

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

WRIT PETITION NO.14000 OF 2017

Laxman s/o. Ghulji Upadhye
Age : 85 years, Occu : Business,
R/o. Khachne Building, Yawal Road
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon

.. Petitioner
(Orig. Defendant)

Versus

1. Dr. Vijay Bhojraj Khachne,
Age : 61 years, Occu : Medical Practitioner,
2. Dilip Bhojraj Khachne
Age : 56 years, Occu : Service
3. Vasant Bhojraj Khachne
Ag : 66 years, Occu : Service,

Nos.1 to 3 all R/o. Municipal Park,
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon
4. Vijay s/o Rameshwar Agrawal
Age : 54 years, Occu : Trade,
Residing at Aatwade Bazar, Bhusawal,
Dist. Jalgaon
5. Shashikant s/o. Jethalal Mehta
Age : 60 years, Occu : Trade,
Residing at Tapinagar, Bhusawal,
Dist. Jalgaon
6. Kapil s/o. Shashikant Mehta
Age : 35 years, Occu : Trade,
Residing as above.

.. Respondents
(Orig. plaintiffs)

...

Mr. Hemant Surve, Advocate for Petitioner
Mr. S.B. Yawalkar, Advocate for Respondent Nos.1 to 3

...

WITH

CIVIL APPLICATION NO.273 OF 2022

IN

WRIT PETITION NO.14000 OF 2017

...

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 14-12-2022

PRONOUNCED ON : 22-12-2022

JUDGMENT:

. Petitioner has challenged the judgment and order dated 12.08.2015 passed by the District Judge-2, Bhusawal in Regular Civil Appeal No.89 of 2014 thereby reversing the judgment and decree passed by Jt. Civil Judge Junior Division, Bhusawal dated 20.08.2007 in Regular Civil Suit No.162 of 1991. The District Judge has directed petitioner to vacate the suit premises.

2. The facts of the case, in nutshell, are as under:

. Petitioner is the tenant in respect of a block located at ground floor of the Municipal House No.1439 at Bhusawal, Dist. Jalgaon. Respondent Nos.1 to 3 are landlords in respect of the rented premises. The landlords filed Regular Civil Suit No.162 of 1991 against the tenant for eviction on the ground that the tenant failed to pay rent for a period exceeding six months and that despite issuance of notice dated 01.01.1999, the tenant failed to pay the rent. Instead of paying the due rent, tenant filed Civil Misc. Appeal No.26 of 1991 for fixation of standard rent on 03.04.1991. The tenant also claims to

have sent a money order dated 21.01.1991 for Rs.240/- towards rent from 01.07.1990 to 31.12.1990. In his application for fixation of standard rent being Civil Misc. Application No.26 of 1991, the tenant deposited amount of rent from 01.07.1990 onwards of Rs.480/- for the period from 01.07.1990 to 30.06.1991 on 04.04.1991.

3. The trial Court proceeded to dismiss the suit filed by the landlords holding that the tenant deposited the amount of rent from 01.07.1990 to 30.06.1991 on 04.04.1991 and has thereafter continued to deposit the rent from time to time. The trial Court allowed C.M.A. No.26 of 1991 and fixed standard rent with taxes at Rs.75/- per month. The judgment and order dated 20.08.2007 came to be assailed by the landlords before the District Court by filing Regular Civil Appeal No.89 of 2014. The District Court held that the tenant had given admission that the monthly rent of the property was Rs.75/- and the rent claimed to have been sent by money order as well as the rent deposited in the trial Court was at the rate of Rs.40/- per month. It was also held that the tenant did not deposit the arrears of rent before first date of hearing and the application for fixation of standard rent was not filed within one month from the date of service of notice. It was also held that the rent was not deposited along with interest at the rate of 9% per annum. Holding that mere deposit of

interim standard rent is not sufficient, the District Court reversed the judgment of the trial Court and decreed R.C.S. No.162 of 1991 directing tenant to vacate the suit premises within three months.

4. The tenant has filed present petition challenging the judgment and order dated 12.08.2015 passed by the District Judge-2, Bhusawal. During pendency of the present petition, the judgment of the District Court has not been stayed on account of which the landlords instituted proceedings for execution of the decree. Tenant has filed Civil Application No.273 of 2022 challenging the orders passed by the Executing Court. By order dated 07.12.2022, this Court directed that the warrant for possession shall not be executed. However instead of deciding the Civil Application, with the consent of the Ld. Counsels for the parties, this Court proceeded to hear the writ petition itself. Accordingly, the counsels for the parties have been heard extensively in the writ petition.

