

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.123 OF 2019
WITH
CIVIL REVISION APPLICATION NO.124 OF 2019

NANDLAL GHISULAL PANDE
VERSUS
ASHWINKUMAR SURESHCHANDRA LALWANI AND
ANOTHER

...

Advocate for applicant : Mr. R.S. Deshmukh a/w A R
Joshi

Advocate for Respondents 1,2 : Mr. P R Katneshwarkar
a/w Miss A S Jadhav

...

CORAM : V.K. JADHAV, J.

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Reserved on : January 10, 2020
Pronounced on : April 30, 2020

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ORDER :-

1. With the consent of the learned counsel for the parties, heard finally at admission stage.

2. Being aggrieved by the judgment and order passed by the learned District Judge-1, Jalgaon dated 20.4.2019 in Regular Civil Appeal No.156 of 2004 confirming thereby the decree passed by the Trial Court in Regular Civil Suit No.41 of 1980 and partly allowing the cross-objection filed by the respondents/plaintiffs,

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the applicant/original defendant has preferred these two Civil Revision Applications.

3. Brief facts, giving rise to the present civil revision applications, are as follows :-

a] The respondents/plaintiffs have instituted a suit bearing Regular Civil Suit No.41 of 1980 for possession, recovery of rent from the revision applicant/defendant. According to the respondents/plaintiffs, they are the owners of the two storied building Grampanchayat House no.1624 admeasuring 2468 square feet situated at Jamner, Tq. Jamner, District Jalgaon and, out of it, western side three rooms were let out to the revision applicant/defendant on monthly tenancy basis. These three rooms have been taken on rent by the revision applicant for running a mess and also for the purpose of residence. According to the respondents/plaintiffs, the revision applicant/defendant paid rent up to 31.10.1979 and promised to pay rent of Rs.250/- p.m. from November, 1979, however, he did not pay it despite repeated demands. On 1.2.1980

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respondents/plaintiffs have sent a registered notice to the defendant and terminated the tenancy w.e.f. 29.02.1980 and also demanded arrears of rent w.e.f. 01.11.1979 to 31.1.1980. It is also the case of the respondents/plaintiffs that defendant was using the suit premises for illegal purposes. Moreover, one room out of the suit rooms has been illegally sublet to one Advocate Shri C.M.Pawar by revision applicant /defendant without consent of the respondents /plaintiffs. Respondents/plaintiffs also require the suit premises for their own bonafide purposes. It is also the case of the respondents/plaintiffs that applicant/defendant on the southern side of the land of the plaintiffs committed encroachment, erected a shed and using it. The applicant/defendant has strongly resisted the suit by filing written statement Exhibit 15, admitted his tenancy, but denied all other contentions in toto including the rent, so also the description of the suit house. According to the applicant/defendant, rent is fixed at Rs.200/- per month and he paid the rent at this rate to the plaintiffs for the month of November and

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December 1979, but respondents/plaintiffs demanded rent @ Rs.250/- p.m. and he refused to issue the receipt for rent paid. He has also tendered rent for January and February, 1980 by money order but, respondents/plaintiffs refused to accept the same. It is also contended that there is no cause of action for the plaintiffs to institute the suit. Even, the applicant/defendant has alternatively challenged the title of the plaintiffs in respect of the suit property. According to the applicant/defendant, suit premises is not required bonafidely by the respondents/plaintiffs. The plaintiffs have kept many tenants in the said building and other buildings.

b] By judgment and order dated 3.4.2004, the learned Civil Judge, J.D., Jamner in Regular Civil Suit No.41 of 1980 decreed the suit with costs, directed the applicant/defendant to hand over the vacant possession of the suit house to the respondents/plaintiffs and, further directed him to pay an amount of Rs.827-85 towards arrears of rent and further to pay the damages

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@ Rs.200/- p.m. from the date of institution of the suit i.e. 25.3.1980 till delivery of possession of the suit house. Being aggrieved by the same, the applicant/original defendant has preferred Regular Civil Appeal No.156 of 2004. So far as the finding recorded by the trial court in the negative to the extent of subletting one room out of the suit property for unlawful use of the suit premises for storing explosives, encroachment and requirement of the suit house for bonafide purpose is concerned, respondents/plaintiffs have preferred cross-objection in the appeal. The learned District Judge-1, Jalgaon by impugned judgment and order dated 20.4.2019 dismissed the appeal with costs and in addition to the decree passed by the Trial Court further declared that the plaintiffs are entitled for a decree of eviction also on the ground of unlawful subletting of the suit premises as per the provisions of section 13(1)(E) of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as 'Act of 1999'). Hence, these two civil revision applications.

