

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 2254 OF 1993

Ashokkumar Uttamchand Bogawat,
Age : 46 yrs, Occ: Business & Agri.,
R/o. Khist Galli, Dist: Ahmednagar.

... **PETITIONER**
(Original Plaintiff)

VERSUS

1) Dinkar Sakharam Bhingardive
(Deceased) through his L.Rs.

1-A) Vithabai Dinkar Bhingardive,
Age: 54 yrs, Occ: Household,

1-B) Ambadas Dinkar Bhingardive,
Age : 29 yrs, Occ: Service,

1-C) Shankar Dinkar Bhingardive,
Age : 25 yrs, Occ: Education,

All resident of C.T.S. No.7549,
Station Road, Ahmednagar.

... **RESPONDENTS**
(Original Defendants)

...

Mr. V. S. Bedre, Advocate for Petitioner.
Court notice served on Respondent Nos.1-A to 1-C.

...

CORAM : **V. K. JADHAV, J.**

RESERVED ON : 23rd November, 2017.

PRONOUNCED ON: 05th January, 2018.

JUDGMENT:

. This writ petition is directed against the judgment and decree passed by the Additional District Judge, Ahmednagar in Regular Civil Appeal No.47 of 1989 dated 8th July, 1993, by confirming the judgment and decree passed by the Joint Civil Judge Junior Division, Ahmednagar in Regular Civil Suit No.731 of 1984 dated 15th April, 1988.

2 Brief facts giving rise to the present writ petition are as follows:

- a) The Petitioner / original Plaintiff is the owner of CTS No.7549 situated at Ahmednagar Station Road out of which one tin shed room admeasuring 15'x10' as described in the plaint paragraph 1, situated on the eastern side of CTS No.7549 is in occupation of the Respondent / Defendant (tenant) on the monthly rent of Rs.40/-. The tenancy commences from the first day of English calender month and expires on the last day of the month. The Petitioner / Plaintiff

contends that the rent upto the end of February 1984 paid by the Respondents / Defendants (tenants) and accordingly, the Petitioner / Plaintiff has issued the receipts. However, the Respondent / tenant did not pay the rent since 1st March, 1984 onwards though the Petitioner / Plaintiff had demanded the same. The Petitioner / Plaintiff has therefore, issued a notice dated 1st October, 1984 and terminated the tenancy and demanded the arrears of rent and possession of the suit premises. However, the Respondent / tenant did not comply the notice. It has been pleaded that the Defendant / tenant is a defaulter for more than six months of the rent. It has also been specifically pleaded that the conduct of the Defendant is of such a nature causing nuisance and annoyance to the adjoining neighbours. It has also been specifically pleaded that the Petitioner / Plaintiff requires the suit premises reasonably and *bona-fide* for his use

and occupation and greater hardship will be caused to Petitioner / Plaintiff if he is not put in possession. Since the Respondent / Defendant (tenant) did not comply the notice, the Petitioner / Plaintiff filed the suit for recovery of rent, possession and decree of eviction.

- b) The Respondent / Defendant (tenant) strongly resisted the suit by filing the written statement. It has been contended that the Respondents / Defendants were regularly paying monthly rent to the father of the Petitioner / Plaintiff and the father of the Petitioner / Plaintiff used to issue receipts some times and some times was not issuing the rent receipts. Initially, the rent for the suit premises was Rs.35/- per month and it was increased to Rs.40/- per month. It has also been pleaded that the rent is excessive and exorbitant and in fact, the rent of the suit premises is not more than Rs.10/- per month. It has been specifically denied that the Respondent /

Defendant did not pay the rent since 1st March, 1984 onwards. It has also been denied that the conduct of the Defendant is causing nuisance and annoyance to the adjoining neighbours. It has also been denied that the Petitioner / Plaintiff requires the suit premises reasonably and *bona-fide* for his use and occupation and greater hardship is likely to be caused to the Petitioner / Plaintiff if he is not put in possession.

