

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2428 OF 1997

Maheshwar B. Vaze .. Petitioner
vs.
Chintamani R. Mavlankar .. Respondent

Ms Sucheta Mirrashi for the Petitioner.
Mr. Dushyant S. Pagare for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 28 AUGUST 2015.

P.C:-

1] This petition is directed against the judgments and decrees dated 27 February 1992 and 12 March 1997 made by the Trial Court and the Appeal Court dismissing the petitioner's Regular Civil Suit No. 610 of 1984 seeking eviction of the respondent on the ground of default in payment of rents.

2] On 1 March, 1975, the petitioner-landlord and the respondent-tenant entered into an agreement under which the tenant advanced a loan of Rs.18,500/- to the landlord for the purposes of construction. The parties agreed that 50% of the loan amount was to be appropriated towards payment of rents at the rate of Rs.166.50 in respect of the suit premises and the balance 50% was to be repaid by the landlord as per the agreed rate of interest. This was expressed in Clause '4' of the agreement, which *inter alia*

provided that out of the total monthly rent of Rs. 166.50, recoverable from the tenant-landlord agrees to repay the tenant every month Rs.83.25 being part of the construction loan advanced. Clause '7' of the agreement made it clear that monthly rent is exclusive of water charges, electric charges, education cess and all other rates and taxes. Clause '3' of the agreement provided that the loan shall be repaid by the landlord within a period of ten years from the date of execution of this agreement or within a period of six months from the date of termination of the tenancy by the landlord, whichever event takes place first. Clause '10' provides that the parties agree to register this agreement in due course. However, it is an admitted fact that such agreement was never registered.

3] On 4 October 1982, the landlord issued a demand notice upon the tenant alleging that the rent was in arrears. This was however, followed by yet another notice dated 27 January 1984, which was stated to be expressly a notice under Section 12(2) of the Bombay Rents, Hotel and Lodging Houses Rates Control, 1947 Act (Rent Act). The notice did make reference to earlier notice, but finally called upon the tenant to pay arrears of rent and arrears of taxes within the statutory period, failing which, it was threatened that action for eviction would be initiated. Within a period of one month

from the date of receipt of notice dated 27 January 1984, i.e., on 25 February 1984, the tenant raised a dispute as to the amount of standard rent and permitted increases and made an application to the Court for determination of standard rent.

4] The landlord, thereafter, on 7 August 1984 instituted Regular Civil Suit No. 610 of 1984 seeking eviction of the tenant on the ground of default in the payment of rents and permitted increases. It is the case of the tenant that during pendency of the suit, the tenant deposited, without prejudice, arrears at the rate of Rs.166.50 per month. The application for determination of standard rent was disposed of by the Court alongwith the suit itself on 27 February 1992. The Trial Court maintained that the standard rent was indeed Rs.166.50, but dismissed the landlord's suit, by observing that the tenant could not be said to be in arrears. The landlord's Civil Appeal No. 135 of 1992 was dismissed by the Appeal Court on 12 March 1997. Hence, the present petition.

5] Ms Mirrashi, learned counsel for the petitioner, submitted that the impugned judgments and decrees are vitiated by jurisdictional error. She submitted that in the present case demand notice was issued on 4 October 1982 and admittedly, within one month from

the date of receipt of such demand notice, neither any dispute was raised nor any application made for determination of standard rent. In the absence of raising of any dispute or filing of any application for determination of standard rent, the Court was required to proceed on the basis that there was indeed default in payment of rent and permitted increases. She further submitted that the agreement for loan dated 1 March 1975 was relatable to the provisions contained in Section 18 of the Rent Act and therefore, the acceptance of loan was authorised. The terms of loan agreement made it clear that the tenant had to pay each month agreed rent of Rs.166.50 and only thereafter, there may have been some obligation on the part of the landlord to refund amount of Rs.83.25 towards repayment of the loan. This, she pointed out, is clear from Clause '4' of the agreement. The material on record, clearly establishes that no such payment was effected by the tenant and further, there was also failure to pay taxes and other outgoings, i.e., the permitted increases, which the tenant was liable to pay in respect of tenancy of the suit premises. She also pointed out that the payment of outgoings like the education cess or other taxes has been held to be a part of the permitted increases, by Apex Court in case of **Raju Kakara Shetty vs. Ramesh Prataprao Shirole & anr.**¹. She also