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4. Learned counsel appearing for the applicant/s in both these civil revision applications submits that, on 13.1.1980 the applicant/defendant had issued a notice to the respondents/plaintiffs calling upon the plaintiffs to issue receipt with regard to the rent paid by him towards November and December 1979 at the rate of Rs.200/- p.m. According to the learned counsel, it is a matter of record that the applicant/defendant paid the rent amount through money order, however, respondents/plaintiffs had refused to accept the same. On 1.2.1980 respondents/plaintiffs had issued notice to the applicant/defendant calling upon him to pay rent for the period of November 1979 to January 1980 at the rate of Rs.250/- per month. On 25.3.1980 respondents/plaintiffs instituted a suit for recovery of possession, arrears of rent and mesne profit. Learned counsel submits that the learned District Judge-1, Jalgaon has specifically recorded the finding to point no.1 in the negative and thereby held that notice dated 1.2.1980 for arrears of rent from 1.11.1979 to 31.1.1980 is not proper and legal. Learned counsel submits that

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in view of the said finding recorded to point no.1 in the negative, then, respondents/plaintiffs have no cause of action to institute a suit for default or arrears of the rent. Furthermore, a claim for eviction on the strength of such notice is also not maintainable. Learned counsel submits that in the facts and circumstances of the present case, the ratio laid down by the Full Bench of this Court in the case of **Babulal Vs. Suresh** reported in 2017 (4) Mh.L.J. 406 relied upon by the learned counsel for respondents/plaintiffs cannot be made applicable to the present case. Learned counsel submits that any measure/recourse against the tenant as contemplated under section 12 (3) of Bombay Rents, Hotel & Lodging Houses Rates Control Act, 1947 (hereinafter for short referred to as 'the Act of 1947') may be taken only on lawful compliance of the mandatory provisions of section 12 (2) of the Act 1947. Learned counsel submits that the trial court has appointed the Court Commissioner on the basis of the application Exh.17 filed by the respondents/plaintiffs. It is well settled that the Court Commissioner cannot be

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appointed for collection of the evidence. The plaintiff's witness no.1 has nowhere stated in their oral evidence that one Advocate Shri C.M.Pawar runs his office from the suit property. Furthermore, the Court Commissioner report Exhibit 20 as well as his oral evidence is silent on the point that Advocate Mr. C.M.Pawar runs his office in the suit property. All that is revealed from the Commissioner's report that material such as utensils, bags with grocery, dining table, chairs and other were kept in the room. Court Commissioner's report is silent with regard to anything such as Law Books, files, stationary, those are generally used by the Advocate for running the office. Learned counsel submits that there is no material to arrive at the finding that the applicant/defendant sublet the suit property to Advocate Mr. C.M. Pawar. Furthermore, respondents /plaintiffs have failed to examine any witness to prove that Advocate Mr. Pawar runs his office from the suit property. Learned counsel submits that in view of the same, the finding recorded by the learned District Judge-1, Jalgaon while partly allowing the cross-
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objection is unsustainable and deserves to be set aside. Learned counsel submits that, furthermore, the learned District Judge directed eviction in accordance with the provisions of Chapter XV-A of the Civil Procedure Code for non-deposit of the rent by the applicant/defendant. Learned counsel submits that it is a matter of record that the applicant/defendant has deposited the entire rent payable on his part. It is also a matter of record that on number of occasions the applicant/defendant has deposited the rent towards entire year in advance. This aspect has been completely ignored by the learned District Judge. Furthermore, non-compliance of the Order 15-A of the Civil Procedure Code contemplates striking out defence of the defendant only after issuance of the show cause notice, however, in the present case the suit for eviction came to be decreed without issuing any show cause notice. Learned District Judge-1, Jalgaon has thus committed error by applying the provisions of Order 15-A of the Civil Procedure Code. Learned counsel submits that, both the Civil Revision Applications are thus deserve to be allowed.