5. Mr. Surve, the learned counsel for petitioner would submit that till the determination of the standard rent by the trial Court, the agreed rent was Rs.40/- and that immediately upon receipt of notice by the landlords, the tenant filed application for fixation of standard rent on 04.04.1991. Before that, the tenant sent money

order on 21.01.1991 for six monthly period from 01.07.1990 to 31.12.1990. He would further submit that the tenant had intention to pay the rent and therefore he deposited the entire rent in the trial Court for the period from 01.07.1990 to 30.06.1991 on 04.04.1991 in application for fixation of standard rent. Mr. Surve therefore would submit that so long as the tenant exhibited intention of paying rent, the order of eviction cannot be passed.

6. Mr. Surve would further submit that there was dispute between the landlord and tenant about the exact amount of rent and therefore, the tenant immediately instituted application for fixation of standard rent on 04.04.1991. That the rent of Rs.75/- deposited in the trial Court only after deciding the application for fixation of standard rent on 20.08.2007. Till that time, the tenant continued paying rent at the rate of Rs.40/- by depositing the same in the trial Court. In support of his contentions, Mr. Survey would rely upon the following judgments:

- (i) **Bai Mohinibai Dharmasey vs. Khimji Tokarshi Jivraj and another**, Special Civil Application No.645 of 1969 dated 18.08.1975.
- (ii) **Moreshwar Narayab Dhadke vs. Shashikant Batakrishna Malkar**, Writ Petition No.639 of 1980 dated 12.09.1980
- (iii) **Shah Bhojraj Kuverji Oil Mills and Ginning Factory vs. Subhash Chandra Yograj Sinha**, Civil Appeal No.49 of 1961, dtd.21.04.1961

- (iv) **Marwadi Bhawarlal Modilal vs. Heirs & LRS of (Decd.) Jiviben wd/o Lallubhai R. Shah & Anr**, Civil Revision
Application No.1077 of 1983 dated 04.08.1998

7. *Per contra*, Mr. Yawalkar, the learned counsel for the landlords would oppose the petition and support the judgment and order passed by the District Judge. Inviting my attention to the provisions of Section 12 of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 (hereinafter referred to as the 'Rent Act'), Mr. Yawalkar would contend that before expiry of period of one month of service of notice the tenant ought to have filed the application for standard rent, whereas in the present case such an application was filed only on 03.04.1991. He would further submit that alleged sending of money order of Rs.240/- on 21.01.1991 or deposit of amount of Rs.480/- in the Court on 04.04.1991 did not suffice requirement of Section 12 (3) of the Act which mandates payment of entire rent with interest and costs. Mr. Yawalkar would further contend that the tenant clearly gave admissions that the monthly rent payable of the suit property was Rs.75/-, whereas notice sent by money order as well as money deposited in the application for fixation of standard rent is @ Rs.40/- per month.

8. In support of his contentions, Mr. Yawalkar would rely upon the following judgments:

- (i) **Yusufbhai Noormohammed Jodhpurwala vs. Mohamed Sabir Ibrahim Byavarwala**, SLP (Civil) No.735 of 2014, decided on 07.11.2014
- (ii) **Manorama S. Masurekar vs. Dhanlaxmi G. Shah and Ors**, Civil Appeal No.469 of 1966 decided on 23.08.1966
- (iii) **Balaji Pratapji Pandya vs. Shyam Kisan Sharma**, Civil Revision Application No.95 of 2014 decided on 21.09.2015
- (iv) **Gokuldas Jamnadas vs. Ahamed Miya Sarole**, Writ Petition No.502 of 1981 decided on 05.12.1991.

9. Rival contentions of the parties now fall for my consideration.

10. Some of the undisputed facts are that notice under Section 12 of the Act has been served by the landlord on the tenant on 01.01.1991. The tenant filed application for fixation of standard rent on 03.04.1991. In that application, the tenant appears to have deposited an amount of Rs.480/- on 04.04.1991 representing the rent for the period from 01.07.1990 to 30.06.1990. Additionally, the tenant claims that a money order of Rs.240/- towards rent from 01.07.1990 to 31.12.1990 was sent by him to the landlords on 21.01.1991. There is a dispute about payment of rent by money order and momentarily I proceed on an assumption that the money order was indeed sent by the tenant and received by the landlord. It is contention of the tenant that since payment of rent of Rs.240/- sent by money order and rent of Rs.480/- deposited in the court on

04.04.1991 disentitles the landlords from seeking decree of eviction on the ground of non-payment of rent. On the other hand, Mr. Yawalkar has contended that the said amounts of Rs.240/- and Rs.480/- did not represent the entire amount of rent. It is therefore necessary to first examine what is the exact amount of rent payable by the tenant to the landlords at the time of issuance of notice dated 01.01.1991.

