

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7990 OF 2016

Smt Yamuna Dattatraya Gawade ... Petitioner
v/s
Shri Vishvaprakash G. Kirad and others ... Respondents

Mr S.P. Thorat for Petitioner.
Mr Dilip Bodake for Respondent Nos.1 to 3.

CORAM : B.P. COLABAWALLA, J.

DATE : JULY 10, 2017

ORAL JUDGMENT :-

1. This Writ Petition has been filed challenging the judgment and decree passed by the Trial Court dated 4th September 2010 passed in Civil Suit No.420 of 2007 and which was confirmed by the Appellate Court vide its judgment and decree dated 8th January 2014 in Civil Appeal No.526 of 2011. Initially, this Petition was filed as a Civil Revision Application and numbered as Civil Revision Application No.370 of 2014. Thereafter, pursuant to an order passed by this Court on 28th June 2016, this Civil Revision Application was converted into a Writ Petition. The Petitioner is the heir and legal

representative of the original tenant – Defendant – Kisan Khandu Gawade. Respondent No.4 is daughter-in-law of the deceased Kisan Khandu Gawade.

2. The brief facts that need to be noted are that the Petitioner before me is the original Defendant / tenant against whom the Respondent landlord filed a Civil Suit being Civil Suit No.420 of 2007 in respect of a premises admeasuring 10' x 10' situated on the first floor in a building being House No.269, Nana Peth, Pune, within the limits of Pune Municipal Corporation, Pune and more particularly described in paragraph 2 of the Petition (hereinafter referred to as the “suit premises”). This Civil Suit came to be filed by the Respondent landlord against the Petitioner tenant on the ground that the Petitioner had committed a default in payment of rent within the meaning of section 15 of the Maharashtra Rent Control Act 1999. Before filing this Suit, the Respondent landlord had issued a notice on 10th July 2007 against the Petitioner / Defendant to pay the arrears of rent. Since according to the Respondent landlord, this payment was not made, he filed a suit being Civil Suit No.420 of 2007.

3. The Petitioner tenant resisted this Suit and denied that he was a defaulter in payment of rent and submitted that on the contrary, he was regularly paying the rent. He also relied upon an earlier Suit filed by the Respondent landlord being Suit No.227 of 1995. In view of this, the Petitioner tenant was protected under section 15(3) of the Maharashtra Rent Control Act, 1999 and prayed that the Suit be dismissed. What must be mentioned here is that during the pendency of this Suit (Civil Suit No.420 of 2007), original Defendant viz. the said Kisan expired and therefore the Petitioner, being the legal heir and representative of the said Kisan alongwith the other legal heirs were brought on record of the Trial Court. Before the expiry of the said original Defendant, he had filed a written statement contesting the Suit.

4. On the basis of the pleadings that were before the Trial Court, the Trial Court framed two issues viz. (i) whether the Defendants were defaulters within the meaning of section 15 of the Maharashtra Rent Control Act, 1999; and (ii) whether the Plaintiff was entitled to compensation. On the basis of these two issues, the Plaintiff led his evidence. However, the Defendants did not lead any

evidence and did not appear before the Trial Court. Even at the time of arguments, the Defendants were not present. In these circumstances, the Trial Court, after hearing the Plaintiff and considering the evidence led by him, answered the aforesaid two issues in favour of the Plaintiff and decreed the suit.

5. Being aggrieved by this judgment and decree of the Trial Court dated 4th September 2010, the Petitioner herein filed an Appeal before the District Judge, Pune (for short, the “Appellate Authority”) being Civil appeal No.526 of 2011. The Appellate Authority, after giving a full hearing to the Petitioner herein, dismissed the appeal by its order dated 18th January 2014 and confirmed the judgment and decree passed by the Trial Court. However, the Appellate Authority directed the Petitioner to handover possession of the suit premises to the Respondent landlord within a period of three months from the date of the order dated 18th January 2014. Being aggrieved by these two orders that the Petitioner is before me in my writ jurisdiction under Article 227 of the constitution of India.

6. In this factual backdrop, Mr Thorat, learned counsel

appearing on behalf of the Petitioner, submitted that the Courts below have completely gone wrong in decreeing the Suit in favour of the Respondent – landlord. He submitted that in the facts of the present case, the very same Respondent – landlord had filed an earlier Suit being Suit No.227 of 1995 which was on the same grounds as canvassed in the present Suit. He submitted that even in that Suit, one of the grounds on which eviction was sought was default in payment of rent. He submitted that in that Suit, (earlier Suit) the original Defendant (predecessor of the Petitioner) had deposited an amount of Rs.695/- towards arrears of rent for the period from 1994 upto 1997. He submitted that despite this, in the present Suit, the Plaintiff claimed that the rent was not paid from the year 1994 till the year 2007. In any event, after filing of this Suit, on 22nd January 2008, the Petitioner deposited an amount of Rs.2730/- towards arrears of rent. He submitted that even though in the notice given by the Respondent – landlord dated 10th July 2007, a claim of Rs.2,295/- was made towards arrears of rent, the Petitioner had deposited a sum of Rs.2,730/- which was far in excess of this amount. He therefore submitted that it was wholly incorrect on the part of the Courts below to come to the conclusion that the Petitioner had failed to continue to

