

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 6 OF 2011

M/s. Maharani Prints	..	Applicant
vs.		
M/s. Bhaktawar Construction Company (P) Ltd.	..	Respondent

Mr. S. G. Deshmukh i/b. Mr. Ramdas Shelke for Applicant.
Ms Preeti Ramani, R. Joshi, Krushi N. Barfiwala i/b. ALMT Legal
for Respondent.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 11 June 2015

Date of Pronouncing the Judgment : 17 June 2015

JUDGMENT :-

1] This civil revision application challenges the judgment and order dated 8 October 2010 made by the appellate bench of the Small Causes Court at Mumbai directing the eviction of the applicant for default in the payment of rent and permitted increases.

2] The Small Causes Court at Mumbai, by judgment and order dated 22 December 2006, had in fact dismissed the respondent's application seeking recovery of the suit premises. The appellate bench, by impugned judgment and order dated 8 October 2010 however, has reversed the Small Causes Court and directed eviction of the applicant. Hence, the present civil revision application.

3] The applicant is the tenant of premises admeasuring 7317 sq. ft. on the first floor of the building situate at 10, Caves Road, Meher Tiles Compound, Jogeshwari (East), Mumbai 400060, hereafter referred to as '*suit premises*' since the year 1969 or at least the year 1975.

4] By notice dated 14 September 1982, issued under Section 12(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (said Act), the respondent landlord demanded from the applicant the following amounts towards arrears of rent and employment guarantee scheme tax:-

(a)	Towards arrears of rent from 1 February 1982 to 31 August 1982 at the rate of Rs.3,077.75 paise	Rs.18,466.50 paise
(b)	Arrears towards employment guarantee scheme taxes from 1 July 1978 to 28 February 1982	Rs. 3,431.00 paise
	Total	Rs.21,897.50 paise

5] The applicant by its response dated 22 September 1982 responded by stating that the demand of monthly rent at the rate of Rs.3,077.75 paise is much in excess of the standard rent and further, denied any liability towards employment guarantee scheme taxes. The applicant, further called upon the respondent landlord to

furnish particulars of standard rent under Section 21 of the said Act in respect of the suit premises, so as to enable the applicant to tender the standard rent.

6] The applicant, on 5 October 1982 applied for fixation of standard rent under Section 11 of the said Act and therein, disputed any liability for payment of any amount towards employment guarantee scheme taxes.

7] The respondent landlord instituted RAE & R Suit No. 206/711 of 1984 seeking recovery of possession, *inter alia* on the ground of default in payment of rent and permitted increases, carrying out additions and alterations of permanent nature to the suit premises, causing waste and damage to the suit premises, in general breach of terms of tenancy. A prayer was also made for recovery of Rs.21,999.75 paise, consistent with the notice dated 14 September 1982.

8] The Small Causes Court, upon consideration of the applicant's defence, as also the material on record, dismissed the suit for recovery of possession by judgment and order dated 22 December 2006. The respondent instituted appeal no. 122 of 2007 before the appellate bench of the Small Causes court, which was

pleased to allow such appeal partly and the operative order of which, read thus :-

“ORDER

- 1) *Appeal No. 122 of 2007 is partly allowed with costs.*
- 2) *The findings of learned Trial judge on issue nos. 1, 2, 6 and 7, relating to non-payment of arrears of rent and permitted increases and recovery of possession of the suit premises on the said ground is reversed.*
- 3) *The findings of learned Trial Court on issue nos. 3, 4 and 5, relating to breach of terms of tenancy, additions and alterations of permanent nature and causing the waste and damage to the suit premises are confirmed.*
- 4) *We modify the decree as under:-*
 - a) *R.A.E. & R. Suit No. 206/711 of 1984 is partly decreed with costs, for possession of the suit premises u/s. 12(3) of Bombay Rent Act, 1947, on the ground of non-payment of rent and permitted increases.*
 - b) *Defendants are directed to deliver vacant and peaceful possession of suit premises namely, room admeasuring about 7317 sq. ft. on the first floor of the building situated at 10, Caves Road, Meher Tiles Compound, Jogeshwari (E), Mumbai 400070, within three months from today to the plaintiffs.*
 - c) *Defendants are directed to pay the amount of Rs.21,099.75 ps. to the plaintiffs. However, they are entitled to get adjustment in payment of the said amount if any amount is deposited by them during the pendency of suit.*
- 5) *An enquiry under Order XX, Rule 12 of C.P.C. is directed for determination of mesne profits from the date of*

suit till the plaintiffs get vacant possession of the suit premises from the defendants.