11. The trial Court has recorded in para nos.12 and 13 of its judgment that the tenant admitted in his cross-examination that since the year 1984-85, the landlords started charging monthly rent of Rs.75/- and that till the final decision of the suit, the tenant had not raised any dispute about such amount of Rs.75/- being demanded towards rent. In para-13, the trial Court has further recorded a finding on fact based on evidence that the rent at the rate of Rs.75/- per month was not only levied by the landlords but the tenant paid the same without any demur. Thus, before trial Court it was fully proved that the rent in respect of the premises as on the date of sending the notice was Rs.75/-. The tenant did not challenge this finding of the trial court by filing appeal and the same has attained finality. Even in the present petition, petitioner has averred in ground clause III as under:

‘(III) That, it is the case of respondents that the petitioner was willful defaulter in payment of rent. But, this fact has not been proved to the satisfaction of Trial Court. According to respondent No.1, the petitioner was in default of rent from 01.07.1990. It is a matter of fact that petitioner remitted rent by money orders but respondent No.1 refused to accept the Money Order. Therefore, petitioner filed Misc. Rent Application No.20/1991. **It is admitted fact that, right from 1984-85, plaintiff i.e. respondent No.1 started receiving monthly rent of Rs.75/- and till date of suit, plaintiff/respondent No.1 did not raise any dispute.** This silence on the part of plaintiff / respondent no.1 is potent enough to dispute his claim. But, the factual position has not been accepted by learned District Judge. The error of District Judge is that the application for fixation of standard rent is not within limitation. On what basis this finding is given, the Judgment is silent. Admittedly, notice to demand arrears of rent is dated 01-07-1990 while application filed by petitioner / org. defendant has sent money orders to plaintiff / respondent No.1 but, the letters refused to accept the same. So, it was on 03.04.1991, application for fixation of standard rent was filed and from 01.07.1991 to 30.06.1991 rent was deposited in court by Exh.61 and continued to deposit rent from time to time. There are 27 receipts showing deposit of rent. The petitioner received the notice and immediately on 03.04.1991, Misc. Application No.26 of 1991 was filed. All these facts are valid enough to disprove finding of learned District Judge who held that application for fixation of standard rent was not within limitation.’

(emphasis supplied)

Thus there appears to be no dispute to the position that the rent payable was Rs. 75 as on the date of issuance of notice.

12. It is undisputed that the amount of Rs.240/- allegedly sent by money order is towards rent from 01.07.1990 to 31.12.1990 @ Rs.40/- per month. Similarly the amount of Rs.480/- deposited in the trial Court in application for fixation of standard rent is towards

rent from 01.07.1990 to 30.06.1991 is again @ Rs.40/- per month. It is thus established that the tenant did not pay the whole of the rent of Rs.75/- per month, but only paid part of that @ Rs. 40. The issue therefore is whether failure to pay whole of the rent can result in eviction of the tenant under Section 12 of the Rent Act.

13. Section 12 of the Rent Act reads thus:

“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 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 [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.]

14. Under sub-section (3) of Section 12, there is a prohibition on passing decree for eviction on the ground of arrears of standard rent and permitted increases if on the first date of hearing of the suit, the tenant pays and tenders the standard rent and permitted increases due together with simple interest and thereafter continues to pay the same in the Court regularly till the suit is finally decided.

The words used in sub-section (3) of Section 12 are ‘the standard rent and permitted increases’, Mr. Surve has contended that since there was a dispute between the parties about the exact rent, the application for standard rent was filed by the tenant on 04.04.1991 and the amount of standard rent came to be determined by the trial Court only on 20.08.2007. He has therefore submit that there was no standard rent fixed as on the date of issuance of notice and therefore payment of rent at the rate of Rs.40/- is sufficient to avoid a decree of eviction under provision of sub-section (3) of Section 12 of the Act.

