

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5721 OF 2000**

Purushottam Dhondiba Rajadne
since deceased Through Legal Heirs

- 1A. Smt. Kusum Purushottam Rajadne
Age 77 years, occupation Housewife.
- 1B. Shri Mukund Purushottam Rajadne
Age 52 years, Occupation Agriculturist
- 1C Shri Anand Purushottam Rajadne
Age 48 years, Occupation Agriculturist
- 1D Shri Krushnaji Purushottam Rajadne
Age 45 years, Occupation Agriculturist.

All R/o. Vairag, Tal. Barshi, Dist. Solapur
PIN 413 402.

..PETITIONERS

VERSUS

Shivling Manmath Gadhave
Since deceased Through Legal Heirs

- 1A Shri Sanjay Shivling Gadhave
Age 45 years, Occupation Agriculturist
- 1B Shri Sachin Shivling Gadhave
Age 41 years, Occupation Agriculturist.

Both R/at Vairag Taluka Barshi,
Disti. Solapur PIN 413 402

. RESPONDENTS.

Mr. Drupad Patil Advocate for petitioners.
Mr. I.M. Khairdi, Advocate for respondents.

CORAM : A.S. GADKARI, J.
RESERVED ON : 14th DECEMBER, 2021
PRONOUNCED ON : 28th JANUARY, 2022.

JUDGMENT :-

1] Petitioners, legal heirs of Mr. Purushottam D. Rajadne, landlord/original plaintiff, in R.C.S. No. 19 of 1986, have invoked jurisdiction of this Court under Article 227 of the Constitution of India, impugning the Judgment and Order dated 31.1.1998 passed in Civil Appeal No. 122 of 1994 preferred by the original defendant/respondent herein, allowing the said appeal and setting aside the Judgment and Order dated 10.2.1994 passed in R.C.S. No. 19 of 1986. By the said Judgment and Order dated 10.2.1994, the trial Court had decreed the suit filed by the petitioner/plaintiff under Section 12(3)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, the Rent Act). In an appeal preferred by the Respondent/defendant/tenant the appellate Court while allowing the said appeal, set aside the Judgment and Order passed by the trial court dated 10.2.1994 and dismissed the suit filed by the original plaintiff.

2] Heard Mr. Drupad Patil learned Advocate for the petitioners and Mr. I.M. Khairdi, learned Advocate for the respondent. Perused entire record.

3] Record reveals that, the petitioner/landlord had filed R.C.S. No. 19 of 1986 in the Court Civil Judge Junior Division, Barshi, at Barshi, District Solapur, for possession of suit property, description of which is more specifically mentioned in para. No.1 of the plaint and for recovery of rent on the ground of default, permanent alteration and nuisance. The trial Court decreed the said suit only on the ground that, the petitioner was entitled to recover possession from respondent under Section 12(3)(b) of the Rent Act, as according to trial Court, respondent did not pay contractual rent despite receipt of notice from the petitioner and had also not deposited rent in the Court on the first date of hearing. The trial Court did not accept other grounds pleaded by the petitioner for eviction of respondent.

4] In an appeal preferred by respondent, the appellate Court by its Judgment and Order dated 31.8.1998 reversed the findings, so also Judgment and Decree passed by the trial Court. The appellate Court came to the conclusion that, the trial Court has wrongly applied the provisions of Section 12(3)(b) of the Rent Act, by ignoring the date of amendment to the Bombay Rent Act in the year 1987 i.e. Maharashtra Amendment Act 18 of 1987 and has wrongly held that, the respondent was defaulter in payment of rent for period of six months or more after issuance of notice .

5] A minute perusal of the record of present case clearly indicates that, the relation between petitioner as landlord and respondent as tenant is not disputed. Petitioner had issued notice for recovery of rent and termination of tenancy on 19.11.1985 (Exh.42) and had demanded Rs. 910 as arrears of rent + Rs. 30/- towards fees of Advocate. Respondent thereafter sent Money Order to the petitioner on 16.12.1985 and as per the record, original petitioner refused to accept the same. Respondent also filed Misc. Application No. 16 of 1986, on 20.12.1985, for fixing standard rent of the suit premises @ Rs. 4 per month , as contemplated under Section 11(3) of the Rent Act. The original plaintiff (petitioner herein) filed R.C.S. No. 19 of 1986 on 10.1.1986. These are the basic admitted facts on record.

6] Mr. Patil, learned Advocate for the petitioner submitted that, the standard rent of the suit premises was Rs. 5/- p.m. That, after issuance of notice dated 19.11.1985, the respondent did not pay the rent and had filed an application for fixing standard rent as contemplated under Section 11(3) of the Rent Act on 20.12.1985 disputing the standard rent and claiming Rs. 4/- p.m. as standard rent for the suit premises. He submitted that, the respondent did not deposit standard rent on the first date of hearing before the trial court and therefore

Section 12(3)(b) of the Rent Act is squarely applicable to the present case. As the respondent had raised dispute regarding the amount of standard rent or permitted increases, Section 12(3)(a) will have no application to the present case. 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 of payment of rent is to be defeated. Mr. Patil, in support of his contentions in interpreting Section 12(3)(b) of the Rent Act and its application to the present case, has relied upon the following judgments :-