Decree be drawn up accordingly.”

9] Mr. S. G. Deshmukh, the learned counsel for the applicant submitted that the appellate bench in making the impugned order has acted illegally and with material irregularity. In particular, Mr. Deshmukh submitted that the view taken in the impugned judgment and order is contrary to the provisions contained in Section 12(3) of the said Act, which provisions, the appellate bench has virtually ignored or in any case failed to interpret correctly. Besides, Mr. Deshmukh submitted that relevant material has been totally overlooked thereby rendering its findings on the aspect of default in payment of arrears of rent and permitted increases perverse and contrary to the weight of evidence on record. For these reasons, Mr. Deshmukh submitted that the impugned judgment and order warrants interference.

10] Ms Preeti Ramani, the learned counsel for the respondent landlord however defended the impugned order by submitting that in the present case there was clear default on the part of the applicant in the matter of payment of rents as well as permitted increases. Ms Ramani pointed out that there was failure to pay municipal taxes, which was the liability of the applicant and

consequently one of the components of rent or at least permitted increases. Ms Ramani pointed out even during the pendency of the proceedings, there was default on the part of the applicant in the matter of payment of municipal taxes and dues towards employment guarantee scheme tax. For all these reasons, Ms. Ramani submitted that there is no warrant for interference with the impugned judgment and order.

11] The rival contentions now fall for determination.

12] Section 12 of the said Act. As it obtained at the time of institution of the proceedings seeking recovery of possession, read thus :

“12. (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 perform 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 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 in the manner provided in section 106

of the Transfer of Property Act, 1882.

(3) (a) 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 referred to in sub-section (2), the [Court shall pass a decree] for eviction in any such suit for recovery of possession.

(b) In any other case, no decree for eviction shall be passed in any such suit 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.]

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

Explanation [I].- In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this 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 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."

13] In the present case, there can be no dispute that the respondent landlord served upon the applicant notice as contemplated by Section 12(2) of the said Act demanding for arrears as well as permitted increases. Section 12 (3)(a) of the said Act provides 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 expiration of the period of one month referred to in sub section (2), the Court shall pass a decree for eviction in any suit for recovery of possession. Section 12 (3)(b) however provides that in any other cases, no decree for eviction shall be passed in any such suit if, on the first date of hearing of the suit or on or before such other date as the court may fix, the tenant pays or tenders in the 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 the costs of the suit as directed by the Court. Explanation I, in terms provides that if there is any dispute regarding the standard rent or permitted increases, the tenant shall be deemed to be ready and willing to pay if, before the expiry of 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. This is relevant because, sub section (1) of Section 12 in terms 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 are consistent with the provisions of the said Act.

14] In the present case, notice as contemplated by Section 12(2) was served by the respondent landlord upon the applicant tenant on 14 September 1982. The applicant, by response dated 22 September 1982 disputed the rent and the permitted increases, by urging that the same were in excess of the standard rent. Further, on 5 October 1982 i.e. well before the expiry of period of one month after the receipt of notice under sub section (2) of Section 12, the applicant made application to the Court under sub section (3) of Section 11 for determination of standard rent as also the liability to pay permitted increases. In such circumstances, view taken by the Small Causes Court that the applicant ought to be deemed to be ready and willing to pay standard rent and permitted increases, was consistent with the legal provisions as also the facts and circumstances of the case. There was nothing wrong in extending

the benefit of Explanation I of Section 12 (3) of the said Act to the case of the applicant – tenant and, the appellate bench, without adverting to the material on record as also scope and legal import of the said explanation, has acted illegally in interfering with the decision of the Small Causes Court.

