

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5024 OF 2002**

1. Shobha Narayan Patil

Since Deceased Thr. LRs

Deleted as per order dated 02/01/2024

2. Amol Narayan Patil

Deleted as per order dated 13/01/2010

3. Atul Narayan Pati,

Age 36, Occ. Business

4. Kum. Mita Narayan Patil

Age 36, Occ. Business. Petitioner Nos.3 and 4
residing at Ganesh Smriti, Dr. Babasaheb
Ambedkar Marg, Parel, Bombay 400 012.

5. Smt. Hirabai Damodar Patil

deleted as per order dated 06/07/2005

6. Shweta Premnath Gunde

Age 34, Occ. Housewife. Kalina, Bombay.

7. Smt. Preeta Suresh Patil,

Age 33, Occ. Housewife, Shivnagar, Thane.

....Petitioners

Vs

1. Smt. Taramati Ramchandra Raul

(Since deceased) Thr. LRs

1(a) Shri. Rajiv Subhash Raul

1(b) Smt. Shubhangi Subhash Raul

(Since deceased) Thr. LR

1(b)(i) Sanjay Subhash Raul

1(c) Shri. Jitendra Subhash Raul

Respondent Nos.1(a),1(b)(i) and 1(c)

All residing at Block No. 6, 2nd Floor,
Ganesh Smriti, Dr. B. R. Ambedkar Marg,
Parel, Mumbai – 400 012.

.....Respondents

Mr. Sanjiv Sawant a/w Mr. Malhar Bageshwar, advocate for the
Petitioners

Mr. Vishwajeet S. Kapse, appointed as Amicus Curie for the
Respondents

Ms. Nirmala Gopal, advocate for Respondent No.1(a)

CORAM : RAJESH S. PATIL, J.
RESERVED ON : 17 JULY 2026
PRONOUNCED ON: 11 SEPTEMBER 2026

JUDGMENT:

1. This writ petition is filed by the landlord challenging the concurrent findings recorded by the Trial Court and the Appellate Court, whereby the eviction suit filed by the landlord on the ground of arrears of rent was dismissed.
2. I have heard learned counsel for both the sides and with their help, I have gone through the documents on record.
3. In the present proceedings, an eviction suit was filed in the year 1983 under the provisions of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Bombay Rent Act') on the grounds of arrears of rent. Hence, the provisions of Section 12(3) of the Bomabay Rent Act, before the amendment of 1987 has to be looked into.
4. In the present proceedings before the Appellate Court, the advocate appearing for the landlord gave away the ground of Section 12(3)(a). In the impugned judgment of the Appellate Court in para no.14 it has been recorded as under:

“14. Mr. Karia further submitted that when there is a demand in which a part of it is not payable by the month, then the whole of it is not payable by the month, and it

would seem to make no difference that the part which is not payable monthly which is a very small or in significant when contrasted with the the other rent or the other permitted increases which may be payable monthly. According to him, if any part of the rent is not payable by monthly, then it has to be held that the entire rent is not payable by the month, then consequently according to him, the section 12(3)(a) would not apply. According to him, if the rent is not payable monthly the case would be governed by section 12(3)(b) of the Bombay Rent Act.

14. In the light of his above arguments on the point that the provisions of sec. 12(3)(a) of the Bombay Rent Act are not attracted”.

5. Therefore, all that has to be looked into in this writ petition is, ‘Whether the landlord has made out a ground for eviction under Section 12(3)(b) of the Bombay Rent Act, as it stood prior to the amendment of 1987’.

6. As far as Section 12(3)(b) is concerned, the date of framing of the issues would be the date of the first hearing. In the present proceedings, the issues admittedly were framed on 22 December 1994.

7. Admittedly, prior to the said date of framing of issues, the tenant had already deposited the rent before the Court. Thereafter, the tenant had kept on depositing the rent in the Court till the disposal of the suit and in fact, even in the Appellate Court. Both the

Courts have concurrently held against the landlord.

8. Supreme Court in the Judgment of *Mranalini B. Shah and another Vs. Bapalal Mohanlal Shah* [(1980) 4 Supreme Court Cases 251] while confirming the view taken in Judgment of *Ganpat Ladha Vs. Shashikant* [(1978) 2 SCC 573] and *Shah Dhansukhlal Chhaganlal Vs. Dalichand Virchand Shroff* [AIR 1968 SC 1109] held that the word “regularly” used in clause (b) of Section 12(3) has a significance of its own. The regularity contemplated may not be clock-like precision. After the tenant persistently defaults during the pendency of the suit or appeal in paying the rent, the Court then has no power to relieve the hardship of the tenant. Paragraph Nos.12 and 13 read as under:

“12. We have perused the recent judgment of this Court in Ganpat Ladha v. Sashikant Vishnu Shinde. In our opinion, the point raised by the appellants before us is fully covered by that judgment. The following observations of Beg, C.J., who spoke for the court, are apposite: (SCC pp. 579 & 580, paras 10 & 11)

“... We think that the problem of interpretation and application of Section 12(3)(b) need not trouble us after the decision of this Court in Shah Dhansukhlal Chhaganlal case followed by the more recent decision in Harbanslal Jagmohandas v. Prabhudas Shivilal which completely covers the case before us.”

