

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1647 OF 2000

M/S. P.R. Wallace And Sons. ...Petitioner

Vs

M/S. Ewart Investments Ltd ...Respondent

Adv. Vivek Walavalkar a/w. Adv. Sameer Bhalekar for Petitioner.

Mr. Y. S. Jahagirdar, Senior Advocate a/w. Adv. Niranjan Shimpi for
Respondent.

CORAM : RAJESH S. PATIL, J.

DATED : 23 APRIL 2024

P.C.:

1. This Writ Petition is filed by the original defendant challenging the concurrent findings recorded by the Trial Court and the Appellate Court, of eviction under the Bombay Rent Act, on the ground of “*arrears of rent*”.

FACTS

2. The suit premises being Northeast side, First Floor of Elphinston Building situated at 10, Veer Nariman Road, Bombay-400 023. The said premises was given on tenancy basis to the petitioner on monthly rent being Rs.358.52 ps. along with service charges of Rs.1,605.45 ps. per month. Thus the total amount payable per month was Rs.1,963.97ps. A letter dated 22 December 1982, was issued by the landlord to the tenant thereby demanding the rent from the month of July 1982 to December 1982. The said letter was replied by the tenant, by its letter dated 17 January 1983. So also, the Landlord had issued a letter dated 14 January 1983, again seeking a payment of rent from the tenant.

3. A notice of demand dated 24 February 1983 was issued by the Landlord to the tenant thereby seeking payment of rent from

July 1982 onwards. The said demand notice was replied by the tenant by its letter dated 6 April 1983.

4. On 5 May 1983 the landlord filed a suit for eviction on the ground of “*arrears of rent*”, under the then prevailing Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short “Bombay Rent Act”).

5. After the summons was served on the defendant, the defendant appeared and filed their written statement. The defendant denied all the contentions made by the plaintiff in the Plaint.

6. Subsequently, ‘Issues’ were framed, after that the plaintiff examined one witness who was the chief accountant of the plaintiff Mrs. Frenny Dubhash. The said witness of the plaintiff was cross-examined by the defendant. After plaintiff’s evidence was completed, the defendant examined one witness i.e. Deepak Desai, being a director of the defendant company. The said witness of the defendant was cross-examined by the plaintiff Advocate.

7. The Trial Court thereafter heard both the parties by its judgment and decree dated 24 July 1995 dismissed the suit of the Plaintiff.

8. Being aggrieved by the judgment and decree passed by the Trial Court, Landlord/Plaintiff filed an Appeal before the Appellate Bench of the court of the Small Causes. The Appellate Bench of the Small Causes Court after hearing the parties was pleased to set aside the decree of the Trial Court and granted decree of possession to the plaintiff/landlord.

9. Against the judgment and decree for eviction passed by the Appellate Bench, the present Writ Petition is filed by the Tenant / original defendant under Article 227 of the Constitution of India. This Writ Petition was admitted by this Court on 30 March 2000.

SUBMISSIONS:

10. Mr. Vivek Walavalkar appeared on behalf of the petitioner/tenant and made his submission :

(i) Mr. Walavalkar submitted that his client tenant was not in arrears for six months, as is necessary to pass a decree on eviction of the ground of “arrears of rent”, under the provisions of Section 12 (3) of the Bombay Rent Act, as then prevailing.

(ii). He submitted that the first notice was issued on 22 December 1982 and immediately thereafter, on his client sent

across, by covering letter dated 17 January 1983 a cheque for a sum of rent payable for three months; since, the financial condition of the tenant was not sound, which was clearly mentioned in the letter dated 17 January 1983. He submitted that however, the said cheque was not accepted by the landlord and with ulterior motive, Landlord issued demand notice dated 24 February 1983. The said demand notice was immediately replied by the tenant by their letter dated 6 April 1983, wherein there is specific mention about the earlier payment offered by the tenant.

(iii) Hence, Mr. Walavalkar submitted that the notice itself was invalid, for a suit to be filed for the ground of “arrears of rent”.

(iv) Mr. Walavalkar further submitted that the said fact about payment being tendered by the tenant, is further proved by the cross-examination of PW-1, who was the Chief Accountant of plaintiff, who in her cross-examination mentioned that she does not remember if along with letter dated 17 January 1983, the defendant had tendered the cheque of Rs.5,891.41ps. and whether the plaintiff had returned the same on the ground that they require full payment and not part payment.

(v) Mr. Walavalkar submitted that the Trial Court has

considered all these facts and based on the facts including the evidence of the plaintiff, the Trial Court came to a finding that the suit requires to be dismissed as the ground of 'arrears of rent' has not been proved by the Landlord.

(vi) Mr. Walavalkar further submitted that after the suit was filed, the defendant, bonafidely filed an application before the Trial Court seeking permission to deposit the rent amount in the Court. He submitted that after the said application was filed an order was passed. His client the tenant has complied with the direction given by the Court till date. He submitted that therefore, a lenient view should taken by this Court, since decree of eviction is only on the one ground i.e., arrears of rent.

11. Mr. Jahagirdar, learned Senior Advocate appeared on behalf of the landlord/original plaintiff and made his submissions.

(i) He submitted that the present case falls under section 12 (3)(a) of old Bombay Rent Act . He submitted that since the case falls under section 12 (3)(a), the only way to get out of the clutches of the said section if either the tenant tenders the full amount as mentioned in the notice or else within a period of one month files an application for fixation of standard rent. He

submitted that in the present proceedings none of this has been done by the Petitioner/tenant, hence, the eviction decree is bound to follow.