15] Ms Ramani however submitted that in terms of provisions of Section 11, as well as 12, the aspect of '*standard rent*' and '*permitted increases*' have been dealt with separately. Ms Ramani submitted that in the present case, the applicant can be said to have raised a dispute with regard to standard rent, however, there was no dispute with regard to permitted increases. Accordingly, Ms Ramani submitted that benefit of Explanation was rightly not extended to the applicant, at least in the context of permitted increases. Ms Ramani further submitted that the Small Causes Court, in RAN Application No. 485/SR of 1982 instituted by the applicant for fixation of standard rent, by its judgment and order dated 22 December 2006 has determined that basic standard rent of the suit premises would be Rs.3,004.75 paise exclusive of permitted increases and other charges. Further, by the same judgment and order, the Small Causes Court has held that the applicant, in terms of the agreement is liable to pay permitted increases and other charges payable under the law. Ms Ramani

submitted that all this, very clearly indicates that there was in the first place no justification whatsoever in raising any dispute with regard to standard rent and in any case, there was no dispute at all raised with regard to permitted increases. The benefit of Explanation I, was therefore rightly denied to the applicant.

16] If the application under Section 11 of the said Act instituted by the applicant on 5 October 1982 is perused, then it is not possible to accept Ms Ramani's contention that there was no dispute raised with regard to permitted increases. At paragraph 6 of the said application, the applicant had clearly stated that the employment guarantee scheme taxes, as demanded, were illegal and said charges together with the rent demanded, were far in excess of the standard rent. Significantly, in the notice dated 14 September 1982, there was no demand whatsoever in respect of any municipal taxes. Besides, if the judgment and order dated 22 December 2006, the Small Causes Court has not only determined that contractual rent of Rs.3,004.75 paise was not in excess of the standard rent, but further determined that the applicant is liable to pay permitted increases, in terms of the contract with the respondent. This implies that a dispute was indeed raised with regard to the standard rent as well as permitted increases by way of institution of proceedings under Section 11 of the said Act. The

circumstance that ultimately the Small Causes Court by its judgment and order dated 22 December 2006 has decided the dispute with regard to standard rent and permitted increases against the applicant, is not really relevant, at this stage. This is because there is no serious dispute that the applicant, in pursuance of order dated 22 December 2006 did pay contractual rate of rent as well as permitted increases. In fact, during the pendency of proceedings, interim standard rent was determined by the Small Causes Court and such interim standard rent was duly deposited by the applicant regularly.

17] The mere circumstance that the Small Causes Court may have ultimately held that the contractual rent was not in excess of the standard rent or that the applicant tenant was liable to pay the permitted increases, is by no means sufficient to deny the applicant the benefit of Explanation I, which creates a legal fiction that a tenant shall be deemed to be ready and willing to pay, if before the expiry of period of one month after the notice under Section 12(2), the tenant makes an application to the Court under Section 11 (3) and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court. In the present case, admittedly, application under Section 11(3) was made within a period of one month from the date of receipt of notice under Section

12(2). Further, the applicant did pay or tender the amount of rent as determined by the Small Causes Court in the interim as well as finally. There is no question in such circumstances to conclude that the tenant was not ready and willing to pay an amount of standard rent or permitted increases.

18] The impugned judgment and order however, has made reference to notice dated 14 November 1983 by which further demands were made for payment of rent and permitted increases. Ms Ramani, on one hand submitted that during the pendency of proceedings for eviction, there is no necessity for the landlord to address fresh notice under Section 12(2) and that it is the duty of the tenant to keep on paying / depositing amounts towards rent and permitted increases. On the other hand Ms Ramani submitted that after notice dated 14 November 1983 was issued demanding rent and permitted increases, since no fresh dispute under Section 11(3) was raised by the applicant tenant, the appellate bench has rightly declined the benefit of Explanation I to Section 12(3) to the applicant. In this regard, Ms Ramani placed reliance on the decision of this Court in the case of *Chase Bright Steel Ltd., Bombay vs. Shantaram Shankar Sawant*¹ and the decision of the Hon'ble Supreme Court in the case of *Ganpat Ladha vs. Sashikant*

