

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Civil Revision Application No.70 of 2014

Anant Tulshiramji Bajaj,	]	
Age 70 years,	]	
Occupation : Retired,	]	
R/o Attar Galli, City Chowk,	]	
Aurangabad.	]	.. Petitioner.

Versus

Sunil s/o Gajanan Rasne,	]	
Age 58 years,	]	
Occupation : Business,	]	
R/o M.H.No.4/3/12,	]	
CTS No.4395, Macchli Khadak,	]	
Aurangabad.	]	.. Respondent.

Shri. Ajit D. Kasliwal, Advocate, for petitioner.

Shri. P.F. Patni, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 30th JULY 2015

JUDGMENT :

1) The proceeding is filed by the landlord against the judgment and decree of Rent Appeal No.10 of 2011 which was pending in the Court of the learned Principal District Judge Aurangabad. The Principal District Judge

has set aside the judgment and decree of possession given on the ground of default by the Civil Judge, Junior Division, Aurangabad in Rent Suit No.20/2006. Both the sides are heard.

2) The suit was filed in respect of property bearing Municipal House No.4/3/42 (CTS No.4395) situated at Machhali Khadak, Aurangabad. It is the case of the plaintiff that on monthly rent of Rs.751/- the suit premises was given to the defendant for using it as a shop.

3) It is the case of the plaintiff that the defendant was never regular in making payment of monthly rent and he is willful defaulter. It is contended that as the defendant had not paid the monthly rent of 36 months prior to the date of the notice, statutory notice dated 29-9-2005 was given by the landlord to the defendant, tenant and the tenancy of the defendant was terminated. It is contended that notice was sent by registered post with acknowledgment due and copy was sent under certificate of posting. It is contended that notice sent by RPAD was returned by post office with endorsement but the second

notice sent under certificate of posting was not returned and it needs to be presumed that the notice was served on the defendant.

4) The suit came to be filed on 19-4-2006, after accrual of cause of action. The landlord had claimed relief of possession on the ground of default and he had claimed relief of recovery of the amount of Rs.42,719/- which included the so called arrears of rent of Rs.21,779/- for the period from 1-10-2003 to 30-9-2006 and relief of recovery of damages of Rs.21,000/- in respect of subsequent period was claimed. It was contended that though the arrears of rent was around Rs.27,036/- the landlord had restricted his claim to Rs.21,779/-.

5) The defendant filed written statement and contested the suit. He denied the aforesaid contentions of the landlord. He contended that in the past two suits bearing Nos.25/97 and 121/97 were filed by the landlord for recovery of arrears of rent but both the suits were dismissed. The defendant contended that the plaintiff had taken amount of Rs.65,000/- as deposit, *Pagadi amount*

from him and the defendant was entitled to say that the landlord can deduct the monthly rent from this amount.

6) It is the case of the defendant that he had suffered heavy loss in the business and he had requested the landlord to adjust the deposit amount against the monthly rent. The defendant contended that he was ready and willing to pay rent. The defendant contended that he was depositing the amount claimed with interest in the Court by filing separate applications for the period from 1-4-2003 to 30-9-2006, for the period of 42 months. He denied that he is willful defaulter.

7) The defendant denied that he had received the statutory notice dated 29-9-2005 both sent by RPAD and under certificate of posting. He contended that the amount demanded in the notice was not correct and under such notice tenancy cannot be terminated. He contended that the amount of rent for 36 months can be Rs.23,736/- and not Rs.27,036/-.

8) Issues were framed by the trial Court on the points like point of willful default committed by the tenant, the point of service of statutory notice by landlord on the tenant for terminating the tenancy, point of right of the landlord to recover arrears of rent and the point of right of the landlord to recover the damages in respect of use of the suit premises after the date of termination of tenancy.

9) The trial Court had held that the landlord had proved the service of statutory notice. The trial Court had held that the tenant was willful defaulter and the decree was given. The District Court has held that service of statutory notice is not proved by landlord and even the default ground is not proved.

