

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

...
CIVIL REVISION APPLICATION NO. 95 OF 2014

BALAJI PRATAPJI PANDYA
VERSUS
SHYAM KISAN SHARMA

...
Advocate for Applicants : Mr. Kulkarni Mukul S.
Advocate for Respondents : Mr. P.R. Katneshwarkar
...

CORAM : S. V. GANGAPURWALA, J.

DATE : 21st September, 2015

ORAL JUDGMENT:

1. The matter is heard finally at the stage of admission with the consent of the learned counsel for the parties.
2. The suit of the landlord seeking eviction of the tenant on the ground of default in payment of rent, filed under section 15 of the Maharashtra Rent Control Act is dismissed. The appeal filed by the landlord is also dismissed. Aggrieved thereby, the present revision.
3. According to Mr. Kulkarni, the learned counsel for the appellant, as per section 15(3) of the Maharashtra Rent Act, the tenant is required to deposit the entire arrears of rent alongwith interest @ 15% per

annum within 90 days of the receipt of notice. Admittedly the tenant has deposited the rent alongwith interest @ 9% per annum only. That too after lapse of 90 days from service of suit summons. There is violation of Section 15(3) of the Maharashtra Rent Act. In the light of that, decree of eviction shall follow.

4. The learned counsel relies on the judgment of the Apex Court in the case of **Chase Bright Steel Limited Vs. Shantaram Shankar Sawant and another**, reported in 1995 (1) Bom.C.R. 561 so also the judgments of the Apex Court in the case of **Yusufbhai Noormohammed Jodhpurwala Vs. Mohamed Sabir Ibrahim Byavarwala** reported in (2015) 6 SCC 526 and, **Ganpat Ladha Vs. Shashikant Vishnu Shinde** reported in 1978 Mh.LJ. 550.

5. Mr. Katneshwarkar, the learned counsel for the respondent submits that the tenant has sufficiently complied the provisions of Section 15(3) of the Maharashtra Rent Act. Within the time fixed by the Court, the amount of rent is deposited by the tenant. No default has been committed by the tenant. Due to inadvertence, instead of interest @ 15% per annum, the amount is deposited with interest @ 9% per annum. It

cannot be said to be a willful default. Provisions of Section 15 are substantially complied. Both the courts have rightly appreciated the said aspect, in its correct perspective.

6. With the assistance of learned counsel for the respective parties, I have gone through the judgment and considered the submissions made.

7. Section 15 of the Maharashtra Rent Control Act reads 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 increase, 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.

(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 under section 106 of the Transfer of Property Act, 1982.

(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."

8. Undisputed facts can be culled out as under:

i. The present appellant is a landlord and present respondent is a tenant of the suit premises. Landlord had filed Regular Civil Suit No.54/2005 for eviction on the ground of default. On 10.11.2004, notices Exhibits 16 and 18 were issued by the plaintiff to the defendant for recovery of rent. On 18.03.2005, the suit was instituted for possession on the ground of default in payment of rent.

ii. On 29.03,2005, suit summons are served upon the defendant. 12.04.2005 was the first date fixed after service of suit summons. The defendant appeared on 12.04.2005. On the same date, the defendant filed an application Exhibit 10 showing his willingness to deposit the amount of rent alongwith interest @ 9% per annum alongwith expenses. On 14.06.2005, the plaintiff filed his say to application Exh.10. On 26.06.2005, the Court allowed the application Exhibit 10 by passing order "Application allowed." Thereafter, on 10.08.2005, the amount is said to have been deposited by the defendant in the court. The said deposit is not within 90 days from the date of service of suit summons. The amount so deposited is the arrears of rent alongwith interest @ 9% per annum instead of 15% as required under section 15(3) of the Maharashtra Rent Control Act.

9. In a case of **Ganpat Ladha**, referred to supra, the Apex Court was considering the provisions of Section 12(3)(b) of the erstwhile Bombay Rent Act which is *pari materia* with section 15(3) of the Maharashtra Rent Control Act. The Court observed thus:

"11. 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 despite opportunities given by law in that behalf. Thus Section 12(3)(a) of the Act makes it obligatory for the Court to pass a decree when its conditions are satisfied as was pointed out by one of us (Bhagwati, J.) in *Ratilal Balabhai Nazarv. Ranchhodbhai Shankerbhai Patel* [AIR 1968 Guj 172 : (1968) 9 Guj LR 48]. If there is statutory default or neglect on the part of the tenant, whatever may be its cause, the landlord acquires a right under Section 12(3)(a) to get a decree for eviction. 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 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 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. 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."

10. The aforesaid judgment is recently followed by the Apex Court in case of **Yusufbhai Noormohammed Jodhpurwala**, referred supra. It is held that the provision has to be strictly complied.