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5. Learned counsel for the applicant, in order to substantiate his contentions, placed reliance on following judgments :-

1. Sitaram Maruti Nagpure Vs. Fakirchand Dhase reported in [2007 (4) Mah L R.310].
2. Mahalinga Bandappa Vs. Venkatesh Waman reported in 1957 AIR (Bom.) 201.

6. Learned counsel for respondents/original plaintiffs submits that the plaintiffs are the joint owners of house No.1624/1 and 1624/3 situated at Jamner, Tq. Jamner, District Jalgaon and out of total rooms, three rooms of the ground floor were allotted to the plaintiff/defendant for running a lodge. It is monthly tenancy and it starts from the first day of each month and ends on last day of the month. Learned counsel submits that the applicant/defendant has paid rent on 31.10.1979 lastly and, thereafter refused to pay rent. On 1.2.1980 respondents/plaintiffs have issued a notice for termination of tenancy from 29.2.1980 and despite the notice served upon the applicant/defendant, no rent was paid. Respondents/plaintiffs thus constrained to institute a suit on the ground of i] default in monthly

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payments, ii] recovery of rent amount, iii] recovery of the mesne profit, iv] bonafide need and v] the applicant/defendant using the suit property for illegal purpose such as storing of explosives and subletting of the room. Learned counsel submits that after institution of the suit, the applicant/defendant was directed by the trial court to deposit the rent regularly in the Court, however, the applicant/defendant has committed several defaults. Learned counsel has pointed out the chart. Learned counsel submits that the applicant/defendant has disputed the standard rent. According to him, monthly rent was fixed at the rate of Rs.200/-. Learned counsel submits that conduct of the applicant/defendant indicates that he was not ready and willing to pay the rent regularly. Learned counsel submits that the ratio laid down by the Full Bench in a case of Babulal Vs. Suresh and others reported in 2017 (4) Mh.L.J. 406 squarely applies to this case. Learned counsel submits that the Full Bench in paragraph no.25 has held that 'to infer once tenant pays that amount recorded in the notice or tenders the same, the land lord

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has no right to institute a suit for recovery of possession, for non-payment of those arrears or continue with such proceeding for eviction and no decree for possession can be asked for, is not within contemplation of the provisions of section 15 of the Act.' These provision does not interfere with the right of the landlord to initiate proceeding for eviction. Learned counsel submits that though the applicant/tenant has raised the dispute about standard rent, he failed to file any application within one month from the service of notice by raising the dispute of the standard rate. The tenant can claim protection from operation of section 12 (3) (a) of Act of 1947 only if tenant makes an application within one month of service of notice terminating tenancy by raising disputes as to the standard rent. Learned counsel submits that provisions of section 12 (3)(b) of the Act of 1947 are mandatory and must be strictly complied with by tenant during pendency of suit or appeal and if the tenant persistently defaults during pendency of suit or appeal in paying the rent, Court has no discretion to treat it as regular payment.

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7. Learned counsel for the respondents, in order to substantiate his submissions, placed reliance on following judgments :-

- i] Babulal Vs. Suresh and others reported in 2017 (4) Mh.L.J. 406.
- ii] Harbanslal Jagmohandas and another Vs. Prabhudas Shivilal reported in 1976 Mh.L.J. 419.
- iii] Mranalini B. Shaha and another Vs. Baplal Mohanlal Shaha reported in (1980) 4 SCC 251.
- iv] Kulkarni Patterns Pvt. Ltd. and others Vs. Vasant Baburao Ashtekar and others reported in (1992) 2 SCC 46.
- v] Bhaskar Bhagwant Shinde Vs. Sou Vasudha Madhukar Kadam and another reported in 2005 (3) Mh.L.J.428.
- vi] Balasaheb Anantrao Bahirat Vs. Rohidas Bapusaheb Tupe reported in 2007 (5) BomCR 839.
- vii] Chandiram Dariyanumal Ahuja Vs. Akola Zilla Shram Wahtuk Sahakari Sanstha reported in 2013 (1) Mh.L.J. 28.
- viii]. Lalji Ramnath Pande Vs. Hawabi Abdulla Shaikh reported in 2004 (4) Mh.L.J.1020.
- ix]. Narayan Ganpat Bhoite Vs. Rampyari Suchitra Gupta and others reported in 2001 (3) Mh.L.J.234.