1 1991(1) All India Rent Control Journal 230

placed reliance upon the decision of the Apex Court in case of ***Nand Lal Agarwal vs. Ganesh Prasad Sah and ors.***², for the proposition that unless a tenant calls upon a landlord to adjust excess payment towards arrears, there is no obligation on the part of the landlord to do so. Finally, she submitted that the two Courts erred in placing reliance upon the ruling of the Apex Court in case of ***Mohd. Salimuddin Vs. Misri Lal and another***³, because in the said case, the advance obtained by the landlord from the tenant was an illegal and unauthorised one. She submitted that in the present case the construction loan obtained by the landlord from the tenant was perfectly legal and authorised transaction consistent with the provisions of Section 18 of the Rent Act. For all these reasons, Ms Mirrashi submitted that the two judgments and decrees suffer from jurisdictional error and may be set aside.

6] On the other hand, Mr. Pagare, learned counsel for the respondent-tenant, submitted that in this case, the two Courts, based upon the material on record, have recorded concurrent findings of fact. Since this Court, under Article 227 of the Constitution of India, does not exercise any appellate powers, there is no warrant to interfere with and upset such concurrent findings of fact. That apart,

² AIR 1988 Supreme Court 1821

³ (1986) 2 SCC 378

Mr. Pagare submitted that Notice dated 27 January 1984 was clearly Notice under Section 12(2) of the Rent Act, and within one month from the receipt thereof, the tenant, having applied for fixation of standard rent, was entitled to benefit of Explanation (I) to Section 12 of the Rent Act. Upon extension of such benefit, there was no question of any eviction on the ground of default in payment of arrears. Mr. Pagare further pointed out that even the landlord has acted in breach of the agreement dated 1 March 1975 and therefore, cannot rely upon its terms. Mr. Pagare pointed out that since the amount of Rs.18,500/- was already held by the landlord, it was obligatory upon the landlord to have made adjustment as held by the Apex Court in case of *Mohd. Salimuddin (supra)*. Finally, Mr. Pagare submitted that the two Courts, after having considered the entire material on record, including in particular the conduct of the tenant, rightly held that there was no default on the part of the tenant in payment of rents as well as permitted increases. Further, the material on record at least overwhelmingly suggest that the tenant was always ready and willing to pay the amount of standard rents and permitted increases. For all these reasons, Mr. Pagare submitted that the impugned judgments and decrees made by the

two Courts may not be interfered with, particularly considering the restrictive parameters of Article 227 of the Constitution of India.

7] The rival contentions now fall my determination.

8] In the first place, it is not possible to accept the contention of Ms. Mirrashi that the notice dated 4 October 1982 be treated as the demand notice under Section 12(2) of the Rent Act for the purposes of present proceedings. This is because, the said demand notice was not acted upon for a period of almost fourteen months. Besides, on 27 January 1984, the landlord chose to address yet another notice not only demanding the arrears, but threatening that in case the same are not cleared, proceedings for eviction would be initiated. This notice dated 27 January 1984, very expressly, states that the same is issued under Section 12(2) of the Rent Act, which incidentally, is the statutory provision in respect of the demand notice. Accordingly, it is impermissible for the landlord to rely upon the earlier notice.

9] The record, very clearly indicates that within the period of one month from the date of receipt of statutory notice under Section 12(2) of the Rent Act, the tenant, applied for determination of standard rent and permitted increases. Explanation (I) to Section 12

of the Rent Act provides that in any case, where there is a dispute as to the amount of standard rent or permitted increases recoverable under the Rent 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 the notice referred to in sub-section (2), the tenant 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. Further, Section 12(1) of the Rent Act provides that the landlord shall not be entitled to recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of standard rent and permitted increases, if any, and observes and performs the other conditions of tenancy, in so far as they consistent with the provisions of the Rent Act.