- c) On the basis of rival pleadings of the parties to the suit, the Trial Court has framed the issues and accordingly, both the parties led their oral and documentary evidence in support of their rival contentions. The learned Judge of the Trial Court has held that the Petitioner / Plaintiff has failed to prove the conduct of the Defendant / tenant as a nuisance and annoyance to the adjoining neighbours and also held that the Petitioner / Plaintiff failed to prove that he requires the suit premises reasonably and *bona-*

fide for his use and occupation. The learned Judge of the Trial Court also held that no greater hardship will be caused to the Petitioner / Plaintiff if he is not put in possession of the rented premises. The learned Judge of the Trial Court also held that as the Defendant / tenant did not raise the dispute regarding the standard rent by filing a separate application within a month from the receipt of the notice, the Defendant cannot raise the dispute regarding the standard rent in his written statement. The learned Judge of the Trial Court also held that the Petitioner / Plaintiff failed to prove that the Defendant / tenant is willful defaulter within the meaning of Section (12)(3)(a) of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947 (hereinafter referred to as the "Rent Act, 1947"). The learned Judge of the Trial Court by judgment and decree dated 15th April, 1988 dismissed the suit of the Plaintiff. Bing aggrieved by the

judgment and decree passed by the Trial Court, the Petitioner / Plaintiff has preferred Regular Civil Appeal No.47 of 1989 and the learned Additional District Judge, Ahmednagar, by judgment and order dated 8th July, 1993 dismissed the appeal and confirmed the judgment and decree passed by the Trial Court. Hence, this writ petition.

3 The learned counsel for Petitioner / original Plaintiff submits that both the Courts below have not correctly framed the substantial question of law and procedure, which resulted into manifest injustice to the Petitioner. Both the Courts below have misinterpreted and misconstrued the provisions of the Rent Act, 1947. The learned counsel submits that the Petitioner / Plaintiff has issued a proper and valid legal notice to the Respondent / Defendant and the same was received by them. It is an admitted fact that the Respondent / Defendant has not tendered or paid the rents within thirty days from the receipt of the notice sent by the Petitioner / landlord. Thus, the Court has no discretion, but to pass the decree

under Section 12(3)(a) of the Rent Act, 1947. The learned counsel submits that the Respondent / Defendant has not tendered the amount of rent as demanded by the Plaintiff / landlord nor raised the dispute under Section 11 of the Rent Act, 1947 and even they have not filed an application for fixation of standard rent of the suit premises. The Respondent / Defendant has given admission in the cross-examination that they have not paid the rent to the Petitioner / Plaintiff after 9th March, 1984. The learned counsel submits that both the Courts below have erred in observing that the Respondent / Defendant sent the money orders, however, the said money order coupons are not proved nor exhibited by the Courts below. The learned counsel submits that even the Defendants have not deposited the rent in the Court regularly and as such, the Petitioner / Plaintiff is entitled for the decree under Section 12(3)(b) of the Rent Act, 1947. The learned counsel submits that the requirements of Section 12(3)(b) of the Rent Act, 1947 have to be strictly complied with. The Court has no discretion to accept the payment made otherwise than in accordance with Section 12(3)(b) of the Rent Act, 1947. The learned counsel submits that two conditions i.e. arrears will be deposited or paid on the first day of hearing and thereafter, the rent must be paid or

tendered in the Court regularly till the suit and appeal, if any, decided, the tenant will be entitled to protection under Section 12(3)(b) of the Rent Act, 1947 on the ground that the entire amount due has been paid before the judgment and therefore, there was a substantial compliance of the provisions of Section 12(3)(b) of the Rent Act, 1947. The Court does not have any discretion to accept the payment, which is made otherwise than in accordance with the requirements of Section 12(3)(b) of the Rent Act, 1947.

4 The learned for the Petitioner in order to substantiate his submissions placed his reliance on the following cases:

- a) **Jaypal Bandu Adake and another Vs. Basavali Gurulingappa Mhalank and another**, reported in, **1982 Mh.L.J. 512**,
- b) **Harbanslal Jagmohandas and another Vs. Prabhudas Shivilal**, reported in, **AIR 1976 Supreme Court 2005**,
- c) **Ganpat Ladha Vs. Sashikant Vishnu Shinde**, reported in, **AIR 1978 Supreme Court 955(1)**,
- d) **Mranalini B. Shah and another Vs. Bapalal Mohanlal Shah**, reported in, **AIR 1980 Supreme**

Court 954(1),

- e) **Bhaskar Bhagwant Shinde Vs. Sou. Vasudha Mahdukar Kadam and another**, reported in, **2005(3) Mh.L.J. 428**,
- f) **Shivnath s/o Anandram Mundada (deceased) through L.R.s Vs. Ramdayal Surajmal Rathi (deceased) through L.Rs.**, reported in, **2011(3) Mh.L.J. 860**.