10) In respect of the case of the landlord that for particular period tenant had not paid the rent, some confusion was created due to the difference in the contentions made in the statutory notice and the pleadings and also the substantive evidence given in the Court. It can be said that to some extent the landlord was

responsible for such confusion but it can be said that his counsel ought to have made the things clear. The contents of the plaint and the statutory notice show that not much blame can be put on the landlord when many things could not have been denied by the tenant. The learned counsel for the tenant has tried to make much out of these inconsistencies. In view of this circumstance it needs to be ascertained as to whether and for how much period the tenant had not paid the rent prior to the statutory notice and prior to the date of the suit.

11) There is no dispute over the agreed monthly rent. Exhibit 45 is written agreement between the parties. It shows that the shop premises was given on monthly rent basis and it is situated in market place, in the heart of the city. The agreed monthly rent was Rs.751/- and it was to be paid by the tenant before expiry of 5th of the month and he was to take care that receipt was obtained by him from the landlord. It was not open to the tenant to raise dispute regarding the payment unless he was having receipt. It appears that agreement was made on 3-12-1984 and during pendency of the proceeding stamp duty and

penalty was paid by the landlord and then after proof the document it was exhibited.

12) It is admitted that two suits were filed by the landlord for recovery of arrears of rent in the past. In Suit No.25/1997 the amount of Rs.30,791/- was mentioned as the arrears of rent and the period was given as September 1993 to January 1997. In the written statement filed in that suit, the tenant had taken stand that he had given deposit of Rs.65,000/- (Pagadi amount). The tenant had admitted that he was in arrears of the rent but he had contended that he had requested the landlord to deduct the amount from the deposit money. He had also contended that he had paid some amount but receipts were not given. Then in the said suit the tenant deposited Rs.30,400/- after receipt of the suit summons. He claimed that he was not liable to pay interest on this amount but then he paid interest also. The record of this matter shows that in past also many times the tenant had committed defaults and he had not paid monthly rent for the period 3 months, 6 months etc. In the previous matter the tenant could not prove that he had given Rs.65,000/- as deposit.

However, the suit was dismissed. The Court held that the amount was deposited by the tenant, as mentioned above, by depositing the amount in Court. In similar manner the second suit was also dismissed.

13) In the present matter statutory notice was given by the plaintiff which is dated 29-9-2005 and he had contended that the tenant had not paid rent for the period of 36 months prior to the date of the notice. Though exact period during which rent was not paid was not mentioned, it can be said that as per the contentions, the plaintiff wanted to prove that at least from August 2003 rent was not paid. Tenancy was terminated and the suit was filed on 19-4-2006 i.e. after expiry of statutory period of 90 days. In the suit, the landlord claimed arrears of rent for the period from 1-10-2003 to 30-9-2006 (paragraph No.9). The rent for this period comes to Rs.27,036/-. It appears that when the suit was filed in April 2006, due to mistake arrears of rent were mentioned for period ending September 2006. However, in para 9 itself of the plaint, the plaintiff had made it clear that he had restricted his claim to Rs.21,779/-, rent for 29 months.

Thus rent for subsequent months was actually not claimed in the plaint. It appears that the plaintiff tried to correct the aforesaid error appearing in the pleading by making application under Order 6 Rule 17 of the Code of Civil Procedure but the trial Court rejected the application in spite of the aforesaid circumstances.

14) In the written statement the defendant has specifically contended in para 7 that he was liable to pay rent for the period of 36 months only till the date of the suit. In para 3 he, however, contended that he would deposit amount of Rs.27,342/- for the period of 42 month. He contended that he had requested the plaintiff to adjust the arrears as against the aforesaid deposit of Rs.65,000/- which, according to the defendant, was with the plaintiff. The tenant further contended he had sustained heavy loss in the business and so he had not paid rent for the aforesaid period. Thus the tenant wanted to make payment for the period from 1-4-2003 to 30-9-2006 and he had admitted that he had not paid rent for this period. The written statement was filed on 25-9-2006. In view of this admission of the defendant not much can

be made out due to the aforesaid discrepancies in the pleadings and the contents of the statutory notice. The defendant tenant had no receipts to show that he had really paid any rent in respect of any of the aforesaid period mentioned in the plaint and statutory notice.

15) In the evidence, the plaintiff tried to correct the aforesaid so called mistakes of the pleading and he deposed that till the date of the suit defendant was in arrears and the plaintiff was entitled to recover the rent for the period of at least 31 months. In the cross examination it was not suggested that the tenant had paid the rent in respect of that period and there is the admission of the defendant of aforesaid nature.