10] From the aforesaid, it is clear that landlord cannot under Section 12 of the Rent Act, evict the tenant from the suit premises as long as the tenant pays or is ready and willing to pay the amount of standard rent and permitted increases. Further, by mean of legal fiction, it is provided that where there is 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

period of one month after notice referred to in sub-section (2) of Section 12 of the Rent Act, such tenant applies for fixation of standard rent and permitted increases and thereafter pays or tenders the amount of rent or permitted increases as specified in the order made by the Court. Explanation (II) also makes it clear that the term '*standard rent*' or '*permitted increases*' shall include '*the interim standard rent*' and '*interim permitted increases*' as specified under sub-section (3) of Section Section 11 of the Rent Act.

11] In the present case, as noted earlier, the notice dated 27 January 1984 shall have to be regarded as the demand notice under Section 12(2) of the Rent Act. Within a period of one month from such notice, the tenant applied for determination of standard rent and permitted increases. There is really no dispute that determination of standard rent was made only on 27 February 1992, which is the date on which the suit itself was dismissed. Pending the determination of standard rent, although, there was no order determining interim standard rents or interim permitted increases, the tenant has deposited rents at the rate of Rs.166.50 per month in respect of suit premises. Accordingly, no case was really made out for securing a decree of eviction on the ground of default in the payment of rents. The two Courts have rightly dismissed the suit,

and there is neither any perversity in record of findings of fact nor is there any jurisdictional error.

12] That apart, the two Courts relying upon the ruling in case of *Mohd. Salimuddin (supra)*, have held that where tenant advances loan to the landlord in violation of the prohibition under the Rent Act and on the adjustment of the loan amount towards the rent accrued, the tenant is found not to be in arrears, no eviction of such tenant can be ordered on the grounds of default in the payment of rent. It is really not necessary to consider this issue in the light of legal fiction in the context of Explanation (I) to Section 12 of the Rent Act. However, the view taken by the two Courts, in the peculiar facts and circumstances of this case, does appear to be a plausible one and really, no case is made out to upset such view in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

13] Although, Ms Mirrashi has submitted that the agreement for loan and the loan secured on the basis of same by the landlord was perfectly a legal and authorised transaction relatable to Section 18 of the Rent Act, it is to be noted that Section 18(3) of the Rent Act requires the such agreement to be registered, notwithstanding

anything contained in Indian Registration Act, 1908. In this case, admittedly, the agreement in question was not registered. Besides, factually, the amount of Rs.18,500/- was indeed advanced and merely because some dispute arose between the parties in the context of its repayment or rather in the context of its manner of repayment, it cannot be said that such amount could never have been adjusted by the landlord towards so called arrears of rent or permitted increases. In this view of the matter, it cannot be said that the view taken by the two Courts either vitiated by any error apparent on the face of record or perversity.

14] The decision of the Apex Court, in case of *Raju Shetty (supra)* is not applicable to the facts and circumstances of the present case, because there was really no dispute regards the proposition that taxes constitute permitted increases. The question was where there were any arrears as such. Similarly, the decision in the case of *Nand Lal Agarwal (supra)* is also inapplicable to the peculiar facts of this case, as in this case, the parties had entered into an agreement and at least a portion of the advance was agreed to be adjusted towards the rent. Ms Mirrashi also placed reliance of the decision of this Court in case of *Prithdayal Chetandas and ors vs. Jamnadas*

*Ghanshamdas Tuliani & anr.*⁴, which lays down the proposition that deposit or dispute as to fixation of standard rent has to be within one month from the date of demand notice. As noted earlier in the present case, since the relevant demand notice is dated 27 January 1984, the dispute as well as application for fixing of standard rent was indeed made within one month.

15] Upon cumulative consideration of all the aforesaid facts and circumstances, it is not possible to interfere with the concurrent findings of fact or for that matter the view taken by the Trial Court and Appeal Court. No case is made out to exercise extra-ordinary jurisdiction under Article 227 of the Constitution of India. Accordingly, this petition is dismissed. There shall, however, be no order as to cost.

(M. S. SONAK, J.)

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4 1989(3) Bom.C.R.1