(ii) He submitted that the story about the tenant having made an attempt to pay the amount as demanded in the notice is cook up story which was not proved by the tenant/defendant.

(iii) He further submitted that in any case even for the sake of argument it is believed that such a tender of three months was made by the tenant, however, the same being not of the entire amount as demanded, hence, the eviction decree under Section 12 (3) (a) follows. He submitted that such a story was never taken up by the tenant in the written statement. He further submitted that the Appellate Court has considered all the facts in a proper perspective and has passed decree of eviction. He submitted that this Court under Article 227 of the Constitution of India should not disturb the findings recorded by the Appellate Court who is a last fact finding Court. He submitted that under the Rent Act a notice before filing of the suit is not necessary, except for the ground of arrears of rent. He submits that even when a suit is filed on the ground of arrears of rent, the notice is not called as a eviction

notice but such notice is called a as “notice of demand”. He harped on the word “thereof”, which one finds in section 12 (3) (a). He therefore submitted that what is required as per the said section is a full payment as demanded by the landlord. He further submitted that after amendment to section 12 (3) (a) in the year 1963, the word “Court may pass decree” has been replaced with “Court shall pass a decree”.

(iv). He refereed to judgment of Supreme Court, Harbanslal Jagmohandas Vs. Prabhudas Shivilal reported in (1997) 1 SCC 575.

(v). He therefore, submitted that the petition should be dismissed with costs.

Analysis & Conclusion

12. I have heard both the counsels and with their assistance I have gone through the documents on record.

13. It is an admitted fact that the demand notice was issued on 24 February 1983. The said demand notice sought a payment from the tenant, from the month of July 1982. A reply to the said demand notice was sent by the tenant on 6 April 1983. Admittedly, in the reply dated 6 April 1983, no cheque or payment is offered to

be paid by the tenant. The said reply mentions about an earlier reply of the tenant dated 17 January 1983. The said reply dated 6 April 1983 mentions that in the letter dated 17 January 1983, the tenant had sent across the payment for the rent of three months only, due to financial crunches.

14. All I have to see in the case of “arrears of rent” is that whether the tenant had made / tendered any kind of payment for the period of six months prior to the filing of the suit. The argument of Mr. Walvalkar that in the reply dated 17 January 1983, his client had sent a cheque, for me it is difficult to believe because the said reply reads as under :

23
P.R. Wallace & Sons Private Ltd.,
Elphinstone Building, 10, Veer
Nariman Road, Fort, Bombay-400 023.

Date: 17th Jan. 1983.

Ref.: SW/B/83.

The Secretary,
M/s. Ewart Investments Ltd.,
22, Homi Modi Street,
Bombay - 400 023.

Dear Sirs,

Kind Attn.: Mr. P.C. Agarwal.

We are in receipt of your letter dated 22.12.1982 and 14.01.1983 and have noted the contents with due care. As you are aware that we have started our business after a closure period of 3 years with great difficulty and at present we are passing through financial difficulties. With this we would like to inform you that rent for the months of July, August & September, will be paid by us by 31.01.1982 and for October, November & December the same will be paid by 20.02.1983. You are requested to bear with us till then.

Thanking you,

Yours faithfully,

FOR P.R. WALLACE & SONS PVT. LTD.,

DIRECTOR.

15. Therefore, the letter dated 7 January 1983 states that there are financial difficulties to the tenant and they will be making payment for the month of July, August and September by 31 January 1983 and for the month of October, November and December, the same will be paid on 20 February 1983. Hence, except making a promise that the payment of first three months will be made on 31 January 1983 and the balance payment by 20 February 1983, there is no tender of payment as contemplated under the Rent Act, by the tenant.

16. After the suit summons was served on the defendant/tenant, in their written statement except denying the contentions of the plaint, they have not made any averment as to the payment made by them.

17. The evidence as recorded of the Chief Accountant of the plaintiff which the Trial Court recorded in its Judgment and Decree about certain statements being made by the chief accountant, according to me, that will not help the defendant. Since the defendant on their own in their letter/reply have not stated anything about payment being made by them. Neither did the

defendant in their evidence proved the fact that they had made certain payments to the Plaintiff.

18. Admittedly, no application was preferred for fixation standard rent by the defendant.

19. On behalf of Respondent / Landlord the judgment of the Supreme Court of *Harbanslal Jagmohandas (supra)* in was referred. The Paragraph no 23 of the said judgment reads as under :

“23. The question as to when a dispute is to be raised came up for consideration in Shah Dhansukhlal Chhanganlal v. Dalichand 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 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 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 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.”

[Emphasis Supplied]

The ratio laid down by Supreme Court in *Harbanslal (supra)* squarely applies to the present proceedings.

20. In my view in the proceedings under section 12 (3)(a) the tenant can come out of the clutches of the said section is by making an application within one month of the service of the notice, and raising a dispute as to the standard rent or else by making the payment as demanded by the landlord.

21. Hence, writ petition is dismissed. No costs.

22. At this stage Mr. Walwalkar has made request that execution of this judgment be stayed for 12 weeks as Petitioners desire to challenge this judgment before the Supreme Court. Mr. Jahagirdar has opposed the said request made by Mr. Walwalkar. The execution of the judgment passed today is stayed for a period of 12 weeks, subject to the petitioner filing an undertaking to this Court within one week, of uploading this judgment, stating therein

that they are only in possession of the suit premises and they will not create any third party interest in the suit premises .They will also pay the rent of the suit premises and in case they are not able to succeed in the Supreme Court they will vacate the suit premises.

(RAJESH S. PATIL, J.)