1. Jashwantraai Malukchand vs. Anandilal Bapalal reported in AIR 1965 SC 1419
2. Mranalini B. Shah and another Vs. Bapalal Mohanlal Shah reported in 1980 (4) SCC 251
3. Anant Purushottam Athavle vs. Damodar Dattatraya Bedekar and others reported in 1988 Mh.L.J. 737
4. Mohan Laxman Hede vs. Noormohamed Adam Shaikh reported in 1988(2) SCC 481
5. Piroja M. Mehta Vs. Dr. Nambai Jamshedji Cama and others reported in 1988 Mh.L.J. 979
6. Indubai Sidram Mundewadi and Ors. Vs. Sidramappa Baslingappa Kalyanshetti reported in 1998(1) Mh.L.J. 282
7. Chandiram Dariyanumal Ahuja vs. Akola Zilla Shram Wahatuk Sahakari Sanstha Akola reported in 2013(1) Mh.L.J. 28
8. Babulal s/o. Fakirchand Agrawal vs. Suresh S/o. Kedarnath Malpani and others reported in 2017(4) Mh.L.J. 40

He submitted that, the appellate court therefore has committed grave error in not appreciating the same while allowing the appeal preferred by respondent-tenant. He therefore prayed that the

impugned Judgment and Order dated 31.8.1998 be set aside by allowing the present petition.

7] Per contra, Mr. Khairadi, learned counsel for respondents, in opposition to the petition submitted that, in the plaint, the petitioner has described suit premises as ‘घर जागा’ (Ghar Jaga). The trial court, while passing the decree against respondent in para.2 of the operative part of its Judgment and Order dated 10.2.1994 has also termed suit premises as ‘Open Space’. That, in his evidence, the original petitioner has described suit premises as ‘Open Space’. That, the description of the suit property mentioned in para. no.1 of the plaint is therefore different and varies at different places and is not specific and therefore the decree passed by the trial Court was bad in law. He further submitted that, after receipt of notice dated 19.11.1985, the respondent had sent money order on 16.12.1985 for a sum of Rs. 905/- alongwith amount of Rs. 5/- towards the rent of suit premises. However, the petitioner did not accept it and in fact refused it. That, though the petitioner produced coupons of money order before the trial court and the trial Court has exhibited them as Exh. Nos. 51 to 53, had considered said money order for different period and thereby committed an error. That, the evidence of respondent in that behalf has gone unchallenged. That, the appellate Court has therefore properly appreciated the evidence available on record in its proper

perspective while allowing the appeal preferred by the respondent. He submitted that, refusal to accept money order by the petitioner would certainly show that, the tenant was ready and willing to pay the contractual amount and was not negligent in making the payment. Therefore, provisions of Section 12(3)(b) of Rent Act would not at all be applicable to the present case. Mr. Khairdi in support of his contentions relied on the following decisions :-

1. Patel Chandubhai Bhallabhai vs. Khengarbhai jeramji purohit reported in 1977 Bom. R.C. 219
2. Radheshyam G. Garg vs. Safiyabai Ibrahim Lightwalla reported in 1987 Mh.L.J. 725
3. Peter D`Silva vs. Smt. Manak Laxman Valti, reported in 1993 Bom.R.C. 43
4. Maruti Ganpat Parte vs. Sakharam Vithal Dani reported in 213 Bom. R.C. 1987
5. Shantilal Jaywantrai and others vs. Rampal Shivram Varma reported in 1992 Bom. R.C. 281

He submitted that, the impugned Judgment and Order does not suffer from any infirmity and therefore interference of this Court with it in its jurisdiction under Article 227 of the Constitution of India is unwarranted. He therefore prayed that the present petition maybe dismissed.

8] The chronology of events narrated in para.5 hereinabove, are the basic admitted facts on record and are culled out from the record for the sake of brevity. Record reveals that, the original respondent in his examination-in-chief has categorically deposed that, he had sent an

amount of Rs. 905 by Money Order after receipt of notice from the petitioner and it was refused. The trial court has exhibited those Money Order coupons as Exhibits 51 to 53. The said coupons alongwith postal receipt were filed in Misc. Application No. 16 of 1986. It is thus *ex-facie* clear that after receipt of notice dated 19.11.1985 from the petitioner/lanalord, the respondent/tenant immediately sent Money Order for the amount demanded on 16.12.1985 i.e. well within the period of 30 days, as contemplated under section 12(2) of the Rent Act. It is to be noted here that, the respondent/tenant also immediately filed application bearing Misc. Application No. 10 of 1986 on 20.12.1985, for fixing standard rent of suit premises @ Rs. 4/- p.m., as contemplated under Section 11(3) of the Rent Act. The respondent thus, had disputed standard rent which was to be paid by him to the petitioner. In view thereof, according to this court, Section 12(3) of the Rent Act has no application at all to the present case and the suit for recovery of possession is not maintainable under Section 12(2) of the Rent Act, as after receipt of notice dated 19.11.1985 from the petitioner/landlord, the respondent/tenant had immediately filed an application under section 11(3) of the Rent Act, i.e. within stipulated period, prescribed therein for fixing the standard rent.

9] In view thereof, the decisions cited by learned counsel for

the petitioner have no application to the present case.

10] After perusing the entire record, this court is of the considered view that, the Appellate Court has appreciated the evidence of the present case in its proper perspective and has not committed any error, either in law or on facts, while passing the impugned Judgment and Order.

11] Petition is accordingly dismissed. Rule is discharged.

[A.S. GADKARI]
JUDGE.

grt/-