5 None present for Respondent Nos.1-A to 1-C.

6 The Petitioner / Plaintiff has instituted the suit for recovery of due rent and possession of the suit premises. There is no dispute that the Petitioner / Plaintiff is the owner of property bearing CTS No.7549 out of which one room admeasuring 15'x10' having tin shed as described in the plaint paragraph 1 given to the Defendant on monthly rent and the tenancy commences from the first day of English calender month and ends on the last day of the month. It is the contention of the Defendant that the rent at present is excessive and he claims for fixation of standard rent of the suit premises. It is also an admitted fact that the Petitioner / Plaintiff has issued notice Exhibit 29 to the Defendant on 1st October, 1984 and the same was served

on the Defendant vide Exhibit 30. The Defendant has also replied to this notice on 10th October, 1984 vide Exhibit 39. Admittedly, the Defendant has failed to file the standard rent application within one month from the receipt of the aforesaid notice as provided under Section 11 (3) read with explanation (I) of Section 12 of the Rent Act, 1947.

7 Thus, the substantial question arises for consideration whether in order to take the case out of the provisions of Section 12(3)(a) of the Rent Act, 1947, it is obligatory on the tenant to make an application for fixation of standard rent under Section 11(3) of the Rent Act, 1947 as required by the Explanation (I) to Section 12 of the Rent Act, 1947, failing therein whether the tenant can claim the protection of Section 12(1) of the Rent Act, 1947 by raising the dispute about the standard rent in the written statement itself.

8 It is not out of place to mention here that the Trial Court has framed issue No.1 as to what is the standard rent and though the Trial Court has made the observations in paragraph 6 of the judgment that a separate application is must for fixation of standard rent within one month from the date of receipt of the notice, recorded the finding

to issue No.1 as does not survive and further recorded the finding to issue No.2 in the negative and held that the Plaintiff fails to prove that Defendant is willful defaulter within the meaning of Section 12(3)(a) of the Rent Act, 1947.

9 In order to correctly appreciate the submissions made on behalf of the Petitioner / Plaintiff, the relevant Section 12 and Section 11(3) of the Rent Act, 1947, are reproduced hereinbelow:

“12. 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 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 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 increase due to him as the Court thinks fit.

Explanation 1.— 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.

Explanation II.— For the purposes of sub-section (2), reference to "standard rent" and "permitted increase" shall include reference to "interim standard rent" and "interim permitted increase" specified under sub-section (3) or (4) of section 11.

Explanation III.— For the purposes of this section, where a tenant has deducted any amount from the rent due to the landlord under section 173C of the Bombay Municipal Corporation Act for recovery or any water tax or charges paid by him to the Commissioner, the tenant shall be deemed to have paid the rent to the extent of deductions so made by him."

... ..

11. Court may fix standard rent and permitted increases in certain cases.

- (1) ...
 - (a) ...
 - (b) ...
 - (c) ...
 - (d) ...
 - (e) ...
- (2) ...

(3) If any application for fixing the standard rent or for determining the permitted increases is made by a tenant who has received a notice from his landlord under sub-section (2) of section 12, the Court shall

forthwith specify the amount of rent or permitted increases which are to be deposited in Court by the tenant, and make an order directing the tenant to deposit such amount in Court or at the option of the tenant make an order to pay to the landlord such amount thereof as the Court may specify, pending the final decision of the application. A copy of the order shall be served upon the landlord. Out of any amount deposited in Court, the Court may make an order for payment of such reasonable sum to the landlord towards payment of rent or increases due to him as it thinks fit. If the tenant fails to deposit such amount or, as the case may be, to pay such amount thereof to the landlord, his application shall be dismissed.

- (4) ...
- (5) ...
- (6) ...”

10 In view of the said provisions, if the rent is payable by month and there are arrears of more than six months and the tenancy is terminated by a notice, either the entire arrears of rent must be paid within one month or if a dispute regarding standard rent has to be raised, the tenant must apply within one month of the date of the receipt of the notice under Section 11(3) of the Rent Act, 1947 and obtain appropriate direction from the Court. If the tenant complies with those directions, he must be deemed to be a person who is ready

and willing to pay. The question, therefore, arises whether any other mode (third mode) is available for getting the protection of the Rent Act, 1947 on the basis that the tenant is one who is ready and willing to pay. In the instant case, the Respondents / tenants have raised a dispute about the standard rent in reply to the notice vide Exhibit 39 and also in the written statement.