pay or deposit in Court regularly the standard rent and permitted increases till the Suit was finally decided or pay the costs of the Suit as directed by the Court. He submitted that looking at section 15(3) of the Maharashtra Rent Control Act 1999, no decree of eviction could be passed by the Court on the ground of arrears of standard rent before the condition as mentioned in sub-section (3) of section 15 of the Act was complied with. In the facts of the present case, Mr Thorat submitted that this condition has been complied with by the Petitioner and therefore, the Courts below have completely gone wrong in coming to the conclusion that the Petitioner was a defaulter in payment of rent.

7. In addition to the aforesaid, Mr Thorat submitted that in any event the Petitioner had deposited Rs.10,000/- in the Appellate Court pursuant to an order dated 1st August 2011 and this was far in excess of the rent that was due and payable by the Petitioner to the Respondent – landlord and this too clearly shows that the condition as set out in section 15(3) of the Act was clearly satisfied. For all the aforesaid reasons, Mr Thorat submitted that the impugned orders clearly suffer from perversity as well as an error apparent on the face

of the record that require my interference under Article 227 of the Constitution of India.

8. On the other hand, Mr Bodake, learned counsel appearing on behalf of the Respondent Nos.1 to 3, submitted that there was absolutely nothing wrong in the impugned orders. He submitted that before the Trial Court, despite the fact that the Petitioner was duly served, she chose to stay away from the proceedings. She did not come forward and lead any evidence. Despite this, taking everything into consideration, the Trial Court correctly came to the conclusion that the Petitioner alongwith other legal heirs and representatives of the Petitioner, were defaulters in payment of rent and therefore decreed the suit. He submitted that the Appellate Authority in fact heard the Petitioner and after considering her arguments, confirmed the judgment and decree of the Trial Court. He took me through the decision of the Appellate Authority to drive home the point that not only the Appellate Authority gave a full hearing to the Petitioner, but also that it had analyzed all the facts as well as the evidence in its correct perspective which did not suffer from any perversity or error of law apparent of the face of the record requiring my interference

under Article 227 of the Constitution of India. He therefore submitted that there was no merit in this Writ Petition and the same ought to be dismissed.

9. I have heard the learned counsel for the parties at length and perused the papers and proceedings in this Writ Petition. Since the controversy in this Writ Petition revolves around section 15(3) of the Maharashtra Rent Control Act 1999, it would be apposite to reproduce the same :-

“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 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 increased 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 (IV of 1882);

(3) No decree for eviction shall be passed by the Court in any suit for recovery of possession on the grounds 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 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.”

10. Section 15 falls in Chapter III of the Maharashtra Rent Control Act, 1999 and deals with the relief against forfeiture. Section 15(1) stipulates 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 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 provisions of the Act. Sub-section (2) of section 15 stipulates that 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, until the expiration of ninety days next after notice in writing of the demand of 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. Thereafter, section 15(3) provides that no decree for eviction shall be passed by the Court in any suit for recovery of possession on the grounds 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 of 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. As can be seen from section 15(3) of the Act itself, it is broken down into two parts. The first part is for payment of arrears of rent alongwith interest within a period of 90 days from the date of service of the summons of the suit. The second part of section 15(3) enjoins upon the tenant to continue to pay or tender in Court regularly, the standard rent and permitted increases till the suit is finally decided and also pay the costs of the suit as directed by the Court.

11. In the facts of the present case, it is not in dispute before me that as far as the first part of section 15(3) is concerned, the same has been duly complied with by the Petitioner. In fact, this is the finding of both the Courts below. However, the Courts below found that the Petitioner had not complied with the second part of section 15(3) viz. to pay or tender in Court regularly the standard rent and

permitted increases till the Suit is finally decided and also pay the costs of the Suit. A finding of the Trial Court on this issue can be found in paragraph 8 of the order wherein the Trial Court has categorically stated that even though the original Defendant had deposited a sum of Rs.2,730/- on 22nd January 2008 which was inclusive of interest upto that date, the Defendant had not paid further rent from August 2007 till the date of the judgment which was approximately for 37 months together with interest which came to Rs.555/-. The Trial Court recorded that till August 2010, the Defendant would have to pay Rs.3,194/- but had in fact deposited only Rs.2,730/- and therefore, it was clear that the second part of section 15(3) of the Act was not complied with by the original Defendant (predecessor of the Petitioner).