It is clear to us that the Act interferes with the landlord's right to property and freedom of contract only for

the limited purpose of protecting tenants from misuse of the landlord's power to evict them, in these days of scarcity of accommodation, by asserting his superior rights in property or trying to exploit his position by extracting too high rents from helpless tenants. The object was not to deprive the landlord altogether of his rights in property which have also to be respected. Another object was to make possible eviction of tenants who fail to carry out their obligation to pay rent to the landlord's despite opportunities given by law in that behalf. ... But where the conditions of Section 12(3)(a) are not satisfied, there is a further opportunity given to the tenant to protect himself against eviction. He can comply with the conditions set out in Section 12(3)(b) and defeat the landlord's claim for eviction. If, however, he does not fulfil those conditions, he cannot claim the protection of Section 12(3)(b) and in that event, there being no other protection available to him, a decree for eviction would have to go against him. It is difficult to see how by any judicial valour discretion exercisable in favour of the tenant can be found in Section 12(3)(b) even where the conditions laid down by it are satisfied to be strictly confined within the limits prescribed for their operation. We think that Chagla, C.J., was doing nothing less than legislating in Kalidas Bhavan case in converting the provisions of Section 12(3)(b) into a sort of discretionary jurisdiction of the court to relieve tenants from hardship. The decisions of this Court referred to above, in any case, make the position quite clear that Section 12(3)(b) does not create any discretionary jurisdiction in the court. It provides protection to the tenant on certain conditions and these conditions have to be strictly observed by the tenant who seeks the benefit of the section. If the statutory provisions do not go far enough to relieve the hardship of the tenant the remedy lies with the

legislature. It is not in the hands of courts.

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

(Emphasis Supplied)

8.1 The Judgment of ***Mranalini B. Shah*** (supra) was followed by the Supreme Court later in the Judgment of ***Mohan Laxman Hede Vs. Noormohamed Adam Shaikh*** [(1988) 2 Supreme Court Cases 481] are not applicable to the present proceedings as the demand notice

and the averments made in the plaint, the demand was only of the rent exclusive of permitted increases.

9. In the present proceedings, on behalf of the landlord, it has been stated that the tenant has not deposited rent in the writ petition before the High Court. Hence, the landlord had to make an application for a direction that the tenant be directed to pay the rent in Court. This Court by its order dated 27 November 2017, directed the tenant to pay the rent on monthly basis and thereafter the rent has been regularly deposited till date. An argument of the landlord therefore is that an arrears of the rent as the judgment of the Supreme Court states that the tenant is not only suppose to pay the rent as demanded but he has to be punctual in payment of his rent till the disposal of the proceedings.

10. I am not affirming the arguments of the advocate appearing for the landlord for the simple reason that the eviction on the ground of arrears of rent is a strict provision where the Court has to see whether the tenant has complied with the payment of rent by depositing the same in Court from the first date of hearing till the disposal of the suit. Going by the proceedings before the Trial Court from the date of the issues till the date of hearing of the suit, the tenant has being more or less accurate in depositing the rent. Even in the Appellate

Court, the tenant who was the respondent, has deposited the rent in Court. Therefore, in my view, in both, the Trial Court and the Appellate Court the tenant was not in arrears of rent. Hence, both the Courts held that a decree for eviction under Section 12(3)(b) of the Maharashtra Rent Control Act cannot be granted. A writ petition is filed by the landlord while the suit and the appeal thereon has been dismissed. If the landlord wanted a tenant to deposit the rent, he could have preferred an application well in advance. Once the Trial Court and the Appellate Court has dismissed the suit for eviction on the ground of arrears of rent, one cannot look into the writ petition proceedings filed by the landlord and point out that there is a delay in depositing the rent in the writ court. I am afraid this is not what is contemplated by the Legislature under Section 12(3) of the Rent Act. The case would be always different had it been in a situation where a tenant has suffered an eviction decree before the Trial Court or else both the Courts on the ground of arrears of rent and he has filed a writ petition before this Court or the civil revision application before this Court and in the said proceedings he does not deposit the rent, then going by merits of that case, one has also to take into consideration the conduct of tenant in not depositing the rent before the High Court in the writ or else in the civil revision application.

11. There is one more argument raised before me on behalf of the tenant that the demand which has been made in the notice and as pleaded in the plaint, the demand is only of the rent exclusive of permitted increases, how much is permitted increase has not been stated in the notice nor the period is stated. Therefore, one cannot say that if the tenant has deposited the rent and not permitted increases, he should be called as a default. Further in the evidence, it has come that as far as the property tax of the Corporation is concerned, with regard to the suit premises, where the preliminary liability of paying the property tax as per Section 154 of the Bombay Municipal Corporation Act is concerned, the same is that of the landlord. Thereafter, he can claim that the amount from the tenant. It has come in evidence as admitted by the landlord that the demand made by him of the property tax, the suit premises in the notice and in the plaint as of that day was not paid by him to the Corporation, since he had a dispute with the Corporation. Therefore, the demand itself was a wrong demand.

12. In the judgment of *Raju Kakara Shetty v. Ramesh Prataprao Shirole & Anr* (1991) 1 SCC 570, the Supreme Court, while dealing with the question of payment of taxes under the tenancy agreement, held that where the tenancy agreement specifically provides for the

payment of taxes monthly, the mere fact that, statutorily, the landlord is liable to pay such taxes annually would not alter the contractual obligation between the parties. The tenant cannot contend that since the statutory liability towards taxes is annual in nature, the corresponding amount could also be treated as payable annually or that the same would not form part of the monthly liability under the tenancy agreement. The Court emphasised that the rights and obligations of the parties are to be determined in accordance with the terms of the tenancy agreement and the statutory manner of assessment or payment of the tax would not, by itself, override the contractual stipulation.

13. Considering the facts of the present case, the law laid down in above judgments relied by the counsel of landlord will not be applicable to the present proceedings. Hence, the petition fails and the Rule issued in the writ petition is hereby discharged.

14. Writ petition accordingly stands dismissed. No costs.

15. This Court expresses its appreciation for the valuable assistance and contribution made by the learned *Amicus Curiae*, Mr. Vishwajeet S. Kapase.

(RAJESH S. PATIL, J.)