11 In the case *Jaypal Bandu Adake and another Vs. Basavali Gurulingappa Mhalank and another* (supra) relied upon by the learned counsel for Petitioner, the Division Bench of this Court had an occasion to deal with this issue on a reference made by the learned Single Judge. The questions referred relate to the construction of the provision of Section 12(3)(a) of the Rent Act, 1947 and the determination of the correct ratio of two decisions of the Supreme Court in **Shah Dhansukhlal Chhaganlal Vs. Dalichand Virchand Shroff**, reported in, **AIR 1968 SC 1109**, and **Harbanslal Jagmohandas and another Vs. Prabhudas Shivlal** (supra). In the above cited case, the Division Bench of this Court made an endeavour to find out and ascertain on reading of the aforesaid two judgments of the Supreme Court that if a reply is given by a tenant to

the notice issued by the landlord under Section 12(2) of the Rent Act, 1947 and in that reply he had disputed the standard rent, that is a permissible way of raising a dispute for the purposes of taking the case out of the clutches of Section 12(3)(a) of the Rent Act, 1947. In paragraphs 15 and 16 of the judgment, the Division Bench of this Court has made the following observations:

“15. It is important to point out that in the other appeal with which the Supreme Court was dealing and which had come to the Supreme Court from the Gujarat High Court, the view taken by the Gujarat High Court was that the dispute as to standard rent was to be raised within one month from the service of the notice on the tenant. It appears that the finding in the Gujarat case was that after the notice was given by the landlord on 6th December, 1966 to the tenant, a letter was alleged to have been sent by the tenant on 16th February, 1967 though two earlier letters mentioned in that letter were found to have been fabricated. Referring to the decision of this Court the Supreme Court observed as follows :

"The view of the Bombay High Court overlooks the limitation of time within which a dispute is to be raised as to standard rent. The view of the Bombay High Court is that disputing within one month of the service of the notice terminating the tenancy is one mode of raising a dispute and there is another mode of raising the dispute at any

stage of the suit. The view of the Bombay High Court nullifies the provisions contained in Section 12 and Explanation thereto and confers a right on the tenant where the legislation does not contemplate such a right."

Now, when the Supreme Court in the above quoted paragraph did not approve of the view taken by this Court that disputing the standard rent within one month of the service of the notice is one mode of raising a dispute and observed that this view nullifies the provisions contained in section 12 and Explanation thereto, the Supreme Court must be held to have positively taken the view that apart from the mode referred to in the Explanation to section 12, the tenant has no other mode in which the tenant can raise a dispute about standard rent for the purposes of section 12(3)(a). When the Supreme Court observed that the view of this Court nullifies the Explanation and overlooks the limitation, it is obvious that the reference was to the limitation of one month prescribed by Explanation I to section 12. That Explanation in unmistakable terms requires that in any case where there is a dispute as to amount of standard rent or permitted increases recoverable under the 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) of section 12, 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. When

the Supreme Court observed that the provisions of section 12 were being nullified, the reference was to the provisions of section 12(1) and section 12(3)(a).

16. Section 12(1) disables a landlord from recovering 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 and observes and performs the other conditions of the tenancy so far as they are consistent with the provisions of the Rent Act. In a case where there is a dispute, the Legislature has provided for a deeming fiction whereby a tenant can be considered to be ready and willing to pay only if he acts in the manner provided by Explanation I. Explanation I contemplates two things. It firstly requires the tenant to make an application for fixation of standard rent within the specified period, namely, before the expiry of one month after the notice under section 12(2) is received by him and the second condition is that he has to pay or tender the amount of rent or permitted increases specified in the order made by the Court. Unless these two conditions are satisfied, it cannot be said that the tenant is ready and willing to pay the amount of standard rent as contemplated by section 12(3)(a). The Explanation clearly provides for what the tenant is to do where he wants to raise a dispute about the standard rent before he can claim to be out of the rigour of section 12(3)(a) of the Rent Act.”