15. The issue that arises for consideration is, whether the Court can pass a decree for eviction if the tenant deposits lesser amount than the agreed amount of rent / standard rent on the date of first hearing of the suit. In **Yusufbhai Noormohammed Jodhpurwala** (*supra*) the Apex Court has held in para-7 and 9 of the judgment as under:

“7. The law on Section 12 (3) (b) is well settled by a series of judgments of this Court. In **Ganpat Ladha v. Sashikant Vishnu Shinde**, (1978) 2 SCC 573, this Court overruled a judgment in **Kalidas Bhavan 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 fail to carry out their obligation 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 Shankerbhai Patel* [AIR 1968 Guj 172 : (1968) 9 Guj LR 48] . If there is statutory default or neglect on the part of the tenant, whatever may be 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 fulfil 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* 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 courts."**

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

9. On facts, it is clear that the tenant was in arrears of rent prior to the filing of the suit and continued to be so. **On the date of the first hearing of the suit, that is the date on which issues were struck, namely 3 rd August 1994, the rent that was paid admittedly fell short by Rs.270/-.** It is clear therefore that

assuming that the respondent is a bonafide tenant the right that is conferred upon him by the legislature can be availed of only twice and on both occasions the tenant was found to be in arrears. **The High Court was wrong in interpreting Section 12(3)(b) purposively holding that so long as the High Court, in its discretion, feels that there is a readiness and willingness on the part of the tenant to pay rent, the High Court can in its discretion say that substantial compliance of Section 12(3)(b) is good enough for the tenant to escape eviction on the ground of non payment of arrears of rent.** Having regard to the judgments of this Court and the fact that Section 12(3)(b) has been construed to be a mandatory provision which must be **strictly** complied with, the judgment under appeal has to be set aside, and the order of the appellate bench of Small Causes restored.”

(emphasis & underlining supplied)

16. Thus in **Yusufbhai Noormohammed Jodhpurwala** (*supra*) the total arrears of rent at the rate of 70/- per month was Rs.7,070/- and the amount of rent deposited in the court was Rs.6,860/-. The deposited rent was short by Rs.270/-. The Supreme Court has held that the High Court in that case erred in interpreting the provisions of Section 12 (3)(b) purposively on the basis of readiness and willingness on the apart of the tenant to pay rent and such interpretation was erroneous. The Apex Court has held that the provisions of Section 12 (3)(b) are mandatory in nature and must be strictly complied with. Thus, from the judgment of the Apex Court in **Yusufbhai Noormohammed Jodhpurwala** (*supra*) it is clear that what is required under the provisions of Section 12 (3) of the Act is to deposit ‘whole rent’ and not part of it. Mere readiness and willingness on the part of the tenant to deposit rent by making part deposit

would not satisfy the requirements of Section 12(3) of the act.

17. In **Balaji Pratapji Pandya** (*supra*) this Court was dealing with a situation where the provisions of Section 15 (3) of the Maharashtra Rent Act requires deposit of amount of arrears along with interest at the rate of 15%, whereas the tenant had deposited such arrears with interest at the rate of 9%. This Court held in para 17 of the judgment as under:

“17. In the present case also, the condition enumerated in section 15(3) of the Maharashtra Rent Act are not strictly complied with. The deposit of the amount of arrears of rent is not with per annum interest @ 15% so also it is not within 90 days from the service of suit summons. Provisions of section 15(3) of the Maharashtra Rent Act are mandatory. The protection under section 15(3) of the Maharashtra Rent Act is available to tenant only if the tenant scrupulously adheres to the provisions of section 15(3) of the Rent Act. The Court has no jurisdiction to extend the time prescribed in the said section. The tenant herein has failed to deposit the rent within 90 days from the date of service of notice so also has failed to deposit the said amount with interest @ 15% per annum. The amount deposited after lapse of 90 days from the date of service of summons is also not with interest @ 15% per annum but is deposited only with interest @ 9% per annum. Both the ingredients of section 15(3) are not complied.”

Thus, even failure to deposit amount of interest at the rate provided for in the Act can lead to a decree of eviction.

18. In **Manorama S. Masurekar** (*supra*) the Supreme Court

was dealing with a case where the tenant had admittedly not paid the rent within one month from service of notice, but had expressed readiness and willingness to pay the rent before institution of the suit.

The Supreme Court held in para-6 of its judgment as under:

“6. The landlord is vested with the right to recover possession of the premises if the rent is in arrears for a period of six months or more, "the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-s. (2)", and the other conditions of sub-s. (3)(a) are satisfied. **This right cannot be defeated by showing that the tenant was ready and willing to pay the arrears of rent after the default, but before the institution of the suit.** In effect, the appellant asks us to rewrite the section and to substitute in it the following condition : "the tenant neglects to make payment thereof until the date of the institution of the suit." It is not possible to rewrite the section in the manner suggested by the appellant.”