16) The tenant tried to say in the evidence that within 90 days of the date of receipt of the suit summons he deposited amount of rent with interest in the Court. But he was not able to prove that for period of 3 years preceding the date of suit he had paid the rent and interest on it.

17) The record of the Court shows that after receipt of the suit summons the tenant deposited amount of Rs.27,342/- in the month of September 2006. It can be said that some amount was deposited towards rent only. It cannot be said that within 90 days of the receipt of the suit summons the entire rent amount with interest was deposited by the tenant. It is already observed that the rent amount for this period comes to Rs.27,036/-. This Court is discussing the position of law on this point but here, it can be mentioned that it was up to the tenant to show that he had paid entire amount which was due and demanded by the plaintiff in the statutory notice with interest. If the tenant had some dispute regarding the amount of rent then he was taking risk of not depositing the disputed amount. If at the end, the Court decides that tenant was defaulter and for relevant period rent was not paid, it was open to the Court to give decree on the ground of default. The facts and circumstances show that the interest amount on the amount demanded in the statutory notice and which was admitted by tenant was not paid by the tenant during the period which is given by Section 15 of the Maharashtra Rent Control Act 1999

(herein after referred to as "the Act").

18) Even during pendency of the suit and the appeal filed by the tenant, the tenant was never regular and punctual in depositing the rent amount. There was written agreement to pay rent before 5th of the month and so it was necessary for the tenant to make payment as per the agreement. The record of the suit shows that in November 2006 he paid rent for previous 2 months. In July 2007 he paid rent for previous 3 months. In January 2009 he deposited amount of rent for previous two months and in April 2009 he deposited amount for previous two months. In June 2009 he deposited amount of previous two months and in June 2010 he deposited amount of previous four months. In the appeal applications at Exhibits 14, 16, 18 and 23 show that he had deposited the rent for 4 previous months, 11 previous months, 2 previous months and 2 previous months respectively.

19) The suit is governed by the provision of section 15 of Maharashtra Rent Control Act, 1999 (in short Act) which runs as under :-

"15. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases. (1) A

landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provision of this Act.

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

(3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases, if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally

decided and also pays cost of the suit as directed by the court.

(4) Pending the disposal of any suit, the court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the court thinks fit."

20) Section 15 has three different parts and they show the liability of the tenant to pay rent or to show readiness and willingness to pay rent when it falls due. They also give protection to the tenant from termination of the tenancy on the ground of default by giving him at least two opportunities after receipt of the statutory notice of termination of tenancy. In section 15(1) it is made clear that the tenant needs to pay or he should show readiness and willingness to pay the rent. The rent means not only standard rent but also permitted increases if any. So long as the tenant is paying or he is ready and willing to pay rent, the landlord cannot get relief of ejectment. Thus landlord needs to show that tenant has committed default and only then the landlord can file suit on this ground. With regard to place and time of payment of rent

the landlord can put some conditions and if those conditions are not inconsistent with the provisions of the Act, those conditions need to be complied by the tenant.

21) The provision of Section 15 shows that if the tenant has no dispute about agreed rent, it is not his case that agreed rent is not the standard rent, then he needs to pay or he needs to show readiness and willingness to pay the agreed rent. If he has dispute about the standard rent then he can file proper proceeding for fixation of standard rent. In the present matter there is no dispute of such nature and so there is no need to discuss the relevant provision in this regard and the facts of the present case on that line.

22) Provision of section 15(2) of the Act shows that the landlord cannot file suit for possession on the ground of default unless the period of 90 days has expired after the date of service of written notice given by him to the tenant. The notice is expected to be as per the provision of Section 106 of the Transfer of Property Act, 1882. This provision shows that time is given to the tenant of 90 days

to the take protection of section 15(2) of the Act. If he pays or shows readiness and willingness to pay the rent due, he gets protection of section 15(2) of the Act. If he has no dispute with regard to the agreed rate of rent and it is not his case that it is not the standard rent and he admits that he had committed default, then he should deposit or pay the entire amount demanded in the statutory notice. If he pays or deposits the rent amount demanded in the statutory notice within prescribed time, the landlord will not get decree of eviction on this ground. However, if the tenant disputes the rent or disputes the calculation made by the landlord and he deposits only some of the amount or pays only some of the amount then he takes risk. If at the end, the Court finds that the amount paid or tendered by the tenant was less than the amount due, it will be open to the Court to give decree on the ground of default and in such a case the Court can come to conclusion that the tenant was not ready and willing to pay the rent and he had not paid rent which had become due. Thus the tenant will lose the protection which is made available under section 15(2) of the Act in such circumstances.