11. In case of **Chase Bright Steel Limited**, referred supra, the Apex Court, while interpreting the provisions of Section 12(3)(b) of the Bombay Rent Control Act as existing then, observed that under section 12(3)(b) of the Act, there is an obligation to deposit permitted increase, not only during the pendency of standard rent application but even during the pendency of the suit for eviction. The Apex Court, even confirmed the decree of eviction as the tenant had not paid permitted increase.

12. In the present case, as referred above, the tenant failed to deposit arrears of rent with interest @ 15% per annum as is required under section 15(3) of the Maharashtra Rent Control Act. The phraseology of section 12(3)(b) of the Bombay Rent Control Act and section 15(3) of the Maharashtra Rent Control Act is somewhat similar. Under section 12(3) (b) of the Bombay Rent Control Act, the tenant is required to

deposit the standard rent and permitted increase then due on the first date of hearing, or on or before such other date as the Court may fix. Under section 15(3) of the Maharashtra Rent Control Act, the tenant is required to deposit the arrears of standard rent and permitted increase then due together with simple interest on the amount of arrears @ 15% per annum within 90 days from the date of service of suit summons.

13. In the aforesaid judgments of the Apex Court, in case of **Ganpat Ladha** and in the case of **Yusufbhai Noormohammed Jodhpurwala**, referred supra, the Apex Court had held that the provisions of section 12(3) (b) are mandatory and no discretion vest with the Court in protecting the tenant, if conditions enumerated in section 12(3)(b) are not complied.

14. Under section 15(2) of the Maharashtra Rent Act, the tenant has an opportunity to deposit the standard rent with permitted increase due within 90 days after service of notice upon the tenant. If the tenant fails to deposit/pay the rent to the landlord within 90 days, then further protection is granted to

him by virtue of section 15(3), thereby permitting the tenant to pay rent along-with permitted increase with interest @ 15% per annum within 90 days from the date of service of summons of the suit.

15. The condition of payment of rent within 90 days from the date of service of summons along with interest @ 15% per annum is mandatory. Protection is not given to the tenant, if the payment is not in conformity with section 15(3). Admittedly, in the present case, the amount is not deposited within 90 days from the date of service of summons. The suit summons are served on 29.03.2005. The amount is deposited on 10.08.2005, much after lapse of 90 days, that too not with interest @ 15% per annum. The amount is deposited only with interest @ 9% per annum. The same is certainly not in conformity with the requirement of section 15(3) of the Maharashtra Rent Control Act.

16. The Apex Court, in case of **Ganpat Lada** so also in the case of **Yusufbhai Noormohammed Jodhpurwala**, referred supra, held that the requirements under section 12(3)(b) of the Bombay Rent Act are to be

strictly complied and the said provision does not create any discretionary jurisdiction in the Court. It provides protection to the tenant on certain conditions and those conditions have to be strictly observed by the tenant who seeks benefit of the said section.

17. In the present case also, the condition enumerated in section 15(3) of the Maharashtra Rent Act are not strictly complied with. The deposit of the amount of arrears of rent is not with interest @ 15% per annum so also it is not within 90 days from the service of suit summons. Provisions of section 15(3) of the Maharashtra Rent Act are mandatory. The protection under section 15(3) of the Maharashtra Rent Act is available to tenant only if the tenant scrupulously adheres to the provisions of section 15(3) of the Maharashtra Rent Act. The Court has no jurisdiction to extend the time prescribed in the said section. The tenant herein has failed to deposit the rent within 90 days from the date of service of notice so also has failed to deposit the said amount with interest @ 15% per annum. The amount deposited after lapse of 90 days from the date of service of summons is also not

with interest @ 15% per annum but is deposited only with interest @ 9% per annum. Both the ingredients of section 15(3) are not complied.

18. The courts below have failed to consider the provisions of section 15(3) in its correct perspective. Under section 12 (3) of the Bombay Rent Act as it stood then, the tenant was permitted to deposit the rent with permitted increase on the first date of hearing of the suit or on or before such other date as the court may fix. However, sub section 3 of section 15 of the Maharashtra Rent Act, with which we are concerned, does not give any jurisdiction to the court to allow any further time to deposit the amount by the tenant. The said section mandates the standard rent with permitted increase to be deposited within 90 days from the date of service of summons with simple interest on the amount of arrears @ 15% per annum. Failure to adhere to sub section 3 of section 15 of the Rent Act would entail consequences of eviction of tenant on the ground of default in payment of rent.

19. In the light of above, the judgments and orders delivered by both the courts below deserve to be set

aside and are hereby set aside.

20. The suit of the plaintiff seeking eviction of the tenant on the ground of default is decreed.

21. The tenant shall deliver vacant and peaceful possession of the suit property to the plaintiff.

22. In the circumstances, there shall be no order as to the costs.

(S. V. GANGAPURWALA, J.)

JPC