8. It is not disputed that when suit was instituted, the provisions of Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 were applicable. In terms of the provisions of Section 58(2)(a)

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of the Maharashtra Rent Control Act, 1999 all the applications, suit and other proceedings under the said Acts pending, on the date of commencement of this Act before any Court, Controller, Competent Authority or other office or authority shall be continued and disposed of, in terms of the provisions of Act so repealed. In terms of sub-section (2) clause (b) of Section 58 of the Act of 1999 the provisions for appeal under the Acts so repealed shall continue in force in respect of the applications, suits and proceedings disposed of thereunder. Section 12 of the Act of 1947 reads as under :-

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) No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of

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arrears of standard rent and permitted increases 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 together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine 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.

Provided that, the relief provided under this sub-section shall not be available to a tenant to whom relief against forfeiture was given in any two suits previously instituted by the landlord against such tenant.]

[(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 3[I].- In any case where there is a dispute as to the amount of standard rent of 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.]

9. Sub-section (3) of section 12 of the Act of 1947 prior to amendment reads as under :-

“[(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 may pass a decree for eviction in any 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,- (i) continues to pay or tender in Court such rent and permitted increases till the suit is finally decided; and (ii) pays costs of the suit], as directed by the Court.”

After amendment in the year 1987, sub-section (3) of section 12 of the Act of 1947 reads as under :-

“[(3) No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases 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 together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine 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.

Provided that, the relief provided under this sub-section shall not be available to a tenant to whom relief against forfeiture was given in any two suits previously instituted by the landlord against such tenant.]”

10. It appears that the learned District Judge-1, Jalgaon has misconstrued the said provision and on the basis of clause (3)(a) of Section 12 of the Act of 1947 (prior to amendment in the year 1987) erroneously held that the notice dated 1.2.1980 for arrears of the rent from 1.11.1979 to 31.1.1980 is not proper and legal. In terms of the provisions of sub-section 1 and 2 of the Act of 1947 which remained unaffected even after amendment of 1987. What is material is to issue notice of one month on the ground of non-payment of the Rent or permitted increases and the landlord is not entitled to recovery of possession of any premises so long as tenant pays or is ready and willing to pay the amount of standard rent or permitted increases, if any. In terms of the provisions of sub-section (3)(a) of section 12 of the Act of 1947 (prior to the amendment of the year 1987) the decree for eviction can only be passed, if there is no dispute about the amount of standard rent, if such rent

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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).

11. In the instant case, the applicant/defendant has also disputed the amount of standard rent so also the very title of the plaintiffs in respect of the suit property. Furthermore, in terms of clause (b) of sub-section (3) of Section 12 of the Act of 1947 (prior to amendment of 1987) and even after amendment to sub-section (3) of section 12 of the Act of 1947, it is mandatory to pay or tender in Court the standard rent and the 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.

12. In a case Babulal Vs. Suresh and others reported in 2017 Mh.L.J. 406 relied upon by the learned counsel for the respondents, following issues were referred for consideration of the Full Bench.

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1. *The issue referred for consideration of the Full Bench is recorded below : -*

“If the tenant complies the notice issued by the landlord demanding arrears of rent and pays the entire amount as demanded within the time stipulated under section 15(2) of the Maharashtra Rent Control Act, then whether the landlord can still file a suit for eviction on the ground of arrears of rent and whether the eviction can be ordered by invoking provisions of section 15(3) of the Maharashtra Rent Control Act ?”