23) The provision of section 15(3) of the Act gives one more opportunity to the tenant to pay the rent due (along with interest the rate of 15% per annum). In this case also if there is no dispute about the rate of rent, the tenant needs to pay or deposit entire amount demanded by the landlord along with interest at the rate of 15% per annum within 90 days from the date of service of suit summons. In this case also if the tenant pays or deposits less amount by creating some dispute then he takes the risk. In this case also if at the end, Court comes to the conclusion that amount due or interest mentioned in the provision was not paid by the tenant, the Court can hold that tenant had not paid or the tenant was not ready and willing to pay rent which had become due. In such cases the tenant loses the protection which is made available under section 15(3) of the Act. The circumstance that the tenant is expected to pay even the cost of the suit as directed by the Court shows that readiness and willingness of the tenant needs to be shown till the matter is finally decided. If the tenant files appeal, in the appeal also the tenant needs to continue to pay the rent which falls due. In the present matter there was no claim of

permitted increases and so this point is not discussed.

24) The provision of section 15 of the Act prevents landlord from filing suit before expiry of 90 days from the date of service notice which needs to be given under section 106 of the Transfer of Property Act. In such a suit, in view of the wording of the aforesaid provisions and the object behind them, it is necessary for the tenant to plead and prove that he followed the procedure given in the section and complied with the conditions mentioned in the section. It is possible that in the past, he was habitual defaulter but if he uses aforesaid provisions, provisions of section 15(2) and 15(3) of the Act, he gets the protection of these provisions and his past conduct of committing default becomes irrelevant.

25) The provision of section 15 shows that it is not sufficient for the tenant to deposit the rent due as described above, within 90 day of the date of service of notice issued under section 106 of the Transfer of Property Act. It is necessary for him to continue to pay or deposit the rent every time it becomes due as per agreement. Similarly, after depositing the amount within

90 days of the date of service of suit summons he needs to go on paying rent as and when it becomes due. In view of the wording of the section, he needs to continue to pay the amount even when the appeal is pending, the decision has not become final. When there is no specific order from the Court against the tenant directing him to deposit the rent within particular time, the tenant is expected to abide by the conditions of the written agreement or the practice.

26) The learned counsel for the tenant has placed reliance on one case reported as **(1988) 2 SCC 481 (Mohan Laxman Hede v. Noormohamed Adam Shaikh)**. In this case the Apex Court has discussed the provision of section 12(3)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The term "regularly" used in this section is discussed and interpreted. The same term is used in section 15(3) of the Act. In para 3 of the reported case the Apex Court has quoted the defaults committed by the tenant in the said case and the particulars show that on four occasions the tenant had deposited the rent after 23 days when the rent had become due. However, on two occasions the rent in

advance in respect of subsequent months was also deposited by the tenant. In view of these facts and circumstances, the Apex Court held that the rent was deposited with reasonable punctuality and the tenant had deposited the rent regularly as contemplated by the aforesaid provision. There was one more circumstance like the order made by the Court to pay interim standard rent and there was no written agreement about the time of payment of the rent.

27) In the case cited supra the Apex Court placed reliance on the ratio of the case reported as **AIR 1980 SC 954 (Mranalini B. Shah v. Bapalal Mohanlal Shah)**. In the case of Mranalini tenant had not paid rent regularly and he had never paid rent in advance. On 16 occasions rent was deposited at intervals ranging from two to four months. It was held that there was default. In the case on which reliance was placed by the learned counsel for the tenant the Apex Court had referred the case of **Ganpath Ladha v. Sashikant Vishnu Shinde (AIR 1978 SC 955)** also and has made observations at paragraphs 11 and 12 as follows :-

“11. 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 :

“... We think that the problem of interpretation and application of Sec.12(3)(b) need not trouble us after the decision of this Court in Shah Dhansukhlal Chaganlal's case (AIR 1968 SC 1109) followed by the more recent decision in Harbanslal Jagmohandas v. Prabhudas Shivilal, (AIR 1976 SC 2005), which completely cover the case before us.

