

BOMBAY HIGH COURT

Laxminarayan Nandkishore

Vs

Keshardev Bajjnath Narsaria

(Shah, J.)

04.09.1956

JUDGMENT

Shah, J.

1. The respondent is the owner of a building known as "Keshar Bag", Quarry Road, Malad, District Thana. The petitioner is a tenant of room No. 3 in that building. The contractual rent of the premises occupied by the petitioner was Rs. 30 per month. It was agreed between the petitioner and the respondent that the petitioner was to pay Rs. 2 per month in addition to rent as electricity charges. In May 1951 the respondent filed a suit for recovery of rent due by the petitioner. The petitioner then applied for fixation of standard rent and ultimately the standard rent was fixed by the Court at Rs. 18 per month. The suit for arrears of rent was, compromised on July 21, 1951, and the petitioner agreed to take a separate sub-meter for the electrical energy supplied to the premises in his occupation. It was provided in the compromise decree that the petitioner was to pay Rs. 10 per month as electricity charges till a sub-meter was taken by him. The petitioner was in default of payment of rent from February 1954 and on July 2, 1954, after serving the requisite notice the respondent filed Suit No. 529 of 1954 in the Court of the Civil Judge, Junior Division, Borivli, against the petitioner for a decree for Rs. 144-9-0 being the amount of arrears of rent and electricity charges and damages for wrongful conversion of electricity and notice charges, and also for a decree in ejectment. The suit was resisted by the petitioner. He contended that the standard rent was Rs. 18 per month and that he was willing to pay rent at the rate of Rs. 18 per month and he was also willing to pay Rs. 2 per month as electricity charges, but as the respondent refused to accept the same the respondent had no cause of action. The learned trial Judge held that the standard rent of the premises was Rs. 18 per month and the petitioner was liable to pay Rs. 2 per month as electricity charges and on that footing before the date of the suit the petitioner was liable to pay Rs. 90 as rent and electricity charges. The learned trial Judge negatived the contention raised by the respondent that the petitioner's presence constituted a nuisance to his neighbours. As the petitioner had not deposited the amount in Court under Section 12(3)(6) of the Bombay Rents, Hotel and Lodging House

Rates Control Act, the learned Judge granted to the petitioner two months to vacate the premises in his occupation and passed a conditional decree for possession which was not to be executed if the arrears of rent and costs off the suit were deposited in Court before the expiry of two months.

2. Against the decree passed by the trial Judge an appeal was preferred by the respondent to the District Court at Thana. In appeal the learned Assistant Judge held that the trial Court was in error in passing a conditional decree for, possession in favour of the respondent. He held that the petitioner Saving failed to pay the standard rent due and the permitted increases at the hearing of the suit, the petitioner was not entitled to claim relief against an order in ejectment. The learned appellate Judge on that view reversed the decree of the trial Court and passed a decree for possession in favour of the respondent. Against that decree this revision application has been filed.

3. Now Section 12(1) of Bombay Act LVII of 1947 provides, in so far as that subsection is material, that 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....Sub-section, (2) requires that suit for possession shall not 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....Sub-section (3), which was added by Bombay Act LXI of 1953 and which came into operation from April 1, 1954, provides by Clause (a) that:Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice...the Court may pass a decree for eviction....Clause (b) of Sub-section (3) provides that in any other case.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 Court shall not pass a decree for eviction.There is an exportation to that section which provides that if there is a dispute between the landlord and tenant about the standard rent and the permitted increases, the tenant shall be deemed to be ready and willing to pay the amount if, before the expiry of the period of one month after the 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. It is clear from the scheme of Section 12 that the Legislature has conferred during the currency of the Act upon all tenants in possession of premises to which the provisions of the

Act apply a right to remain in possession so long as they pay rent. If they are ready and willing to pay the standard rent and the permitted increases and observe and perform the other conditions of the tenancy, they are not liable, except on proof of circumstances set out in Section 13, to be evicted. Even if the tenant has not paid the standard rent and the permitted increases the Legislature has provided for a locus poenitentiae by prescribing that 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 standard rent or permitted increases payable by the tenant, it is open to the tenant to make an application for fixation of standard rent, and the pendency of an application for fixation of standard rent and the payment or tender of the amount of standard rent or permitted increases specified in the order of the Court passed in that behalf is presumptive evidence of the tenant's readiness and willingness to pay the rent. Even if there is no dispute as to the standard rent or permitted increases, mere default in payment of rent for a period less than six months will not authorize the Court to pass a decree in ejectment on the view that the tenant is not ready and willing to pay the rent. Again the tenant is by law entitled to pay the standard rent and the permitted increases at the date of the hearing of the suit or on such other date as the Court may fix, and if he pays that amount, he will not be deemed to be in default.

