

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2186 OF 1994**

Shamsuddin M Bandar

...Petitioner

Versus

Khairunbi M Bargir

...Respondent

Mr Manoj A Patil, *for the Petitioner.*

Mr Rahimtulla M Momin, *for Respondent No. 1a to 1f.*

CORAM: G.S. PATEL, J

DATED: 17th November 2017

PC:-

1. This writ petition filed by the original Defendant/tenant was admitted on 15th June 1994 and interim relief granted, both for good reason. The only ground for eviction was arrears of rent and, as we shall see, both Courts below materially misdirected themselves in this regard.

2. The premises in question are a shop of 10 ft. X 12 ft. in a house property CTS No. 1311-B/2 at Sangli. The present litigation has something of a history. In 1973, the Defendant, or at least his ancestors, for we are now dealing with third or fourth generation in this tenancy dispute, filed Suit No.93 of 1973 to fix the standard rent. This resulted in a decree that by today's standard borders on the alarming. It fixed a rent of Rs.35/- per month *including a*

electricity and water charges. In 1977 the landlord brought suit for ejectment claiming the Defendant to be in arrears of rent. He filed Regular Civil Suit 28 of 1977, but he claimed the arrears of rent to be a total of Rs.280/-. The landlord's suit was dismissed on 13th June 1991. A specific finding was returned that there were no arrears and that there was no valid tenancy termination notice at that time. Then came the present Regular Civil Suit No.276 of 1984, where once again, the landlord sued for ejectment on the ground of arrears and said that Rs.280/- were due.

3. In the present suit the Defendant entered a written statement. He contested the correctness of the notice and the computation of arrears. After framing issues, the 4th Joint Civil Judge, Junior Division, Sangli partly decreed the suit on 5th September 1986. He ordered delivery of possession and an amount of Rs.1,068.80 to the Plaintiff towards arrears of rent. Future rent was directed to be paid at Rs.35/- per month. The first difficulty with the Trial Court order was the manner in which the Court went about its business in determining the arrears, and assessing the correctness of the notice and the demand for arrears. The Trial Court said, and to this extent (and perhaps only to this extent) it was correct, that it would have to consider arrears up to the date of the notice, 30th April 1984. The Trial Court then said that 'for this simple suit' it had given 'four complete days to both parties only to calculate arrears'. Each side was supposed to draw up a statement of payment or arrears. There followed, apparently, what is described as 'a long discussion in open Court'. Then the two charts were marked in evidence. The Defendant's chart was Exhibit 58. The Plaintiff's chart was Exhibit 46. Plumping for the Defendant tenant's chart, the Trial Court said

that it would go by his figure. Then it simply computed that portion of the Defendant's statement that Plaintiff did not accept and took this to be the 'proved' arrears and held this to be necessarily the amount of rent in default.

4. Now the difficulty is that the Court was confronted with the first decree, the one that fixed standard rent. The Trial Court said it could not of course examine the merits of the case by which standard rent was fixed, i.e., it could not go behind that decree because it was not sitting as an Appellate Court. But, the Trial Court said, no law prohibited it, 'from finding out the meaning of the order in that declaratory suit'. Apparently this exercise was to determine whether, despite the express wording of the first decree, the standard rent fixed did in fact include electricity and water charges. If this was not going behind the original decree, then it is difficult to understand what it was.

5. The Defendant appealed. This unfortunately resulted in the impugned judgment of 24th February 1994 by which the District Judge at Sangli not only repeated all the mistakes of the Court below, but seems to have added to them. This is evident from paragraphs 10 and 11 at pages 63 and 64. The contesting charts were once again revisited and the Defendant's chart was once again examined and studied for that portion of it that the Plaintiff did not accept. The Appellate Court held that there was no direct evidence led by the Defendant to prove the items disputed by the Plaintiff, and, therefore, these disputed items totalling to Rs.585/- had to be added to an earlier arithmetical discrepancy of Rs.77.50 resulting in a total of Rs 662.50, and this, the Appeal Court said, was the

amount of rent due, it was for more than six months, and hence the Plaintiff had proved his case.

6. For some reason the Appellate Court then also dove into the question of who was liable to pay for the electricity and water despite the earlier decree that had attained finality, and ultimately concluded that the default in payment of standard rent and permitted increases stood proved. Resultantly, the appeal was dismissed.

7. I do not think that it requires very much examination to say that neither of these orders can be sustained. The entire discussion on the assessment of arrears of rent is misdirected and misconceived. Eviction cannot be ordered on a computation arrived that in this haphazard and entirely ad-hoc manner.

8. I am unable to see how the Respondent landlord's reliance on the decision in *Srinivas Babulal v Ramakant s/o Shivnarayan Jaiswal*¹ and *Nibaran Chandra Bag v Mahendra Nath Ghughu*² are of any assistance. It is true that this court is slow to interfere when there are concurrent findings, but what the argument overlooks is that it is not the mere concurrence but the existence of findings that is of some consequence. The second decision is on the question of invalidity of a notice. In the present case this is of a little assistance to the Respondent. As we have seen the suit did not proceed to a decree on the basis of the claim in the notice but rather on the basis of a wholly independent exercise adventured by the Courts below.

1 2011 (2) Bom CR 370 : 2011 (1) ALL MR 315 : 2011 (2) Mah LJ 156.

2 AIR 1963 SC 1895.

From any perspective it is not possible to sustain the impugned order.

9. Rule is made absolute. The impugned order is quashed and set aside. The suit stands dismissed. There will be no order as to costs.

10. This is, of course, without prejudice to the rights of the landlord to initiate fresh proceedings, if he so inclined.

(G. S. PATEL, J)