It is clear to us that the Act interfere 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 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 Sec.12(3)(b)

and defeat the landlord's claim for eviction. If, however, he does not fulfill 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's case (1958-60 Bom LR 1359), 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”.

12. The above enunciation, clarifies beyond doubt that the provision of clause (b) of Section 12(3) are mandatory, and must be strictly complied with by the tenant during the pendency of the suit or appeal if the landlord's claim for eviction on the ground of default in payment of rent is to be defeated. The word “regularly” in clause (b) of Section 12 (3) has a

significance of its own. It enjoins a payment or tender characterised by reasonable punctuality, that is to say, one made at regular times or intervals. The regularity contemplated may not be a punctuality, of clock-like precision and exactitude, but it must reasonably conform with substantial proximity to the sequence of times or intervals at which the rent falls due. Thus, where the rent is payable by the month, the tenant must, if he wants to avail of the benefit of the latter part of cl.(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.”

28) Learned Single Judge of this Court has made observations which are similar to the observations made in Mranalini Shah's case (cited supra) by the Apex Court in the case reported as **2010 (3) Bom. C.R. 766** (Nagpur Bench) (**Girish Gangadhar Agrawal v. Jiteshkumar Hasmukha Vakhariya**).

29) In the present case there is peculiar circumstance like written agreement between the parties. Even if it is presumed that after receipt of the suit summons the tenant paid arrears of rent, he did not pay the interest on it as required by section 15(3) of the Act. In addition to this circumstance, he committed many defaults in making payment of rent which became due in the trial Court and in the appellate Court. Right from beginning, the tenant gave excuse that he had suffered financial crisis and so he was not able to pay rent regularly. He tried to say that he had given Rs.65,000/- as Pagadi, deposit amount to the landlord and he was entitled to say that rent amount needs to be deducted from the Pagadi amount. In view of these facts and circumstances of the case, this Court holds that the tenant is not entitled to the protection of any part of provision of section 15 of the Act.

30) The learned counsel for the tenant submitted that specific amount was not demanded as the amount due from the tenant and so it needs to be presumed that default ground is not proved. He placed reliance on

following reported cases :-

- (i) **2010(3) Mh.L.J. 807 (Vinayak Narayan Deshpande v. Deelip Pralhad Shisode)** (Bombay High Court);
- (ii) **1993 Bom. R.C. 298 (Smt. Sonubai v. Smt. Yellawa)** (Bombay High Court);
- (iii) **1982 Bom. R.C. 65 (Khimji Bhimji Majithia v. Taraben Lalji Soni)** (Gujarat High Court).

In these cases, in view of the facts of the cases, when amount was not specified, the Courts had held that there was no compliance of Section 12(2) of the Bombay Rent Act.

31) On the other hand, learned counsel for the landlord placed reliance on a case reported as **1983 BCI (O) 28 (Chhaganlal Mulchand Jain v. Narayan Jagannath Bangh)**. The relevant observations can be found at paragraphs 10 and 11 :-

“**10.** It was also submitted that the notice under section 12(2) of the Rent Act is bad because the demand is not for the standard rent and permitted increases and because the demand was at the agreed rate though the standard rent was later on determined by the Courts below at a lesser amount i.e. at 11/- per month. The argument is that the notice under section 12(2) should be construed strictly and the tenant should

be given an advantage of any mistake that may be appearing in the notice. In our opinion, it will not be possible to accept this contention of a strict construction of the notice in favour of the tenant. The notice is a communication between the landlord and the tenant and both the parties know their rights and liabilities about the payment of rent. Hence any mistake in making a demand for the larger amount would not render the notice invalid. This has been so held by the Supreme Court in an unreported decision of the case of *Raghunath Ravji Dandekar v. Anant Narayan Apte*. Similarly this Court in the case of *Lalshankar Mulji v. Kantilal*, has held that a notice is not invalid simply because by mistake or oversight the landlord has demanded the rent more than it was due. It was further held that a liberal construction should be put upon the notice to quit in order that it should not be defeated by inaccuracies.