Thus mere expression of readiness or willingness to pay the rent will not extend the benefit of section 12 (3) of the Act.

19. Considering the sound exposition of law on the subject of deposit of ‘whole rent’ along with interest in the above judgments, I am of the view that the tenant in the present case is not entitled to protection of Section 12 (3) of the Act on deposit of rent at the rate of Rs.40/- per month.

20. The next issue is about filing of application for fixation of standard rent. Mr. Surve has referred to provision of Explanation-1

appearing in Section 12 of the Rent Act to submit that since the tenant immediately filed application for fixation of standard rent, he is saved from the consequences of an eviction decree. Explanation (I) reads thus:

*“**Explanation [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.”*

21. Thus to claim benefit of Explanation-1, the tenant has to file application for fixation of standard rent within one month on receipt of notice. In the present case, the notice has been received by the tenant on 01.01.1991, whereas the application for fixation of standard rent came to be filed by him only on 30.04.1991. Thus, the tenant is not entitled to the protection under sub section (1) of Section 12. Mr. Yawalkar in this regard has rightly relied upon the judgment of this Court in **Gokuldas Jamnadas** (*supra*) in which it is held in para-9 as under:

“9. The ratio of the above two judgments holds the field. **In the instant case, no application was made for fixation of standard rent within period of one month from service of the notice under Section 12(2) of the Act.** In this case also the amount of rent due was not tendered in full by the tenant within the notice period. The application

made by the tenant for fixation of interim rent during the pendency of the civil suit for possession was not maintainable in law as such, an application could be made by the tenant only if an application for fixation for standard rent was made within period of one month from the date of notice of demand. In any event, for purpose of applicability of Section 12(3)(a) of the Act, it is sufficient to prove that the tenant was in arrears of rent for six months or more and the tenant had defaulted in making payment of the said amount and that the dispute about the standard rent was not raised within one month from the date of service of notice. Even in a case where application for fixation of standard rent was made in time, the tenant could escape liability from being evicted only if the tenant complied with the orders which may be passed by the Court under Section 11(3) of the Act within the contemplation of later part of Section 11(3) of the Act.”

(emphasis supplied)

22. Thus, the case of the tenant fails on both the counts of non-deposit of whole rent with interest on the first date of hearing of the suit as well as non-filing of application for fixation of standard rent within one month from date of receipt of notice under Section 12 (2) of the Act. The District Court has rightly decreed the suit of the landlord.

23. What remains now is to deal with the judgment relied upon by Mr. Surve in support of his contention that the tenant in the present case has not neglected to pay the rent.

(i) The judgment in **Bai Mohinibai Dharmasey**, in my view, has no

application in the light of authoritative judgments of the Apex Court and of this court referred to herein above.

- (ii) **Moreswar Narayab Dhadke** (*supra*) is on the issue of non-requirement of fixation of interim rent during pendency of the application for fixation of standard rent. The judgment has therefore no application to the present case.
- (iii) In **Shah Bhojraj Kuverji Oil Mills and Ginning Factory** (*supra*) the issue was about who can be treated as tenant and therefore the decision is of no avail to the case of petitioner.
- (iv) **Marwadi Bhawarlal Modilal** (*supra*) the issue was about issuance of composite notice of demand of rent. The issue involved is entirely different and it is not applicable to the present case.

24. Consequently it is held that the District Court has not committed any error in decreeing the suit of the landlords. The present petition is devoid of merits and the same is dismissed without any orders as to costs. The findings recorded in this judgment shall not affect the rights of the parties in Writ Petition No.670 of 2016. Pending Civil Application is disposed of and interim order granted earlier stands vacated.

LATER ON:

25. After the judgment is pronounced, Mr. Surve, learned counsel appearing for petitioner requests for continuation of protection granted by order dated 07.12.2022. The request is opposed by Mr. Yawalkar. During the pendency of the present petition, decree passed by the District Court was not stayed. The protection from warrant of possession was extended to petitioner on 07.12.2022 only on account of non-availability of Mr. Yawalkar on that date and since petition was to be taken up for hearing immediately thereafter. Considering the position that the decree of the District Court was not under stay during the pendency of the present petition, which has been pending since the year 2017, the request of Mr. Surve is rejected.

(SANDEEP V. MARNE, J.)

GGP