes clear that the construction of Sub-Section (1) sought by Mr. Shastri cannot be accepted without making Sub-Section (3)(a) also superfluous. Sub-Section (3)(a) lays down, four conditions, namely,

- (1) that the rent is monthly,
- (2) that the arrears are for six months or more,
- (3) that there is no dispute with regard to the standard rent and permitted increases, and
- (4) that there is neglect on the part of the tenant to pay the arrears even after the lapse of a month after notice.

The neglect that is spoken of in Sub-Section (3)(a) is the neglect to make payment 'thereof, after the lapse of one month after the date of service of notice, that is to say, of such rent, monthly and without any dispute as regards the standard rent and permitted increases and which is in arrears for six months or more. It is obvious that such arrears must be for six months or more and must be due at the date of the notice because in order to avoid Sub-Section (3)(a), the tenant has to pay the arrears before the expiry of one month from the date of notice under Sub-Section (2). That being so, any payment made subsequently, that is, after the expiry of one month after the date of service of notice, cannot save the tenant from the operation of Sub-Section (3)(a). Consequently the provisions of Sub-Section (3)(a) would be rendered nugatory and of no effect if the tenant were said to be protected by Sub-Section (1) even when he pays up such arrears at any time before the passing of the decree. There is no doubt that the object of Sub-Section (3)(a) was to give a clear right to a landlord to possession in a case where the tenant is in arrears of rent for a period of six months or more, where he has no reason not to pay, as such rent and permitted increases are not in dispute and where he neglects to pay such arrears though he was given an opportunity to pay up by a notice before a month expires from the date of service of such a notice. When such period expires, the landlord can file a suit and evict the tenant. Such a tenant against whom the Legislature has even deprived the Court from exercising discretion in his favour cannot be contemplated as having been permitted by Sub-Section (1) to pay not within one month from the date of the service of notice but at any time after the suit is filed but before a decree is passed. It is evident that the Legislature which has given a right to the landlord to recover possession by taking away from the Court the right to exercise discretion in favour of a tenant when the case falls under Sub-Section (3)(a), could possibly have contemplated Sub-

Section (1) to denude him of such a right by providing that even if all conditions under Sub-Section (3)(a) are existent and the landlord has filed a suit thereafter, he would still be deprived of that right to recover possession if at the last minute the tenant were to pay up the arrears before the passing of the decree.

13. The view of Sub-Section (1) that we are inclined to take finds support in some of the decisions of the High Court of Bombay. In *Mathuradas Maganlal v. Nathubhai Vithaldas*², Pratt J. was concerned with the construction of Section 9(1) of the Bombay Rent (War Restrictions) Act, 1918, where language similar to that in Sub-Section (1) was used. Section 9(1) or that Act provided :

"No order for the recovery of possession of any premises shall be made so long as the tenant pays or is ready and willing to pay rent to the full extent allowable by this Act and performs the conditions of the tenancy.

It was there contended, as it was done before us, that the conditions laid down in that section applied at the date of the order, and, therefore, even though a tenant has made default in payment of arrears of rent at the time when the suit was filed, but if he paid the arrears of rent in Court, the Court could not pass a decree for eviction against him. The question there was whether Section 9(1) applied at the date of the suit or at the date of the decree. The learned Judge held that the section applied at the date of the suit and relying upon two English decisions in *Beavis v. Carman*³, and *Davies v. Bristow*⁴, construed the section to mean that if the conditions laid down in that section were fulfilled by the tenant at the date of the suit, no decree for eviction could be passed against him. He observed that the present tense used in Sub-Section (1) was not to describe anything that the tenant did or might do at the time when the Court passed the decree, but to describe the conduct of the tenant which entitled him to plead the Rent Act, i.e. the conduct of the tenant upto or at the time when the suit was instituted. Both Pratt, J. and the learned Judges who decided the two English cases construed the corresponding sections before them as importing a condition precedent which was to be fulfilled not at the time when the Court was to make its order but at the time when the writ was served. The view of Pratt, J. was approved in *Ismail Dada Bhamani v. Bai Zuleikhabai*⁵, where a Division Bench of the High Court of Bombay while construing Section 11 of the Bombay Rent

²25 Bom LR 345 : (AIR 1923 Bom 387)

⁴(1920) 3 KB 428

³(1920) 36 TLR 396

⁵46 Bom LR 244 : (AIR 1944 Bom 181)

Restriction Act,

1939, which corresponded to Section 9(1) of the Bombay Rent (War Restrictions) Act, 1918, held that the relevant point of time to consider whether the conditions specified in that section were fulfilled was the time when the suit was filed. Relying on these two decisions Chagla, C.J. in an unreported decision in *Gomtibai Morarji v. Tapu Bhimji*⁶, held that Sub-Section (1) of Section 12 was retrospective and further held that though it was not applicable when the suit was

filed but when the Court came to pass a decree, Sub-Section (1) of Section 12 would afford protection to the tenant if the Court was satisfied that the tenant's case fell under that Sub-Section. He, however, negated the contention on behalf of the tenant that readiness and willingness there mentioned extended to any time up to the passing of the decree and observed referring to the two Bombay cases :

"It is obvious that that view is correct because the only reason for enacting Sub-Section (3) was to give a further protection to the tenant even though he had not paid the rent due by him at the date of the filing of the suit. If Mr. Gupta's construction of "readiness and willingness" was correct, then there was no necessity of enacting Sub-Section (3)."