12. The Appellate Authority also concurred with the findings of the Trial Court. The Appellate Authority took into consideration the report of the Nazir (Exh.63) that the amount of Rs.2,730/- was deposited by the original Defendant on 22nd January 2008 towards the amount of rent and interest thereon. The Appellate Authority opined that by way of demand notice issued by the Respondent

landlord, he had claimed rent for 103 months, which came to the tune of approximately Rs.2,295/-. As against this demand, the tenant had deposited an amount of Rs.2,730/- and which deposit admittedly was made within a period of 90 days from the service of the writ of summons. The Appellate Authority therefore came to the conclusion that the tenant had duly complied with the first part of section 15(3) of the Act. Thereafter, at paragraph 11, the Appellate Authority deals with the point as to whether the tenant had continued to deposit the rent during the pendency of the Suit as required under the second part of section 15(3) of the Act. The Appellate Authority, and in my view, correctly stated that even though it appeared that on 5th February 1997, the original Defendant had deposited a sum of Rs.695/- in the earlier suit, being Suit No.227 of 1995 towards rent plus costs of the Suit, there was no specification or bifurcation to show as to how much amount was deposited towards the rent and how much was towards the costs. Looking at this, the Appellate Authority came to a finding that it was doubtful that the deposited amount was sufficient to satisfy the claim due in the present Suit which was an amount approximately Rs.555/-. The Appellate Authority further came to a finding that despite raising this

contention in the written statement, neither did the original Defendant nor the heirs led any evidence before the Trial Court to substantiate this contention. It is in these circumstances that the Appellate Authority also confirmed the findings of the Trial Court.

13. On going through the orders passed by the Trial Court as well as the Appellate Authority, I do not find that they suffer from any perversity or an error of law apparent on the face of the record requiring my interference under Article 227 of the Constitution of India. Both the impugned orders deal with this issue adequately and thereafter have come to a finding that the Petitioner is guilty of not complying with the second part of section 15(3) viz. that she and her predecessor (original Defendant) failed to pay or deposit in Court regularly, standard rent and permitted increases till the Suit was finally decided and also pay costs of the Suit as directed by the Court. Since this provision is a relief against forfeiture that is granted to the tenant, it has to be strictly construed. There is no scope for purposeful interpretation in section 15(3) of the Act. This is now well settled by a decision of the Supreme Court in the case of **Yusufbhai Noormohammed Jodhpurwala v/s Mohamed Sabir Ibrahim**

Byawarvala, reported in 2015(2) ABR 406. The Supreme Court was considering the provisions of section 12(3)(b) of the Bombay Rents, Hotel and Lodging House Rules Control Act 1947 (old Rent Act). The Supreme Court opined that the law was well settled by a series of judgments of the Supreme Court and came to a conclusion that the provisions of section 12(3)(b) have to be strictly construed. Paragraph 7 of this decision reads thus :-

“7. The law on section 12(3)(b) is well settled by a series of judgments of the Court. In Ganpat Ladha v. Sashikant Vishnu Shinde (1978)2 SCC 573 : (AIR 1978 SC 955) this Court overruled a judgment in Kalidas Bhuvan Bhagwandas' case in which a Division Bench of the Bombay High Court thought that it was open under section 12(3)(b) to exercise a discretion in favour of the tenant. In para 11 of the said judgment, it was stated :

'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 failed to carry out their obligations 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 Nazar v. Ranchhodbhai Shankarbhai Patel (AIR 1968 Guj. 172) : (1968) 9 Guj.L.R. 48). If there is statutory default or neglect on the part of the tenant, whatever may 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 valor 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 the 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 court.'

This statement of the law was followed in Jamnadas Dharamdas v. Joseph Ferreira (1980) 3 SCC 569 at para 12 : (AIR 1980 SC 1605) and Mranalini B. Shah v.s Bapalal Mohanlal Shah (1980) 4 SCC 251 at para 12 : (AIR 1980 SC 954)."

14. Looking at the law laid down by the Supreme Court and considering that section 15(3) is similar to the provisions of the terms of old Rent Act, the provisions of section 15(3) would also have to be strictly construed. Looking at the findings given by the Courts below and especially that of the Appellate Authority that there is nothing on record to show that the amounts deposited in the earlier Suit would be enough to satisfy the second part of section 15(3), namely depositing in Court regularly, standard rent and permitted increases till the final disposal of the Suit, I find that there is no infirmity in the orders passed by the Courts below.

15. For the foregoing reasons, I find no merit in this Petition and the same is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. The interim orders, if any, stand vacated forthwith.

(B.P. COLABAWALLA, J.)