13. The Full Bench has considered the provisions of section 15 of the Maharashtra Rent Control Act, 1999 so also the provisions of section 12 (3) (b) of the Act of 1947 and by referring the various judgments, in paragraph no.25 of the judgment has answered the reference in the following manner :-

“25. To infer that once the tenant pays the amount recorded in the notice or tenders the same, the landlord has no right to institute a suit for recovery of possession for non-payment of those arrears or continue with such proceeding for eviction and no decree for possession can be asked for, is not within contemplation of provisions of [section 15](#) of the Act. The provision does not interfere with the right of the landlord to initiate proceeding for eviction, however, sub-section (2) of [section 15](#) prescribes precondition for presentation of suit, that is to say that no suit can be initiated without issuing a notice within contemplation of said sub-section (2) of [section 15](#) and tenant's entitlement to claim relief against forfeiture shall be subject to fulfillment of conditions stipulated under sub-section (1) and (3) of [section 15](#) of the Rent Act”.

14. In a case of Sitaram Maruti Nagpure Vs. Fakirchand Dhase (supra) relied upon by the learned counsel for the applicant, the Division Bench of this Court in the facts and circumstances of the said case observed conduct of the landlord and further held that he is not entitled to seek ejectment on the ground of default when he himself refuses to accept the rent by money order. In the instant case, however, as observed by the Courts below, those money orders were not in respect of the period covered by the legal notice issued by respondents /plaintiffs. Furthermore, though, applicant/defendant has raised dispute about the standard rent, failed to file any application under section 11 of the Act of 1947 before the Court. I do not think that the ratio laid down in the aforesaid case can be made applicable to the facts and circumstances of the present case.

15. In a case Mahalinga Bandappa Vs. Venkatesh Waman (supra) relied upon by the learned counsel for applicant, in the facts of the said case, no

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notice as required by section 12 of the Act of 1947 was given by the plaintiff/landlord to the defendant/tenant and notice was given not for demanding the rent, but it was a notice asking the defendant to vacate the premises. However, in the instant case, no such occasion arises.

16. In a case Harbanslal Jagmohan Das and another Vs. Prabhudas Shivilal (supra) relied upon by the learned counsel for respondents, in paragraph nos.14 and 22 Supreme Court has made following observations :-

- “14. Under section 12 of the Act 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 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 the Act. Sub-section (2) of section 12 of the Act states 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 dues 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. Clause (a) of sub-section (3) of [section 12](#) of the Act provides for the passing of a decree for eviction first, where the rent is payable by the month; second, there is no dispute regarding the amount of standard rent or permitted increases; third, the rent or increases, are in arrears for a

period of six months; and fourth, the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2) of [section 12](#) of the Act. Clause (b) of sub-section (3) of [section 12](#) of the Act, states that 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.

22. The question as to when a dispute is to be raised came up for consideration in [Shah Dhansukhlal Chhanganlal v. Dulichand Virchand Shroff & Ors.](#) The appellant fell into arrears of rent in that case. The landlord gave a notice to the tenant on 18 April, 1955 demanding the arrears of rent and also terminating the tenancy of the defendant with effect from 31 May, 1955. The notice was received by the defendant on 21 April, 1955. The suit for ejectment was filed on 15 March, 1956 on the ground that the defendant was in arrears of payment of rent and permitted increases and as such not entitled to the protection of the Act. This Court held that [section 12](#) (1) of the Act must be read with the Explanation and so read it means that the tenant can only be considered to be ready and willing to pay if before the expiry of the period of one month 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 by the Court. This Court found in Chhaganlal's case (supra) that the tenant made no payment within the period of one month of the notice of ejectment and further that although in his written statement he raised a dispute about the standard rent he made no application in terms of [section 11\(3\)](#) of the Act. The tenant can claim protection from the operation of [section 12\(3\)\(a\)](#) of the Act only if the tenant makes an application within one month of the service of the notice terminating the tenancy by raising a dispute as to standard rent."