11. It will be very difficult to accept the contention that a mistake here or a mistake there in the demand notice would entail the dismissal of the suit. It is possible that in a particular case, the landlord may make a false and untenable demand of certain amount among with the claim about which there will not be any dispute. In such a cases the tenant will have an option to pay the undisputed amount of rent and to give a reply that the rest of the claim was a false one. If in due course of time at the stage of the suit the claim is proved to be false, the tenant obviously would be protected as he has made the payment of the amount

that was actually due. But he will not be able to resist the same if within one month from the notice he has not paid even the arrears to which the landlord is entitled. The view expressed in the case of Ganpat v. Motilal (supra) that the notice would be bad if the notice included untenable claim is too general a statement and we disagree with it. Even in such a case the tenant is under an obligation to remit within the prescribed time the permissible amount payable by him. Of course, he will have to take the risk if ultimately the Court finds that such payment would not cover all the arrears. In case of such a finding the landlord would be entitled to a decree for possession. But there would not be such a decree if the payment was sufficient to clear off all the arrears which were payable to the landlord. Thus everything will depend upon the facts of each case, but primarily one has to proceed on the basis that the notice should be construed liberally and not with a view to find fault in it."

32) In the present case, this Court has already discussed relevant facts in this regard and they show that it cannot be said that the tenant was not aware of the actual demand from the landlord. So, on this point also the tenant has no case.

33) The learned counsel for the tenant placed reliance on a case reported as **2009 (6) Mh.L.J. 906 (New**

Laxmi Cycle Company v. Jagdishchandra). This case is on altogether different point like liability of the tenant to pay permitted increases. In the present matter the landlord had not claimed permitted increases and this point is not at all involved in the present matter.

34) In view of the aforesaid discussion, this Court has no hesitation to observe that tenant of the present case is not entitled to protection of 15 of the Act. The trial Court had discussed the relevant material and had given the relief. The Appellate Court has committed mistake in ignoring the material and in setting aside the judgment and decree given by the trial Court in favour of the landlord on the ground of default. Thus, the decision of the appellate Court on the point of default needs to be set aside.

35) One more point was argued by the learned counsel for the tenant by making submission that statutory notice was not served on the tenant. Substantive evidence is given by the landlord that he had sent notice both the registered post with acknowledgment due and

Under Certificate of Posting and they were given on the correct address, the address where the tenant is doing business, the suit premises. To rebut the substantive evidence and the circumstances like postal remark and the receipt of the notice sent under U.C.P., the tenant has tried to say that on occasions he remains out of the shop and he goes to the shop of his brother and so possibly he did not receive the intimation of the postman. He has deposed that he did not get notice sent under certificate of posting. The District Court has held that it was necessary to examine postman to prove endorsement of postman appearing on the envelop. It needs to be mentioned that statutory notice as required under section 106 of the Transfer of Property Act was sent and the suit was filed after expiry of the statutory period mentioned in section 15 of the Act. In this regard provision of section 106(4) of the Transfer of Property Act needs to be kept in kind and it runs as under :

“106. Duration of certain leases in absence of written contract or local usages.--

- (1) . . .
- (2) . . .
- (3) . . .

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or if such tender or delivery is not practicable affixed to a conspicuous part of the property."

36) The District Court has observed that it was necessary for the landlord to examine postman to prove the endorsement on the envelope sent under the registered post like "intimation given". On this point learned counsel for the landlord placed reliance on cases reported as (1) **AIR 1989 SC 630 (M/s. Madan & Co. v. Wazir Jaivir Chand)**; and, (2) **2005 (2) BCJ 632 (SC) (P.T. Thomas v. Thomas Job)**. The observations with regard to postal intimation are at para 6 of the first case and at para 11 of the second case and they are as under :-

"6. We are of opinion that the conclusion arrived at by the Courts below is correct and should be upheld. It is true that the proviso to Cl.(i) of S.11(1) and the proviso to S.12(3) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language

would be impractical and unworkable. The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through post. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under S.27 of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee. The difficulty is where the postman calls at the address mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee, he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorised to affix the letter

on the premises because of the addressee's absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a Court under O. V of the C.P.C. The statutory provision has to be interpreted in the context of this difficulty and in the light of the very limited role that the post office can play in such a task. If we interpret the provision as requiring that the letter must have been actually delivered to the addressee, we would be virtually rendering it a dead letter. The letter cannot be served where, as in this case, the tenant is away from the premises for some considerable time. Also, as addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities

either to detain the letters addressed to him for some time until he returns or to forward them to the addressee where he has gone, or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the word "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him get served on, or is received by, the tenant."