1 1987 Mh. L. J. 432

*Vishnu Shinde.*²

19] In order to appreciate the aforesaid submission of Ms Ramani, reference is required to be made to paragraph 18 of the impugned judgment and order, which reads thus:

“18) It is seen that in demand notice the rent and employment guarantee cess both are demanded. Employment guarantee cess is demanded @ Rs.73/- p.m. Hence, it can be said that it was payable monthly by the defendants. The provisions of Section 12(3)(a) are therefore attracted. Even if, it is considered that there is no document on record to show agreement of defendants to pay employment guarantee cess monthly, it is seen that provision of Section 12(3)(b) are attracted. In view of Section 12(1), (2), (3)(a), (3)(b) and explanation (I) & (II) to Section 12 so also, in view of judgments relied upon by the learned advocate of the plaintiffs, it is seen that readiness and willingness to pay permitted increases is always necessary to claim protection of the provisions of Section 12. The compliance of provisions of Section 12(3)(a) and (b) both are mandatory. Even in the judgment in Vora Abbasbhai Alimahomed vs. Haji Gulamnabi Haji Safibhai reported in AIR 1964 S.C. 1341 cited by learned advocate of the defendants same law is laid down. Hence, submission of learned advocate of the defendants has no substance that interim rent of Rs.2000/- fixed by the Court for the standard rent application deemed to include permitted increases. The

2 AIR 1978 SC 955

judgment of Hon'ble Supreme Court reported in AIR 1964 S.C. 1341 is arising out the judgment of Hon'ble Gujarat High Court. In the facts of present case the said judgment is not helpful to the case of defendant. Even if it is assumed as claimed by defendants that notice dated 14.11.1983 was not served, it is seen that demand of permitted increases was continuously made by the plaintiffs hence, it was necessary for the defendants to pay the same or to raise the dispute about the same. Agreement of tenancy dated 12.10.1975 is admitted by them and it shows their liability to pay taxes in addition to contractual rent. We therefore, hold that defendants did not comply the requirement of Section 12(3) (a) or Section 12(3)(b) and as such they cannot be said ready and willing to pay the arrears of rent and permitted increases demanded by the plaintiffs. Point No. 1 is therefore, answered in the affirmative and Point No.2 answered in the negative."

20] There is no dispute and the material on record substantially bears out that the applicant tenant did deposit in the Court the interim standard rent as determined and thereafter final standard rent as determined. Ms Ramani has however contended that failure to deposit amounts towards employment guarantee cess, constitutes failure to pay or deposit the permitted increases, since employment guarantee cess is a part of the permitted increases. This controversy, need not detain the Court, because, as noted earlier, the applicant tenant by application dated 5 October 1982 had raised a dispute with regard to standard rent as well as the

liability towards employment guarantee scheme tax i.e. permitted increases. At the stage of quantifying interim standard rent at the rate of Rs.2,000/- per month, there was no quantification with regard to permitted increases. It is only by the order dated 22 December 2006 that there was final determination, both on the aspect of standard rent as well as permitted increases. There is no dispute that post such final determination, the applicant tenant has deposited the rent and the permitted increases. In such circumstances, it is not possible to accept the contention raised by Ms Ramani, that the failure to deposit employment guarantee cess during the pendency of the proceedings, indicates lack of readiness and willingness on the part of the applicant to pay standard rent and permitted increases.

21] In the case of *Chase Bright Steel Ltd.* (supra), the tenant filed an application for fixation of standard rent, in which an order was made determining interim standard rent. Later on, the application for fixation of standard rent was dismissed in default but the tenant neither paid arrears nor future permitted increases during the pendency of proceedings before the trial Court as well as the appeal Court. The same were deposited, only when the tenant instituted proceedings before the High Court. In such gross circumstances, this Court ruled that the tenant was not entitled to

protection from eviction under the provisions of Section 12(2)(b) of the said Act. The fact situation in the said case therefore, offers no parallel to the fact situation in the present case. In this case, the tenant did deposit the interim standard rent in the trial Court and further, upon final disposal of the proceedings for fixation of standard rent and permitted increases, the tenant deposited the rents and permitted increases in accordance with such order before the trial Court.