12 Section 11(3) of the Rent Act, 1947 refers to an application for fixation of standard rent by a tenant who has received a notice from his landlord and when such application is made, there is an obligation on the Court to specify the amount of rent or permitted increases which are to be deposited in Court by the tenant and the Court is further obliged to make an order directing the tenant to deposit such amount in Court or at the option of the tenant to make an order to pay to the landlord such amount thereof as the Court may specify pending the final decision of the application. If the tenant fails to deposit such amount or to pay such amount thereof to the landlord, his application shall be dismissed. A tenant can only be considered to be ready and willing to pay, if he makes an application to the Court under sub-Section (3) of Section 11 of the Rent Act, 1947 and thereafter, pays or tenders the amount of rent or permitted increases specified by the Court. In view of the ratio laid down by the Supreme Court in the case of *Harbanslal Jagmohandas and another Vs. Prabhudas Shivlal* (supra), in order to escape from the consequences mentioned in Section 12(3)(a) of the Rent Act, 1947, the tenant should make an application under Section 11(3) of the Rent Act, 1947 within one month of the service of the notice under Section 12(2) and

there is no other mode available. In the case of *Harbanslal Jagmohandas and another Vs. Prabhudas Shivilal* (supra), the Supreme Court points out that in order to avoid the operation of Section 12(3)(a) of the Rent Act, 1947, the dispute with regard to standard rent or permitted increases must be raised at the latest before the expiry of one month from the date of service of notice under Section 12(2) of the Rent Act, 1947 and it is not enough to raise a dispute for the first time in written statement. It nullifies the provisions contained in Section 12 and Explanation thereto and confers a right on the tenant where the legislation does not contemplate such a right.

13 In paragraph 32 of the judgment, the Division Bench of this Court in the case of *Jaypal Bandu Adake and another Vs. Basavali Gurulingappa Mhalank and another* (supra) has made the following observations:

“32. On giving our anxious consideration to the legal position as now settled by the decisions of the Supreme Court, we are of the considered view that the only way to prevent a decree for eviction being passed under the provisions of section 12(3)(a) of the Rent Act is

that the tenant must make an application raising a dispute regarding standard rent and must ask for fixation of standard rent under section 11(3) of the Rent Act as required by Explanation I to section 12. There is no other mode permissible for raising a dispute as to standard rent for the purposes of section 12 of the Rent Act. By raising a dispute with regard to standard rent by the tenant in a reply to the demand notice before the expiry of one month without making an application under section 11(3) read with Explanation I to section 12, the Court will not be prevented from passing a decree for eviction under the provisions of section 12(3)(a). The fact that there was some dispute about standard rent prior to the notice under section 12(2) would also be immaterial and would not affect the power of the Court to pass a decree under section 12(3)(a) if the conditions referred to in section 12(3)(a) are satisfied if no application has already been made under section 11(1) of the Act. This will answer the first two questions raised in the order of reference.”

14 In view of the above, even if the tenant has raised the dispute in reply to the demand notice without making any application under Section 11(3) read with Explanation (I) to Section 12 of the Rent Act, 1947, the Court is not prevented from passing a decree of eviction under the provisions of Section 12(3)(a) of the Rent Act, 1947. It appears that both the Courts below have not considered this

legal position. Both the Courts below have given weightage to the admission given by the Petitioner / Plaintiff to the effect that the Petitioner / Plaintiff has admitted in his cross-examination that the Respondents / Defendants have sent the rent by money order. Both the Courts below, however, ignored that the Petitioner / Plaintiff has qualified his so-called admission by deposing that he has refused to accept the money order as it was insufficient. Since the Defendants have raised the dispute about the standard rent and thereafter, failed to comply with the provisions of sub-Section (3) of Section 11 read with Explanation (I) to Section 12 of the Rent Act, 1947, the rent allegedly paid through money order loses its significance. There is no record available to indicate that the Respondents / Defendants were regular in depositing the rent in the Trial Court or even in the Appellate Court. Consequently, the writ petition deserves to be allowed. Hence, the following order:

ORDER

- I. The writ petition is hereby allowed.
- II. The judgment and decree passed by the
Additional District Judge, Ahmednagar in Regular

Civil Appeal No.47 of 1989 dated 8th July, 1993 and judgment and order passed by the Joint Civil Judge Junior Division, Ahmednagar in Regular Civil Suit No.731 of 1984 dated 15th April, 1988, are hereby quashed and set aside.

- III. The Plaintiff is entitled to a decree for possession of the suit premises and also for a decree of arrears of rent of Rs.396.60.
- IV. The Plaintiff is also entitled to *mesne* profit from the date of the decree alongwith the costs of the suit and appeal. In the circumstances, there shall be no order as to the costs of this writ petition.
- V. Rule is made absolute in the above terms.

[V. K. JADHAV, J.]