"11. The High Court, in our view, has also misinterpreted Section 27 of the Post Office Act, 1898. The requirement of the section has been complied with in this case. The reasoning of the High Court on this issue is not correct and not in accordance with factual position. In the notice issued, the postman has made the endorsement. This presumption is correct in law. He had given notice and intimation. Nevertheless, the respondent did not receive the notice and it was returned unserved. Therefore, in our view, there is no obligation cast on the appellant to examine the postman as assumed by the High Court. The presumption under Section 114 of the Evidence Act, 1872 operates apart from that under the Post Office Act, 1898."

37) In the cases reported as **2003 (4) Bom. C.R. 612 (David K.N. v. S.R. Chaubey)** and **2005 (4) Mh.L.J. 577 (Krishna Ramchandra Jadhav v. Shankari Ajimal)** the aforesaid point is discussed and the aforesaid cases are also referred. In view of the observations made by the Apex Court this Court has no hesitation to observe that it was not necessary for the landlord to examine the postman to prove the aforesaid intimation.

38) On the other hand learned counsel for the tenant placed reliance on the cases reported as (1) **2001 (2) Mh.L.J. 342 (Lalmani Ramnath Tiwari v. Bhimrao Govind Pawar)**; (2) **2004 (4) Mh.L.J. 873 (Vinod Shashank Chakor Pvt. Ltd. v. H.D. Merchant)**. In these two cases of Bombay High Court the aforesaid cases of the Supreme Court are not referred. In view of this circumstance, this Court holds that the observations made by the Bombay High Court are of no help to the tenant.

39) In the case reported as **AIR 1990 SC 1215 (Anil Kumar v. Nanak Chandra Verma)** it is held that there cannot be hard and fast rule on the point as to how the

presumption available under section 27 of the General Clauses Act can be rebutted. It is observed that it would depend on the facts and circumstances of each case. In a case the unchallenged testimony of tenant may be sufficient to rebut the presumption. There cannot be any dispute over this proposition. In this regard there are many circumstances against the tenant. Notice was addressed on the correct address of the tenant, intimation of the notice was given by the postman but the notice was not claimed and it was returned as "unclaimed". Another notice under certificate of posting was also sent on the same address but it was not returned by the post office. It is not the case of the defendant that his shop remained closed at the relevant time but he has taken stand that he used to visit other shop, of his brother and there is possibility that at the relevant time he was not present in the shop. His version is not acceptable and reliable. If his shop was open he ought to have kept somebody to attend his shop at the relevant time and in that case it can be said that notice was tendered to his man like servant and intimation was given to him. He ought to have examined said person who was attending his shop during his

temporary absence and so there is no convincing evidence of rebuttal. Further, the suit summons was served on the tenant at the same address. This Court has no hesitation to observe that presumption available under the aforesaid provision of General Clauses Act was not at all rebutted by the tenant and the District Court has committed error in holding that the evidence of the tenant on oath has rebutted the presumption. In view of the observations made by the Apex Court in the cases cited supra if the version of the tenant is accepted in such cases it will be practically impossible for the landlord to get decree of eviction on the ground of default. The tenant is bound to take all the possible defences and it is up to the Court to decide as to whether there is truth in his defence.

40) In view of the aforesaid discussion this Court has no hesitation to hold that there was no scope to interfere in the decision given by the trial Court in favour of the landlord. Thus, the judgment and decree of the appellate Court cannot sustain in law.

41) In the result, civil revision application is allowed. The judgment and decree of the District Court delivered in Rent Appeal is hereby set aside. The appeal is dismissed. The judgment and decree of the trial Court is restored. No order as to cost. The learned counsel for the tenant seeks time to vacate the premises. Two months time from today is granted subject to giving usual undertaking.

Sd/-
(T.V. NALAWADE, J.)

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