4. In this case, the rent due was not paid on the first day of hearing of the suit by the tenant. The tenant, did, not make an application to the Court to fix time for payment of the standard rent and the permitted increases and he went to trial without making any payment and the learned trial Judge declared that the petitioner was liable to pay Rs. 89-8-0 and passed a conditional decree directing him to pay the amount within two months and in default of payment of that amount the decree in ejectment was made executable. Mr. Rao, who appears on behalf of the petitioner, contends that this was a proper decree and that in any event the learned trial Judge was entitled to fix the date for payment of the standard rent and the permitted increases, and he having fixed the date for payment at the time when he passed the decree and the payment having been made in accordance therewith, it must be held that the petitioner was ready and willing to pay the standard rent and the permitted increases, and under Section 12(1) the Court was not competent to pass a decree in ejectment. In my view, the contention raised by Mr. Rao cannot be sustained. What Clause (b) of Sub-section (3) of Section 12 contemplates is the payment on the first day of the hearing of the suit of the standard rent and permitted increases, or, if the Court so orders, on such future date as may be fixed by the Court. If on the date fixed for the first hearing the tenant does not pay the standard rent and the permitted increases, he must apply to the Court to fix a date for making the payment. If he makes payment of the amount as ordered by the Courts together with the costs of the suit and continues to pay or tender in Court regularly the standard rent and the permitted increases, a presumption will arise that he is ready and willing to pay the standard rent and the permitted increases. If, however, the tenant does not pay the standard rent

and the permitted increases on the date of the first hearing of the suit, and goes to trial without making an application asking the Court to fix a date for payment of the standard rent and the permitted increases and does not continue to pay during the pendency of the suit the standard rent, he cannot claim the benefit of Sub-section (3)(b) of Section 12. In my view, the learned appellate Judge was right in holding that Section 12(3)(h) does not contemplate the passing of a conditional decree.

5. Mr. Rao contented that in any event the amount of rent due by the petitioner having been paid under the decree of the trial Court, the appellate Court was incompetent to reverse the decree passed by the trial Court because the expression "the date of hearing of the suit" must include the date of the hearing of the appeal as well, and in support of that contention reliance was placed upon a judgment of this Court: *Dayaram Kashiram v. Bansilal* (1952) 55 Bom. L.R. 30. But that decision proceeded upon the interpretation of Sub-section (3) of Section 12 as it stood before it was amended by Act LXI of 1953. Sub-section (3) before its amendment provided that no decree for eviction shall be passed in any such suit if, at the hearing of the suit, the tenant pays or tenders in Court the standard rent or permitted increases then due together with the costs of the suit. and it was held by the Court that the payment or tender may be even at the hearing of the appeal because the expression 'suit' includes an appeal. The Legislature has, however, substantially, altered Sub-section (3) by Act LXI of 1953. Whereas under the Sub-section (3) before it was amended it was open to the tenant to pay the amount of rent due by him even in the Court of appeal and claim relief on the plea that he has shown his readiness and willingness to pay the rent, the Legislature has now provided that before the date of the hearing of the suit the rent must be paid or the tenant must obtain an order from the Court fixing the date for payment of the standard rent and the permitted increases and he must continue to pay the rent so ordered till disposal of the suit. That, in my judgment, indicates that the application has to be made before the Court of first instance and cannot be reserved to be made for the first time in the Court of appeal. In my view, the learned appellate Judge was right in passing the order that he has passed.

6. Rule is discharged with costs. The petitioner applies for time to vacate and deliver possession. Mr. Rao on behalf of the petitioner says that the petitioner will deposit within a week from this date the arrears of rent and costs of this revision application. If the amount of rent in arrear and costs of this revision application are deposited in the trial Court within one week from this date, the decree for possession not to be executed for two months on the petitioner undertaking to vacate and deliver possession at the expiry of two months from this date. Mr. Rao says that the petitioner is present before the Court and gives an undertaking to vacate and deliver possession on the expiry of two months from this date after paying the amount due by him till the date on which he vacates the premises.