17. In a case *Mranalini B. Shah and another Vs. Bapalal Mohanlal Shah* (supra) relied upon by the learned counsel for respondents in paragraph no.11 and 12 has made following observations :-

11. We have perused the recent Judgment of this Court in *Ganpat Ladha v. Sashikant Vishnu Shinde*. In our opinion, the point raised by the appellants before us is fully covered by that Judgment. The following observation's of Beg, C.J., who spoke for the Court, are apposite:

...We think that the problem of interpretation and application of Section 12(3)(b) need not trouble us after the decision of this Court in *Shah Dhansukhlal Chagganlal's* case followed by the more recent decision in *Harbanslal Jagmohandas v. Prabhudas Shivilal*, which completely cover the case before us.

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 fail to carry out their obligation to pay rent to the landlord despite opportunities given by law in that behalf. 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 valour 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 in Kalidas Bhavan's case 1958-60 Bom LR 1359, 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 that 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 Courts.

12. The above enunciation, clarifies beyond doubt that the provisions of Clause (b) of Section 12(3) are mandatory, and must be strictly complied with by the tenant during the pendency of the suit or appeal if the landlord's claim for eviction on the ground of default in payment of rent is to be defeated. The word "regularly" in Clause (b) of Section 12(3) has a significance of its own. It enjoins a payment or tender characterized by reasonable punctuality, that is to say, one made at regular times or intervals. The regularity contemplated may not be a punctuality, of clock like precision and exactitude, but it must reasonably conform with substantial proximity to the sequence of times or intervals at which the rent falls due. Thus, where the rent is payable by the month, the tenant must, if he wants to avail of the benefit of the latter part of Clause (b), tender or pay it every month as it falls due, or at his discretion in advance. If he persistently default during the pendency of the suit or appeal in paying the rent, such as where he pays it at irregular intervals of 2 or 3 or 4 months as is the case before us the Court has no discretion to treat what were manifestly irregular payments, as substantial compliance with the mandate of this Clause irrespective of the fact that by the time the Judgment was pronounced all the arrears had been cleared by the tenant.

18. In a case Bhaskar Bhagvant Shinde vs. Sou. Vasudha Madhukar Kadam, (supra) relied upon by the learned counsel for respondents, this Court in paragraph nos.23, 33 and 34 has made following observations :-

23. Before appreciating the rival contentions, it is necessary to have a look at [Section 12\(3\)\(a\)](#) and [12\(3\)\(b\)](#) as they stood prior to amendment and [Section 12\(3\)](#) as it stood after amendment.

"12(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. 12(3)(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."

[Section 12\(3\)](#) introduced by the amending Act No. 18 of 1987 reads as follows :

"12(3). No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases 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 together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine 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.

Provided that, the relief provided under this subsection shall not be available to a tenant to whom relief against forfeiture was given in any two suits previously instituted by the landlord against such tenant."

33. Therefore, a tenant who does not avail of benefit under [Section 12\(3\)](#) cannot get its benefit at the appellate stage by contending that appeal is continuation of a suit. But on that basis a tenant who contends that he has deposited arrears in the trial Court as per [Section 12\(3\)](#) cannot stop depositing arrears in the Appellate Court by contending that he was obliged to pay arrears only in the trial Court and appeal is not extension of the suit and, therefore, he need not pay rent in the Appellate Court at all and if he does not deposit, the landlord has to file a fresh suit. The tenant would in effect be contending that the Appellate Court is powerless to deal with such a tenant. Such can never be the intention of the legislature. In my opinion the judgment of the Supreme Court in Damle's case (supra) is not applicable to the present case because, it arose out of different facts. It does not even remotely suggest that defaulting tenants should be allowed to misuse [Section 12\(3\)](#). In fact the Supreme Court has observed that this provision is not intended to confer a right without circumspection to be availed of by the tenant at any time according to his convenience. Therefore, the judgment of the Supreme Court in Damle's case (supra) does not further the petitioner's case. In this connection I may refer to [Goodyear India Ltd. v. State of Haryana and Anr.](#), where the Supreme Court has held that it is well settled that a precedent is an authority only for what it actually decides and not for what may remotely or even logically follow from it.
34. As I have already noted, [Section 12\(3\)](#) puts all the tenants on par, provides for simple interest at 9% on arrears and provides that right conferred upon a bona fide tenant can be availed of only twice and not thereafter. The changes introduced by [Section 12\(3\)](#) are not such as would make the judgment of the Supreme Court in Mrinalini's case (supra) inapplicable to it."

19. In a case Balasaheb Anantrao Bahirat Vs. Rohidas Bapusaheb Tupe reported in 2007 (5) BomCR 839, in a case of Chandiram Dariyanumal Ahuja reported in 2013 (1) Mh.L.J. Page 28 and also in case of Lalji Ramnath Pande Vs. Hawabi Abdulla Shaikh reported in 2004 (4) Mh.L.J page 1020 this Court has made similar observations.

20. In the facts of the instant case, as per the concurrent finding recorded by the Courts below the applicant/tenant has committed default in payment of the rent. It also appears from the finding recorded by the trial court that the applicant/tenant was not ready and willing to pay the rent. It also appears that though the applicant/original defendant has raised the dispute about the standard rent, failed to file any application in the Court under sub-section 3 of section 11 of the Act of 1947. Even, the applicant/defendant has failed to deposit the amount of rent month wise as directed by the trial court during the pendency of the suit. It is a part of the record that the applicant/defendant has

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persistently committed default even in depositing the payment of rent before the Court. The learned judge of the trial court so also the learned District Judge has recorded the finding to that effect. In terms of the ratio laid down by the Supreme Court in the aforesaid cases relied upon by the learned counsel for the respondents/ plaintiffs, the provisions under section 12(3) (b) of the Act of 1947 are mandatory and must be strictly complied with by the tenant during the pendency of the suit or appeal. Furthermore, in terms of the reference answered by the Full Court, the landlord can initiate proceeding for eviction and only precondition is about issuance of notice as contemplated in the Act of 1947 or in the Act of 1999.

21. In the instant case, the tenant has not paid the amount recorded in the notice though disputed the amount of standard rent and further failed to file any application before the trial court under sub-section (3) of section 11 of the Act of 1947.

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22. So far as subletting of the suit house is concerned, it is the case of the respondents/plaintiffs that the applicant/defendant has unlawfully sublet one room out of three rooms to Advocate Shri Pawar. The learned District Judge-1, Jalgaon has rightly observed that so far as illegal sub-letting is concerned, it is always done in secrecy and in normal course, the landlord hardly gets any proof in agreement between a tenant and sub-tenant. The learned District Judge, has, therefore, rightly given weightage to the Court Commissioner's report Exhibit 20. The Court Commissioner has visited the suit premises in presence of the parties and their respective advocates. The Court Commissioner has specifically observed in the report that in the room having door on the southern side, there was a dinning table and chairs in the Eastern side corner of the door of that room board C.M.Pawar advocate hanging on a peg. Even though parties were called upon to file say, the applicant/defendant has not filed any say to the said Court Commissioner's report. I

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find no fault in the finding recorded by the learned District Judge about subletting of one room.

23. Thus, considering the entire aspect of the case, I find no substance in both these Civil Revision Applications. Hence, I proceed to pass the following order.

ORDER

Civil Revision Application Nos.123 of 2019 and 124 of 2019 are hereby dismissed. No order as to costs.

24. The learned counsel appearing for the applicant, at this stage, submits that the applicant is 78 years of age and amid outbreak of Covid-19 and extended period of Lock-down, it is not possible for the applicant to vacate the premises. Learned counsel for the applicant, on instructions from the applicant submits that the applicant is not willing to approach the Supreme Court as against the judgment and order passed by this Court and though initially sought time of two years to vacate the premises, learned counsel for

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the applicant, again on instructions, submits that the applicant would vacate the premises, if reasonable time is granted to the applicant. Advocate A S Jadhav h/f Advocate P.R. Katneshwarkar, on instructions, submits that the respondents/original plaintiffs have no objection if the interim protection granted to the applicant in the form of the statement is extended for a further period of three months. In view of the above submissions, by consent, the interim protection granted by way of the statement made on behalf of respondents/original plaintiffs by their counsel is hereby extended for a further period of THREE MONTHS with a clear understanding that the applicant would vacate the premises, on his own, within the said period of **three months.**

(V. K. JADHAV, J.)

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