On this view of Section 12(1) he held that as the tenant was in arrears at the date of the suit, he was not entitled to the protection of Section 12(1). A similar view of Section 12(1) was also taken by Gajendragadkar, J. and Chajnani, J. (as he then was) in *Kurban Hussein v. Ratikant*⁷, The learned Judges there observed :

"When Section 12, Sub-Section (1) refers to the readiness and willingness of the tenant to pay, it refers to the readiness and willingness at the date of the suit. It is true that the verbs "pays or is ready and willing to pay" are used in the present tense; but it is well settled that the material time by reference to which this test has to be judged is the date of the suit (vide 25 Bom LR 340 : (AIR 1923 Bombay 387) and 46 Bom LR 244 : (AIR 1944 Bombay 181).

Applying this test, it is clear that at the date of the suit the petitioner had not paid the rent and was not ready and willing to pay the rent either. Therefore, it would not be possible to accept the argument that the opponent's claim for ejection against the petitioner is barred under Section 12, Sub-Section (1)."

There is thus considerable authority apart from the language used in Sub-Section (1) which supports our construction as indicated above.

14. It was, however, contended that these decisions must be construed as having been impliedly reversed by the decision of the Supreme Court in *Shah Bhojraj Kuverji Oil Mills and Ginnig Factory v. Subhash Chandra Yograj Sinha*⁸, where it was said, a contrary view of Sub-Section (1) of Section 12 has been taken. In that case the appellants executed a rent note on September 11, 1942 and the period of tenancy was 15 years. On March 14, 1957, the tenancy expired by efflux of time

⁶ Civil Revn. Appln. No. 785 of 1952, D/-13-2-1953 (Bom)

⁸ AIR 1961 SC 1596

⁷ 59 Bom LR 158 at p. 162 : (AIR 1959 Bom 401 at p. 403)

and on April 25, 1957, the respondent landlord filed a suit against the tenant for possession. Meanwhile, under Section 6 of the Act, a notification was issued applying Part II of the Act to the areas where the premises were situate. The appellants claimed protection under Section 12 of the Act. The trial Court decreed the suit and the High Court of Bombay in revision following a

Full Bench decision in *Nilkanth Ramchandra v. Rasiklal Mulchand*⁹, dismissed the revision by the appellants holding that Section 12 was prospective and did not apply to pending cases. The High Court also relied on *Chandrasinh Manibhai v. Surjit Lal*¹⁰, where the Full Bench decision had been approved. Two questions were urged before the Supreme Court :-

- (1) Whether by reason of the first proviso to Section 50 of the Act and the provisions of Part II including Section 12 were not expressly made applicable to all suits, and
- (2) Whether by virtue of Section 12(1) of the Act, which applied independently by the extension of the Act to the area where the premises were situate, the suit was not rendered incompetent and the landlord deprived of his remedy of possession.

The appellants' contentions were :-

- (1) that by virtue of the latter part of the proviso to Section 50 all the provisions of Part II including Section 12 were extended to the area where the premises were situate, and, therefore, all pending suits were governed, no matter when filed, and,
- (2) that the notification extending Part II to this area has also the same effect independently to the first proviso to Section 50.

It was urged that Section 12(1) therefore applied and the tenants were protected thereunder. It was also urged that Sub-Section (1) of Section 12 was retrospective and was applicable on its own terms from the date of the enactment of the Act. The Supreme Court held that Sub-Section (1) enacted a rule of decision and the appellants as statutory tenants were within the rule enacted by that Sub-Section and entitled to its protection if that Sub-Section could be applicable to the instant case. The Supreme Court also held that in view of the language of Sub-Section (1), no decree could be passed granting possession to the landlord, if the tenant fulfilled the conditions therein set out; that the explanation to Section 12 made it clear that the tenant in case of a dispute may make an application under Section 11(3) for fixation of the standard rent and may thereafter pay or tender the amount of rent or permitted increases specified in the order made by the Court. Their Lordships then held that the tenants before them had expressed their readiness and willingness to pay, and, therefore, they fulfilled the requirements of Sub-Section (1) of Section 12. They observed that the point of time when the sub-section would operate was when the decree for recovery of possession would have to be passed. Therefore, the Sub-Section applied equally to suits pending when Part II came into force and to these to be filed subsequently. In a recent decision by Bhagwati, J., in *Panchal Mohanlal Ishwardas v. Maheshwari Mills Ltd*¹¹, the learned Judge observed that in view of this decision of the Supreme Court, the relevant point of time to consider whether the conditions mentioned in Sub-Section (1) of Section 12 are fulfilled is the time when the decree is passed. Similarly in Civil Revn. Appln. No.

⁹51 Bom LR 280 : (AIR 1949 Bom 210)

¹¹ Civil Revn. Appln. No. 83 of 1950 D/-13-12-1961 (Guj)

¹⁰1951 SCR 221 : AIR 1951 SC 199

267 of 1960 D/-16-1-1962 (Guj), Raju, J. observed that it was clear from Section 12(1) and the decision in *Shah Bhojraj Kuvarji Oil Mills'* case, AIR 1961 Supreme Court 1596 that if on the

date of the decree the tenant is found to have paid all the amounts referred to in Sub-Section 12(1), no decree can be passed against him. He held that in the case before him, the tenant had paid all the amounts referred to in Section 12(1) before the date of the decree according to the standard rent fixed by the trial Judge and, therefore, the tenant was entitled to protection under Sub-Section (1) of Section 12.

15. We have read the judgment of their Lordships of the Supreme Court with considerable care as also the view taken of it by Raju and Bhagwati, JJ. In our view, the only ratio laid down in that decision is :

- (1) that Section 12(1) being a rule of decision and being retrospective it applied to all suits pending at the date when Part II of the Act was applied, and
- (2) that Sub-Section (1) being an impediment against the right of a landlord to a decree for possession, it would operate at the time when the decree in his suit has to be passed and when it has to be considered whether the tenant is one who fulfils the conditions therein set out and, therefore, is one who is entitled to protection under that sub-section. The sub-section being retrospective and being applicable to pending suits, the tenant would be protected in the same manner and to the same extent as the tenant in a suit filed after the Act came into force.

But in both the types of suits, whether filed before or after the Act came into force, the tenant must satisfy conditions laid down in Sub-Section (1), at the time of the passing of the decree and the Court has at that stage to ask itself is the tenant before it protected under Sub-Section (1), that is to say, is he one who has paid or has been ready and willing to pay the standard rent and permitted increases ? But this does not mean that a tenant in default at the date of the suit who pays up the arrears after the suit has been filed and before the decree is passed is entitled to the protection of Sub-Section (1). Sub-Section (1) would, as laid down by their Lordships of the Supreme Court, operate at the date of the decree when the Court has to ascertain whether the tenant is one who fulfils the conditions set out in Sub-Section (1) and, therefore, is one entitled to the protection of that Sub-Section. We do not read the decision in Shah Bhojraj Kuverji Oil Mills' case, AIR 1961 Supreme Court 1596, as laying down the proposition canvassed before us by Mr. Shastri. Such a proposition was in fact not agitated in that case nor were their Lordships called upon to determine its correctness. It is also impossible to say that their Lordships took a different view on the construction of Sub-Section (1) than the one taken in the Bombay cases or that they meant to lay down that even if the tenant was in default of payment of arrears at the date of the suit and was not ready and willing to pay the standard rent and permitted increases at the date of the suit, if he paid up the arrears during the pendency of the suit and before the passing of the decree, he would still be protected under Sub-Section (1). Having considered the judgment of their Lordships with care, we are of the view that they do not lay down the construction of Sub-Section (1) of Section 12 as urged by Mr. Shastri, nor do they lay down the construction of the words "so long as the tenant pays or is ready and willing to pay" in a manner contrary to the

construction of those words and similar words in the Acts construed in the Bombay cases.

16. Sub-Section (1) of Section 12 contemplates cases where there is no dispute as to standard rent or permitted increases and also cases where there is such a dispute. The words "so long as the tenant pays" show that since the tenant in such a case pays the standard rent and permitted increases, there is no question of a dispute in regard to them. It is only when there is a dispute as to the standard rent or permitted increases that the tenant may not pay or the payment tendered by him may not be accepted by the landlord and in such cases the question of readiness and willingness would arise. On the construction placed by us on Sub-Section (1), if the tenant has not paid but has shown his readiness and willingness to pay the standard rent or permitted increases at the date of the suit, it would be sufficient to entitle him to the protection of Sub-Section (1). But it was urged on behalf of the landlord that readiness and willingness as contemplated by Sub-Section (1) meant only that readiness and willingness as laid down in the explanation of Section 12. In other words, unless a tenant takes steps before the expiry of the period of one month after notice under Sub-Section (2) as provided for in the explanation, he cannot avail himself of the protection of Sub-Section (1).

17. In support of this proposition reliance was placed on two unreported judgments, in Civil Revn. Appln. No. 579 of 1958, decided by Patel, J. of the High Court at Bombay on February 1, 1960 and the other by Raju, J. in *Dayabhai Bhagwandas v. Abdul Karim*¹², Patel, J. was of the view that the explanation to Section 12 provided a special machinery for making an application for fixation of the standard rent and permitted increases whenever a notice was served for the arrears of rent under Sub-Section (2). According to him such a machinery had been devised to assure a tenant a fair and just protection and at the same time to assure to the landlord a reasonably fair deal. If the tenant, therefore, does not choose to comply with the order or take advantage of the provision, he must thank himself for it. Raju, J., in Civil Revn. Appln. No. 276 of 1960 (Guj), took a similar view and negatived the contention urged before him that when the standard rent is in dispute, the tenant would be said to be ready and willing even if he has not complied with the requirements of the explanation. In *Laxminarayan v. Keshavdev*¹³, Shah, J. dealing with the several safeguards given in favour of the tenant under Section 12 observed that even if the tenant has not paid the standard rent or permitted increases, Sub-Section (2) provided a 'locus penitentiae' by prescribing for a notice to be given before the institution of the suit. If the tenant pays after such notice has been given all arrears due by him, the landlord would not be entitled to file a suit for eviction. He further observed that if there was a dispute as to the standard rent or permitted increases, it was open under the explanation to the tenant to apply for fixation of such rent or permitted increases and payment or tender of such amount specified in the order of the Court passed in that behalf would be presumptive evidence of the tenant's readiness and willingness. He also observed that the explanation raises a mere presumption and treats the fact of the application thereunder made and the payment by the tenant of such amount specified in the order of the Court passed in that behalf as evidence of readiness and willingness. Such readiness and willingness cannot be proved, however, otherwise than by the mode provided in the explanation. But with respect neither the explanation nor Sub-Section (3) of Section 11 rules out

the proof of readiness and willingness by a mode other than that provided for by the explanation. There is nothing in Section 12 or the explanation to warrant, the narrow construction that the tenant can establish his readiness and willingness only through the rule of presumption laid down in the explanation or the machinery provided in Sub-Section (3) of Section 11. The explanation is only one more

¹² Civil Revn. Appln. No. 276 of 1960, D/-16-1-1962 (Guj)

¹³58 Bom LR 1041

protective safeguard created for the benefit of the tenant. If he avails of it, the Court then raises a presumption. If he does not, but proves his readiness and willingness otherwise, the Court cannot discard such evidence. This view was accepted in an unreported judgment by Chagla, C.J. in Civil Revision Application No. 412 of 1957, D/-8-7-1958 (Bom), where he also stated that the explanation by a legal fiction treats an application for fixation of the standard rent as evidence of readiness and willingness of the tenant to pay; nevertheless it is open to the tenant to prove his readiness and willingness otherwise. He agreed with the contention on behalf of the tenant that in case of a dispute regarding the standard rent, it was not necessary that the tenant must pay the rent, fixed by the Court by making an application under the explanation. The explanation is intended as a safeguard for the tenant if he obtains an order and pays the amount according to that order, then, no question of his being in arrears arises, but, he added, that if it was open to the tenant to take the risk and deposit what he thinks to be the standard rent and if that turns out to be the standard rent fixed by the Court, it would be sufficient. Conversely, as observed by Datar, J., in Civil Revn. Appln. No. 1495 of 1956, D/-5-2-1958 (Bom), the explanation does not mean that if no such application is made, the tenant would be deemed not to be ready and willing. In our view, there is no warrant either in Section 12 or in the explanation thereto to take a restricted construction, adopted by Patel, J. and Raju, J. There is nothing in the section to indicate that the Legislature intended to lay down an exclusive mode of establishing readiness and willingness by resorting only to the explanation. The explanation, as aforesaid, provides only a presumption and that is one mode of evidencing readiness and willingness, but, the tenant may not choose to resort to that method and may prefer to establish his readiness and willingness otherwise than under the explanation. There is nothing in the section not to allow him to establish his actual readiness and willingness instead of relying on the fiction created by the explanation. There is also nothing in the section not to allow him to establish his actual readiness and willingness instead of relying on the fiction created by the explanation. There is also nothing in the section to prevent him from applying under Section 11 irrespective of the explanation.

18. As aforesaid, Sub-Section (2) provides, besides the protection given in Sub-Section (1), another safeguard in favour of the tenant. It provides that no suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of standard rent or permitted increases due until the expiration of one month after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant. This sub-section gives the tenant a further opportunity to pay the rent within one month from the date of the receipt of

the notice. In spite of this opportunity, if the tenant fails to avail himself of this benefit, the landlord is entitled to ask for ejection and the matter would then fall to be governed by the subsequent Sub-Section. As it originally stood, Sub-Section (3) provided that no decree for ejection should be passed in any such suit, if at the hearing of such suit, the tenant pays or tenders in Court the standard rent or permitted increases then due together with the costs of the suit. This sub-section provided one more safeguard in favor of the tenant. If the tenant paid in Court rent due at the hearing, no decree for eviction could be passed. As we have pointed out earlier, this sub-section was construed by the High Court at Bombay as giving an opportunity to the tenant to pay or tender rent even at the appellate stage on the ground that the appeal was a continuation of the suit and relief would be given to the tenant against ejection if the tenant paid or tendered the amount due up-to-date even in the appellate Court. It was presumably because of this interpretation of Sub-Section (3), as it then stood, that the Legislature thought of making suitable amendment and we have now two parts in Sub-Section (3). Sub-Section (3)(a) deals with cases of tenants who are in arrears for a period of six months or more and who neglect to make payment of such arrears until the expiration of the period of one month after notice as provided for in Sub-Section (2). As observed in 59 Bom L R 158 : (AIR 1959 Bombay 401) (supra), the scheme of Section 12 indicates that in regard to tenants who are in arrears for a long period and who refuse to pay rent, even after a month after notice, a decree for ejection shall follow as a matter of course. Having given adequate protection to tenants who are not in arrears for such a long period as six months or more under Sub-Section (3)(b), the Legislature appears to have taken the view that where tenants are in arrears for such a long period as six months or more and if they do not take steps to pay the rent within one month after receiving notice from the landlord, they are not entitled to further protection and the landlord would be entitled to a decree as a matter of right. It was for this reason that in 59 Bom LR 158 : (AIR 1959 Bombay 401), the High Court at Bombay took the view that the word "may" used in Sub-Section (3)(a) in its context meant "must" or "shall". Whereas Sub-Section (1) lays down a general provision providing restriction against the right of landlord to recover possession, Sub-Section (3)(a) lays down a special provision. In order that Sub-Section (3)(a) may apply four conditions are, as stated earlier, necessary. The words "such rent" in Sub-Section (3)(a) are used with reference to the preceding words, viz. "monthly rent" in respect of which there is no dispute. Then follow two more conditions, viz. that such rent is in arrears for six months or more at the date of the notice and further that there is neglect on the part of the tenant to make payment "thereof" even after the lapse of one month after the date of service of the notice. It may be observed that the neglect contemplated by Sub-Section (3)(a) is in respect of payment "thereof", that is of such rent, monthly and not in dispute as regards the standard rent or permitted increases and which is in arrears for six months or more. It follows, therefore, that such arrears of six months or more must be due at the date of the notice because in order to avoid Sub-Section (3)(a), the tenant has to pay such arrears before the expiry of one month from the date of the notice under Sub-Section (2). It is clear that the object in enacting Sub-Section (3)(a) was to give an absolute right to a landlord to possession in a gross case where the tenant is in arrears of rent for a period of six months or more, where he has no excuse not to pay as such rent is not in dispute and where he yet neglects

to pay such arrears, although he is given a 'locus penitentiae' to pay up the arrears by a notice under Sub-Section (2) before a month expires from the date of service of such notice. When such period expires, a landlord can file a suit and recover possession from the tenant. But even where a case falls under Sub-Section (3)(a) but the tenant pays the arrears due or shows readiness and willingness to per the standard rent and permitted increases before the date of the institution of the suit, he can conceivably claim protection under Sub-Section (1). He may raise a dispute with regard to the standard rent or permitted increases on receiving a notice under Sub-Section (2) and establish his readiness and willingness by filing an application for fixation of standard rent under the explanation to Section 12 within the time prescribed therein and by paying or tendering thereafter the amount of rent or permitted increases specified in the order made under Section 11(3) by the Court.

19. It was contended on behalf of the tenant that Sub-Section (3)(a) would have no application even where the tenant raises for the first time a dispute with regard to the standard rent or permitted increases in the written statement he files in answer to a suit for eviction by a landlord. In our view, there is no justification for such a view. The arrears of rent or permitted increases, in respect of which there is no dispute for a period of six months or more and to which Sub-Section (3)(a) applies, are arrears of rent or permitted increases in respect of which there is no dispute at the date of the notice. On a proper interpretation of Sub-Section (3)(a) and the scheme of the entire section, it appears to us that the dispute in regard to the standard rent or permitted increases contemplated is the one which is in existence at the date of the notice or at any rate before the expiry of one month after its service and not the one raised subsequently in a written statement with a view to avoid the operation of Sub-Section (3)(a). In such a case, if the tenant resorts to the explanation and establishes his readiness and willingness as provided therein, he would be entitled to the protection under Sub-Section (1) of Section 12 and the landlord would not be entitled to file a suit for eviction. As we pointed out, the words "such rent or increases" mean monthly rent in respect of which there is no dispute. Such rent or increases must be in arrears for six months or more. A notice under Sub-Section (2) has then to be given and if the tenant wants to escape the rigour of Sub-Section (3)(a), he must make payment "thereof" before the expiry of one month after the date of service of the notice. If the tenant were to neglect to make payment "thereof" until the expiration of the period of one month after service of the notice, the Court in a suit for eviction by the landlord has no discretion and has to pass a decree for eviction "in any such suit for recovery of possession". It was argued on behalf of the landlord by Mr. R.M. Shah that under Sub-Section (3)(a) it is not necessary that at the time of the notice under Sub-Section (2) there must be arrears due for six months or more and that it would be sufficient for the application of Sub-Section (3)(a), if it were found that the tenant was in arrears of standard rent and permitted increases then due for six months and more at the date of the institution of the suit. The construction suggested by Mr. Shah does not appear to be in consonance with the language used in Sub-Section (3)(a) and also the object of the Legislature in providing Sub-Section (3)(a). As we have already stated, the Legislature was dealing with gross cases under Sub-Section (3)(a) where the tenant has been founded to be in arrears for six months or more and to have neglected

to pay such arrears even after a notice has been served upon him before the expiration of the period of one month after the date of service of such notice. It is, therefore, not possible to accept the interpretation of Sub-Section (3)(a) suggested by Mr. R.M. Shah.

20. Sub-Section (3)(b) commences with the words "in any other case" and, therefore, deals with cases not falling under Sub-Section (3)(a). It provides that no decree for eviction shall be passed "in any such suit" i.e. a suit for eviction on the ground of non-payment of the standard rent or permitted increases 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 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. Instead of the words, "at the hearing of the suit" as originally used in Sub-Section (3) prior to the Amendment Act 61 of 1954, the Legislature has introduced a different phraseology in that Sub-Section, viz., "on the first day of the hearing of the suit or on or before such other date as the Court may fix". If the payment is made during this period then the Court is precluded from passing a decree for ejection. For the reasons given by Tendolkar, J. in *Khanderao Malkarjun v. Anandrao Laxmanrao*¹⁴, we agree with his interpretation of the words "the first day of hearing" as meaning not the day for the return of the summons or the returnable day, but the day on which the Court applies its mind to the case which ordinarily would be at the time when either the issues are determined or evidence taken. This view was subsequently accepted also by Datar, J. in Civil Revn. Appln. No. 1495 of 1956, D/-5-2-1958 (Bom). If a tenant pays the arrears on or before such day and continues to pay on due dates the standard rent or permitted increases until the suit is finally decided and also the costs of the suit, no decree for eviction can be passed against such a tenant. Even if the tenant were to neglect to pay the arrears due on the first day of the hearing but applies to the Court for fixing a subsequent date for such payment and pays on such date the arrears as also the costs of the suit and continues to pay thereafter regularly the standard rent or such amount specified in the order made by the Court under Section 11(3), the Court again would have no jurisdiction to pass a decree for eviction against such a tenant.

21. The words "in any other case" mean in their ordinary connotation a case which does not fall under Sub-Section (3)(a). Therefore, if the rent is not a monthly rent or the arrears, at the date of notice, of standard rent or permitted increases are not for six months or more, or there is a dispute as regards the standard rent or permitted increases at the date of the notice or before the expiry of one month from the date of service of such notice, the case would fall under Sub-Section (3)(b). Sub-Section (3)(b) furnishes a further safeguard in favor of the tenant even if the tenant is one who has committed default but not for a period of six months or more. Therefore, even if he has not paid in spite of 'locus penitentiae' having given to him by necessitating a notice under Sub-Section (2) and even if he has not availed of the explanation to show readiness and willingness and by paying the amount fixed thereunder, if he makes the payment of the arrears due, of standard rent or permitted increases and costs on the first day of the hearing, no decree of eviction can be passed against him. Even if such a tenant does not pay on the first day of hearing

but has raised a dispute and applies to the Court for a date and the Court fixes a date for payment and he pays on such date the arrears and costs and continues to pay on due dates thereafter until the suit is finally decided, Sub-Section (3)(b) gives him the protection. It would appear from the scheme of the section that if he raises a dispute as to the standard rent or permitted increases on receipt of the notice and resorts to the explanation to Section 12 and complies with the terms thereof, he would be protected under Sub-Section (1). If he has not done so but establishes his readiness and willingness to pay the standard rent and permitted increases, otherwise than under the explanation, even then he would be protected under Sub-Section (1). If he does not do that even and pays the arrears due and the costs of the suit, provided the arrears are not for six months or more and his case does not fall under Sub-Section (3)(a), on the first day of the hearing or on such other day fixed by the Court and thereafter continues to pay on the due dates till the suit is disposed of, he would be protected under Sub-Section (3)(b). Even if he does not do any of these things but raises a dispute after the service of the notice and applies under Section 11(3) for the fixation of the standard rent and pays thereunder as ordered by the Court, he would be protected. But if he does not do any of these things, he cannot get protection and it would seem that the Court has no jurisdiction to deny to the landlord the decree for possession. The words "in any such suit" used in Sub-Section (3)(b) have reference to the words used

¹⁴60 Bom LR 1039 : (AIR 1959 Bom 471)

at the commencement of that Sub-Section, viz. "in any other case", meaning thereby a suit for eviction filed in a case other than the one falling under Sub-Section (3)(a). If there is a dispute with regard to the standard rent or permitted increases, the tenant can resort to the explanation and pay as directed thereunder or if he does not wish to resort to the explanation, he may file an application for fixation of the standard rent after receipt of the notice under Sub-Section (2), under Section 11(3) and pay as directed by the Court thereunder. If he finds that such an order is not likely to be passed by the Court before the first day of the hearing, he may ask for a subsequent date for such payment. If he does none of these things, it seems that the Court has no discretion in such a case to deny a decree to the landlord for possession. No discretion has been left to the Court under Sub-Section (3)(b) to refuse such a decree.

22. Relying upon the decision of Chagla, C.J. in *Kalidas Bhavan v. Bhagvandas Sakalchand*¹⁵, Mr. Shastri for the tenant, however, argued that under Sub-Section (3)(b) even if the tenant does not satisfy the conditions therein laid down the Court has discretion not to pass a decree for eviction. It may or may not pass such a decree. The learned Chief Justice there emphasized that the Legislature has not placed any accent in Sub-Section (3)(b) on the payment of the arrears due on the first day of the hearing but that the accent there is that the arrears should be paid before the judgment is delivered in such a suit. In that case, the tenant was in arrears from July 1954 and the landlord gave a notice in September 1954 terminating the tenancy. He filed a suit for possession on January 6, 1955. The tenant filed his written statement on June 20, 1955 and the first day of the hearing was June 26, 1955. On August 23, and, 26, 1955, the tenant deposited in Court Rs. 111/- and Rs. 125/- respectively. These deposits were more than the arrears due. On August 31, 1955, the trial Court passed a conditional decree to the effect that if the tenant paid all the arrears

due till the end of September and costs, the decree for possession passed by him should not be executed. The landlord appealed against that order and that appeal was dismissed and thereupon he filed a Revision Application to the High Court. The learned Chief Justice observed that Sub-Section (1) of Section 12 debarred the Court from passing a decree in favor of the landlord so long as the tenant satisfied the conditions therein set out. But that sub-section did not impose any obligation upon the Court to pass a decree if those conditions were not satisfied. No doubt, the impediment, against the right to recovery against the tenant under the general law of landlord and tenant would be removed if the conditions in Sub-Section (1) were not fulfilled, but he observed that, if under the general law the Court in certain circumstances had a right to refuse to pass a decree, that discretion was not taken away. At page 1361 of the report the learned Chief Justice further observed that the Legislature did not call upon the Court to pass a decree for eviction if the tenant had not satisfied the conditions laid down in Sub-Section (3)(b). At page 1362, he further observed that when the Court accepted the two deposits, in the eye of the law, the Court permitted the tenant to make these deposits and to make them on the dates on which they were accepted. He, therefore, held that there was compliance with Sub-Section (3)(b). The arrears of rent were deposited on the two dates and the Court must be deemed to have fixed those dates as the dates on which he paid those arrears. These observations have been relied upon since then in certain other decisions as a ground for not passing a decree although the conditions of Sub-Section (3)(b) were not performed. In our view, it is erroneous to say that even where a tenant is not entitled to protection as where he fails to perform the conditions under

¹⁵⁶⁰ Bom LR 1359

Sub-Section (3)(b), the Court has discretion to refuse a decree in a case where the landlord has terminated his tenancy by a notice to quit. It is true that Sub-Section (3)(b) does not provide that a decree shall be passed if conditions therein laid down are not performed by the tenant. But that does not mean also that there is any discretion left to the Court, statutory or otherwise, not to pass a decree where under the general law of landlord and tenant, or under the Transfer of Property Act, the landlord is entitled to a decree unless there is something in that law or the terms of the lease which debars the landlord to obtain a decree. Under the law of the land, a landlord is entitled to a decree if he has terminated the lease by a valid notice to quit. Owing to the exigencies of times that right is restricted by the specific provisions in the Rent Act. Unless the case of the tenant falls under them, the tenant is not entitled to protection and unless the tenant's case falls under them and the tenant is protected thereunder, there can be nothing to prevent the landlord to obtain a decree which he is entitled to under the law of landlord and tenant. As we have already explained in the earlier part of this judgment, the principle in equity of relief against forfeiture does not arise in a case where the tenancy is terminated by a valid notice to quit and where the tenant relies upon his status as a statutory tenant under the Rent Act. To say that the two deposits made by the tenant in Kalidas's case, 60 Bom LR 1359, were deposits permitted by the Court on the dates on which they were accepted and therefore, constituted compliance with the conditions laid down in Sub-Section (3)(b), is contrary to the very scheme provided by the Legislature in Sub-Section (3)(b). Sub-Section (3)(b) does not contemplate two dates to be fixed by the Court to enable the tenant to pay the arrears or tender them in Court. If the tenant were to

avail of the protection provided to him by Sub-Section (3)(b), he has to deposit all arrears due either on the first day of the hearing of the suit or to pay or tender in Court such arrears on a date fixed by the Court and to continue to pay regularly such rent and permitted increases till the suit is finally decided and also pay costs of the suit as provided by the Court. It is clear from Sub-Section (3)(b) that if the tenant has failed to pay the arrears due on the first day of the hearing of the suit, it is for him to apply to the Court to fix another date for payment and also to apply to the Court for the determination of costs of that suit in order to enable him to pay or tender in Court such amount. It is obvious that Sub-Section (3)(b) does not contemplate more than one date for the payment of the arrears or tender thereof in Court. With the greatest respect, it is difficult to understand how making partial deposits of arrears due on two different dates without applying for a date would constitute compliance of the conditions laid down in Sub-Section (3)(b). If the observations made by the learned Chief Justice at page 1361 of the report in Kalidas's case, 60 Bom LR 1359 were to be understood as meaning that even where a tenant has not fulfilled the conditions laid down in Sub-Section (3)(b), there is still discretion in the Court to grant or not to grant a decree for eviction to the landlord, these observations would mean that there is such a discretion to deny to the landlord, a decree for recovery of possession even in cases where the tenancy is determined not by forfeiture but by a notice to quit. Such a position is not borne out either by the Transfer of Property Act or by the Rent Act. In *Gulam Hussain Kalumia v. Mahomed Umar Azizulla*¹⁶, Chagla C.J. himself has observed that under the Rent Act the Courts are not concerned with any equity principles but that the principles are embodied in the sections of the Rent Act and what the Court has to do is to construe these sections. We agree with the reasons given by Raju, J. in *Allanur Rasulla v. Balchand Ramji*¹⁷, and by Bhagwati, J. in *Pinjare Karimbhai v. Shukla Hariprasad*¹⁸,

¹⁶60 Bom LR 972

¹⁸ Civil Revn. Appln. No. 77 of 1960, D/-12-9-1961(Guj)

¹⁷(1962) 3 Guj L R 182

that no discretion is given to the Court, under Sub-Section (3)(b), to refuse to pass a decree for eviction if the tenant is not entitled to the benefit of the provisions contained in Sub-Sections (1) and (3)(b) of the Act and if the tenant is otherwise liable to be evicted under the general law.

23. Applying these principles, the position of the petitioner tenant in Civil Revision Application No. 86 of 1960 is that at the date of the notice the arrears due were for a period of less than six months, the first day of the hearing of the suit was on April 25, 1957 and the decree against the tenant was passed by the trial Court on the next day. By the 25th of April 1957 the tenant had deposited in Court various amounts aggregating to Rs. 900/-. He paid a further sum of Rs. 30/- on April 26, 1957. That payment cannot be taken into consideration as it was not one made on the first day of the hearing nor on a date fixed by the Court, as no application was made for the fixation of such a date. It is admitted that the costs of the suit as determined by the Court came to Rs. 112-7-0. The tenant, therefore, had not made the full payment nor had he deposited the full amount, on the first day of the hearing, which was Rs. 825/- as and by way of arrears and Rs. 112-7-0 as and by way of costs. The deposit of Rs. 900/- was therefore short by Rs. 37-7-0. It is also clear that the tenant did not make any payment or deposit in the Court during the pendency of the appeal. The tenant's case therefore fell under Sub-Section (3)(b), the conditions whereof

were not performed by the petitioner. The decree, therefore, was validly passed by the trial Court and confirmed by the Appellate Court. No reason therefore exists for interfering with the decree and no question of equitable relief can possibly arise as this was not a case of determination of tenancy by forfeiture. That being so, Civil Revision Application No. 86 of 1960 fails and must be dismissed with costs.

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Orders accordingly.