22] In the case of *Ganpat Ladha* (supra), the Hon'ble Supreme Court has held that if there is a statutory default or neglect on the part of the tenant, whatever may be it is, because the landlord acquires the right under Section 12(3)(a) to get a decree of 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(2) (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 further protection available to him, a decree for the eviction would have to go against him. Section 12(3)(b) does not create any discretionary jurisdiction in the Court.

23] In the present case, it cannot be said that the trial Court, in dismissing the suit for eviction had exercised any discretion in favour of the applicant tenant. The finding of fact recorded by the trial Court was that the applicant tenant, within a period of one month from the date of the receipt of notice under Section 12(2) of the said Act had applied under Section 11 for determination of standard rent and disputed the liability to pay employment guarantee cess, as and by way of any permitted increases. Upon determination of interim standard rent, the same was duly deposited by the applicant tenant before the trial Court. Similarly, upon obtaining no relief in the application under Section 11, the applicant tenant deposited the rent and the permitted increases. Accordingly, the finding of fact was to the effect that the applicant tenant did fulfill the conditions prescribed under Section 12(3)(b) of the said Act and consequently was entitled to the benefit of Explanation I thereto. The approach of the trial Court was thus consistent with the law laid down by the Hon'ble Supreme Court in the case of *Ganpat Ladha* (supra).

24] Virtually, the entire reasoning of the appellate Court, in reversing the decision of the trial Court is contained in above quoted paragraph 18 of the impugned judgment and order. In the first part of the reasoning, the appeal Court holds that the compliance with

the provisions of Section 12(3)(a) and 12(3)(b) is mandatory. However, there is no discussion as to the manner in which such mandate can be said to have been violated in the present case. The later part makes reference to the notice dated 14 November 1983 and proceeds to hold that even if it is assumed that such notice was not served, demand for permitted increases was continuously made by the respondent landlord and it was necessary for the applicant tenant to pay the same or to raise a dispute about the same. Such approach on the part of the appeal Court is vitiated by perversity. The weight of material on record establishes fulfillment of the conditions prescribed under Section 12(3)(b) of the said Act. The dispute with regard to permitted increases was already pending in the application under Section 11 of the said Act. In such a situation, there was no obligation upon the applicant tenant to raise successive disputes, just as, there may have been no liability upon the respondent landlord to keep on serving successive notices upon a tenant. This is however on the basis that there was no dispute between the parties with regard to payment of standard rent and permitted increases. As noted earlier, in the present case there was clearly a dispute between the parties on this aspect and within a period of thirty days from the receipt of notice under Section 12(2), the applicant tenant had made an application under Section 11 for determination of standard rent and liability to

pay permitted increases. Explanation I to Section 12 of the said Act provides that where such a course is adopted by the tenant, the tenant shall be deemed to be ready and willing to pay the standard rent and permitted increases, provided of course the tenant pays / deposits the standard rent and the permitted increases, which may ultimately or in the interim be determined by the Court.

25] Accordingly, for the reasons aforesaid, the impugned judgment and order dated 8 October 2010 is set aside. The respondent landlord is however granted liberty to apply within a period of eight weeks from today for withdrawal of rents and permitted increases from out of the amounts deposited by the applicant tenant in this Court in pursuance of interim orders made from time to time. The respondent landlord to furnish detailed statement in this regard along with such application. The balance amount however, shall have to be refunded to the applicant tenant. Both the parties shall be entitled to proportionate interest, if any, that may have accrued upon the amount. If no application for withdrawal is filed by the respondent landlord within a period of eight weeks from today, the applicant tenant shall be entitled to withdraw the amounts deposited in this Court along with interest, if any, that may have accrued thereon without, in any manner diminishing the liability of the applicant tenant to pay regularly the amounts towards

rents and permitted increases to the respondent landlord.

26] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka