

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.5355 OF 1999
WITH
INTERIM APPLICATION NO.10193 OF 2024
IN
WRIT PETITION NO.5355 OF 1999**

Sudhir Kumar Sengupta,
since deceased by his heirs and
legal representative

Ronen K. Sengupta
since deceased by his heir and
legal representative:
Smt. Supriya Ronen Sengupta

**.... *Petitioner*
(orig. Defendant)**

V/s.

Mrs. Kusum Pandurang Keni

**....*Respondent*
(Orig. Plaintiff)**

Mr. Jintendra G. Damani, for the Petitioner.

Dr. Abhinav Chandrachud with Mr. Saurabh Utangale and Mr. Sarthak Utangale i/b. M/s Utangale & Co., for Respondent.

CORAM : SANDEEP V. MARNE, J.

***Judgment reserved on :13 September 2024.
Judgment pronounced on :24 September 2024.***

Judgment:

1) This Petition is filed challenging judgment and order dated 18 June 1999 passed by the Appellate Bench of the Small Causes Court, by which the Appeal preferred by original Plaintiff /Respondent has been allowed setting aside the decree dated 7 June 1995 passed by the learned Judge of the Small Causes Court, by

which R.A.E. & R. Suit No.313 /1024 of 1983 was dismissed. The Appellate Bench of the Small Causes Court has thus, reversed the finding of the Trial Court on the issue of default in payment of rent and has decreed the Suit directing Defendant to handover possession of the suit premises to the Plaintiff-landlord.

2) Briefly stated, facts of the case are that Plaintiff is the owner and landlady of the building known as 'Dr. Keni's House', situated at Plot No.176, Sion Road, Sion (West), Mumbai-400 022. The original Defendant Mr. Sudhir Kumar Sengupta was inducted as monthly tenant in respect of Flat No.8 (**suit premises**) in the said building 'Dr. Keni's House' at monthly rent of Rs.43.76 exclusive of permitted increases. According to Plaintiff, Defendant was irregular in payment of rent and he also not paid water pump and pump-man charges @ Rs.10 per month. That Defendant also did not pay permitted increases comprising repair cess and education tax amounting to Rs.20.24 per month. That this is how the Defendant remained in arrears of rent, permitted increases and water pump charges from October 1972. Plaintiff sent Advocate's letter dated 22 March 1982 calling upon Defendant to pay the arrears of rent, permitted increases and water pump charges. Defendant was served with the notice on 8 April 1982. According to Plaintiff, Defendant failed to pay the demanded rent, permitted increases and water pump charges nor replied to the notice. Plaintiff therefore filed R.A.E. & R. Suit No.313/1024 of 1983 against Defendant for recovery of possession of the suit premises and for recovery of amount of Rs.2,664/- towards arrears of rent, permitted increases and water pump charges. The Suit was resisted by Defendant by filing written statement denying that he was in arrears of rent, permitted increases or water pump charges. Defendant contended that he was always ready and willing to pay standard rent

and permitted increases in respect of the suit premises. Defendant denied receipt of notice dated 22 March 1982. That he was also willing to pay arrears of standard rent, permitted increases alongwith interest and cost of the Suit as provided under Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (**Bombay Rent Act**). By order dated 29 October 1984 the learned Judge of the Small Causes Court directed Defendant to deposit arrears of standard rent and continue to deposit the same regularly. It appears that in pursuance of the said order, the Defendant deposited the arrears of rent and continued depositing the same during pendency of the Suit.

3) Both the sides led evidence in support of their respective claims. Plaintiff took out Notice No. 5595 of 1994 for comparison of signature of Defendant on postal acknowledgment with his signature on vakalatnama, written statement, etc. for proving receipt of Notice. The Court directed that said Notice No. 5595 of 1994 would be decided alongwith the Suit. After considering the pleadings, documentary and oral evidence, the learned Judge of the Small Causes Court made Notice No. 5595 of 1994 absolute by undertaking the exercise of comparison of signatures. The learned Judge held that the notice dated 22 March 1982 was received by the Defendant. The learned Judge however, held that Defendant was ready and willing to pay the amount of standard rent and permitted increases. Accordingly, the learned Judge proceeded to dismiss the Suit by judgment and decree dated 7 June 1995. Aggrieved by the decree of the Trial Court dated 7 June 1995, the Plaintiff/Respondent filed Appeal No.359 of 1995 before the Appellate Bench of the Small Causes Court. By judgment and decree dated 18 June 1999, the appeal has been allowed and the Appellate Bench has set aside the Trial Court's decree dated 7 June

1995. The Appellate Bench has accepted the ground of default in payment of rent on the part of the Defendant -tenant. The Appellate Bench has accordingly decreed the Suit by directing Defendant to vacate the suit premises by 30 September 1999. Petitioner/Defendant has filed this Petition challenging the decree passed by the Appellate Bench. By order dated 27 September 1999, the Petition has been admitted and interim order is granted staying the decree of the Appellate Bench on usual terms. During pendency of the Petition, the Petitioner/original Defendant passed away and accordingly Smt. Ronen K. Sengupta was brought on record as his legal heir. However, said Ronen Sengupta has also passed away and accordingly Smt. Supriya Ronen Sengupta is prosecuting the present Petition. It appears that Petitioner has been depositing rent before the Small Causes Court during pendency of the Petition. The Petition came to be dismissed for non-prosecution by order dated 2 December 2019. The Petition came to be restored by order dated 15 September 2022. It appears that the Small Causes Court did not accept rent in respect of the suit premises on account of dismissal of the Petition in default. Therefore, Petitioner has filed Interim Application No.10193 of 2024 seeking direction for acceptance of rent. Said Interim Application is also decided alongwith the main Writ Petition.

4) Mr. Damani, the learned counsel appearing for Petitioner would submit that the Appellate Bench has erred in reversing the well-reasoned judgment of the Trial Court. That the Appellate Bench has erred in not appreciating the fact that the entire amount of rent together with interest has been deposited by the Petitioner before the Small Causes Court. That the present case is clearly covered by provisions of Section 12(3)(b) of the Bombay Rent Act and that therefore deposit of standard rent and permitted increases as per the

order passed by the Small Causes Court clearly warranted rejection of the ground of default and dismissal of the Suit. He would submit that Section 12 has subsequently been amended during pendency of the Suit in the year 1987, under which deposit of arrears of standard rent and permitted increases is permissible till the first date of hearing of the Suit, which has been interpreted by Courts to mean the date of framing of issues. That the objective behind said amendment must be borne in mind and the said objective must be made applicable in the present case, in which the Defendant-tenant has shown willingness to pay the arrears of rent and permitted increases. That throughout pendency of the Suit Defendant has been regular in payment of rent. In support of his submissions, Mr. Damani would rely on judgment of the Apex Court in ***Smt. Priya Bala Ghosh and Others V/s. Bajranglal Singhania and Another***¹ and of this Court in ***Yashodabai Ganpat Wani since Decd. V/s. Ramnarayan Govindram Sarswat***², and ***Sitaram Maruti Nagpure V/s. Fakirchand Purushottam Dhase***³

5) Mr. Damani would further submit that Plaintiff-landlady herself was not sure about the exact amount of rent in respect of the suit premises. He would take me through Plaintiff's cross-examination, in which she stated that the rent was Rs. 44.33 ps and later changed the said amount to Rs. 43.33 ps. That the amount demanded in the notice was excessive. That the notice was actually not received by Defendant. That in the light of the dispute about receipt of notice, the Trial Court had rightly considered readiness and willingness on the part of the Petitioner/Defendant to pay the rent. That decree for eviction cannot be passed by adopting hyper-technical

¹. 1993 SUPP(1) SCC 24

². 1997(3) BOMCR 23

³. 2208(1) BOMCR 687

approach ignoring the conduct of the tenant in depositing the entire arrears of rent in the court and further continuing to deposit the same regularly through the pendency of the proceedings. Mr. Damani would therefore pray for setting aside the decree passed by the Appellate Bench and for dismissal of the Suit.

6) Petition is opposed by Dr. Chandrachud, the learned counsel appearing for Respondent -Plaintiff. He would submit that present case is governed by provisions of Section 13(1)(a) of the Bombay Rent Act as it stood prior to 1987 amendment. That there is no dispute to the position that the rent was payable by month. That there is no dispute regarding amount of standard rent or permitted increases. He would take me through the averments in the plaint and written statement to demonstrate that no dispute is created by Defendant about rent being payable by month and also about quantum of standard rent or permitted increases. He would further submit that since the rent is not paid from October -1972, the arrears were in excess of six months. That therefore case is clearly covered by Section 12(3)(a) of the Bombay Rent Act. That the Trial Court had erred in considering the provisions of Section 12(3)(b), which has no application to the present case. He submits that use of words 'in any other case' would mean that all three elements of monthly rent, absence of dispute about quantum of rent and arrears for a period of less than six months must be present in a given case. In support of his contention Dr. Chandrachud would rely upon judgment of the Apex Court in ***Manorama S. Masurekar V/s. Dhanlaxmi G. Shah and Another***⁴ and ***Shah Dhansukhlal Chhaganlal V/s. DalichandVirchand Shroff (dead) by his Legal representatives***⁵.

⁴. AIR 1967 SC 1078

⁵. AIR 1968 SC 1109

7) Dr. Chandrachud would submit that subsequent amendment effected in Section 12 in the year 1987 permitting tenant to deposit arrears of standard rent and permitted increases before first date of hearing of the Suit operates prospectively and cannot affect the Suit instituted prior to coming into effect of said amendment. In support, he would rely upon judgments of the Apex Court in ***Raju Kakara Shetty V/s. Ramesh Prataprao Shirole and Another***⁶, ***Vora Abbasbhai Alimahomed V/s. Haji Gulamnabi Haji Safibhai***⁷. Dr. Chandrachud would therefore submit that since the case is governed by Section 12(3)(a) of the Bombay Rent Act, failure on the part of the Defendant to pay the amount of standard rent and permitted increases within the statutory period prescribed under Section 12(2) of the Bombay Rent Act left no choice to the Court to pass decree of eviction.

8) Dr. Chandrachud would submit that even the Trial Court has held that demand notice has been duly served on Defendant. That there is no dispute to the position that demand notice was dispatched at the correct address. Relying upon judgment of this Court in ***Mukesh Kantilal Waghela and Others V/s. Rajkumar Shivmurat Singh and Others***⁸ he would submit that the notice is otherwise deemed to have been served on the tenant. Relying on judgment of this Court in ***Egbert D'Souza V/s. Smt. Vencilla J. Miranda***⁹ he would submit that it is permissible to address composite notice in respect of distinct demand for standard rent and permitted increases. Dr. Chandrachud would submit that Trial Court has committed gross error in applying provisions of Section 12(3)(b) of the Bombay Rent Act to the present case when in fact provisions of

⁶. (1991) 1 SCC 570

⁷. Air 1964 SC 1341

⁸. 2024 SCC OnLine Bom 2780

⁹. 1997 SCC OnLine Bom 680

Section 12(3)(a) were clearly attracted. That the Appellate Bench has rightly reversed the erroneous order of the Trial Court. He would submit that the judgment and decree passed by the Appellate Bench does not suffer from any gross error for this Court to interfere in the same. He would pray for dismissal of the Petition.

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

10) Plaintiff filed Suit seeking recovery of possession of premises from Defendant on singular ground of default in payment of rent under Section 12 of the Bombay Rent Act, as it applied in the year 1983, when the Suit was lodged. The Plaintiff was premised on averment that the Defendant was in arrears of rent, permitted increases and water pump charges since October 1972. Though Petitioner/Defendant succeeded before the Trial Court in getting the Suit dismissed, the Trial Court has recorded a finding that the Defendant paid rent lastly till September- 1972 and thereafter he remained in arrears of rent. Thus, non-payment of rent by Defendant since October -1972 is concurrently held to be proved by the Trial Court and its Appellate Bench. In fact, the factum of non-payment of rent from October-1972 was admitted by Defendant in his cross-examination in which he stated that *'I have been paying rent regularly to the present landlady. I paid upto October -1972 to the present landlady'*.

11) There is no dispute to the position that on account of default in payment of rent by the Defendant since October-1972, Plaintiff dispatched demand notice dated 22 March 1982. Plaintiff pleaded in the Plaintiff that the said demand Notice was received by the Defendant and produced office copy of the said Notice alongwith postal

acknowledgment receipt of Defendant in evidence. The office copy of demand notice together with postal acknowledgment receipt have been exhibited and marked in evidence. The Defendant however, denied having received the said demand notice dated 22 March 1982. In his examination-in-chief Defendant deposed that he did not receive notice dated 22 March 1982. In cross-examination he denied authorship of the signature reflected on postal acknowledgment dated 8 April 1982. However, Defendant admitted in the cross examination that he used to receive all other correspondence at the address of the suit premises. He did not dispute correctness of the address put on the demand notice, envelope, and postal acknowledgment. The conduct of the Defendant in denying his signature on the postal acknowledgment prompted Plaintiff to take out Interim Notice No.5595 of 1994 for undertaking the exercise of comparing signature of Defendant on postal receipt with his signature on vakalatnama and written statement, etc. While deciding the Suit by judgment dated 7 June 1995 the learned Judge of the Small Causes Court has undertaken the exercise of comparing signatures and has held that the signature appearing on the postal acknowledgment is that of Defendant. The Small Causes Court thus, recorded findings against the Defendant that he was served with the demand notice dated 22 March 1982. Since demand notice is concurrently held to be proved, it is not necessary to deal with the judgments in ***Mukesh Kantilal Waghela*** and ***Egbert D'Souza*** (supra).

12) This is how non-payment of rent from October-1972 as well as receipt of demand notice dated 22 March 1982 was held to be proved even by the Trial Court.

13) Under Section 12 of the Bombay Rent Act, as it applied at the time of filing of the Suit, landlord was not entitled to seek recovery of possession so long as tenant paid or was ready and willing to pay amount of standard rent and permitted increases. Sub Section (2) of Section 12 mandated landlord to serve a demand notice in respect of the arrears of standard rent and permitted increases in accordance with the provisions of Section 106 of the Transfer of Property Act, 1882 and no Suit for ejectment could be filed before expiry of period of one month after service of notice. Thus, the tenant, who was in arrears of standard rent and/or permitted increases had time of one month to make good the default. If the tenant failed to make good the default within a period specified under Section 12(2), the landlord became entitled to recover possession of premises as provided for in Sub Section (3). It would be apposite to reproduce provisions of Sections 12 of the Bombay Rent Act as it applied prior to amendment of 1987:

12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3) (a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent 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 shall pass a decree for eviction in any such suit for recovery of possession.

(b) In any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such

other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court.

(4) Pending the disposal of any such suit, the Court may out of any amount paid or tendered by the tenant pay to the landlord such amount towards payment of rent or permitted increases 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.

14) Thus, under Section 12(3)(a), in cases where (i) rent is payable by month, (ii) there is no dispute regarding amount of standard rent or permitted increases (iii) if the rent or increases are in arrears for a period of six months or more; and tenant neglects to make payment within one month period after service of demand notice, the Court has to pass decree for eviction. Clause (b) of Sub Section (3) of Section 12 comes into play in 'any other case'. Thus, where a case is not governed by Clause (a) of Sub Section 3 of Section 12, provisions of Clause (b) would apply, under which the tenant can avoid decree for eviction by paying or tendering in the Court the standard rent and permitted increases on the first day of the hearing of the Suit or on or before such other date as the Court fixes.

15) There is debate in the present case about applicability of Clause (a) or (b) of Sub Section (3) of Section 12. While Mr. Damani contends that provisions of Section 12(3)(b) would apply to the present

case, it is Dr. Chandrachud's contention that case is clearly governed by Section 12 (3)(a) of the Bombay Rent Act. In fact, answer to this debate would determine Plaintiff's entitlement to seek recovery of possession of suit premises as the Defendant admittedly did not pay arrears of standard rent and permitted increases within one month period specified under Section 12 (2) of the Bombay Rent Act. Therefore, if the case is held to be governed by Section 12(3)(a), the decree for eviction would be imminent whereas if case is held to be governed by Section 12(3)(b), tenant's deposit of standard rent and permitted increases before first date of hearing would avoid decree for eviction.

16) For application of Section 12 (3)(a) of Bombay Rent Act, it is necessary that three elements specified in Clause (a) are satisfied. The three elements are :-

- (i) rent being payable by month;
- (ii) absence of any dispute about the amount of standard rent or permitted increases; and
- (iii) arrears in excess of six months.

So far as first element of rent being payable per month is concerned, Plaintiff averred in paragraphs 3, 5 and 6 of the Plaint as under:

- 3. The Plaintiff states that prior to the termination of tenancy, the Defendant was a **contractual monthly tenant** of the Plaintiff in respect of Flat No.8 in her building known as Dr. Keni's House situated at Plot No.176, Sion road, Sion (West), Bombay- 400 022 on the **monthly rental** of Rs.43/76 P exclusive of permitted increases. For brevity sake, the premises in occupation of the Defendant are hereinafter referred to as 'the suit premises'.
- 5. The Plaintiff states that the Defendant also failed and neglected to pay the Water pump and pump-man's charges at the rate of Rs.10/- **per month** which the Defendant was liable to pay as the same was a facility and amenity to have water supply for more hours.
- 6. The Plaintiff states that the Bombay Municipal Corporation levied the permitted increases like repair cess, education tax which the Defendant is liable to pay in addition to the rent at the rate of Rs.20.24 Ps. **per month**.

(emphasis added)

17) In his written statement, Defendant admitted that he is '*contractual monthly tenant*' of the Plaintiff. The Defendant did not dispute that the amount of pump charges or repairs cess and education tax were to be paid on monthly basis. Thus, there is no dispute to the position that either rent or permitted increases were payable on monthly basis. Thus, the first element of Section 12 (3)(a) is clearly satisfied.

18) So far as second element of absence of dispute about quantum of standard rent and permitted increases are concerned, perusal of the written statement would indicate that Defendant did not create any dispute with regard to the quantum of rent. The second element is also clearly satisfied. So far as the third element of arrears in excess of six months is concerned, it has been concurrently held that Defendant did not pay rent since October -1972. Thus, the third element of Section 12(3)(a) of the Bombay Rent Act is also satisfied.

19) In my view therefore, the present case is governed by provisions of Section 12(3)(a) of the Bombay Rent Act. The Defendant admittedly did not pay to the Plaintiff arrears of standard rent or permitted increases within one month period specified under Section 12(2) of the Bombay Rent Act. In that view of the matter, the Court had no option to pass decree for eviction on the ground of default in payment of rent.

20) The Trial Court erred in going into the issue of Defendant's readiness and willingness to pay the rent. The Trial Court erred in not appreciating the language employed in Section 12(3)(a) of the Bombay Rent Act, which uses the words '*court shall pass a decree for*

eviction'. The word 'may' has been substituted by the word 'shall' by 1963 amendment, which leaves no discretion for the Court to pass decree for eviction once the case get covered by provisions of Section 12(3)(a) of the Bombay Rent Act.

21) Dr. Chandrachud has relied upon judgment of the Apex Court in ***Manorama S. Masurekar*** (supra) in which the Apex Court has held in paragraphs 2 and 4 as under:

2 It is to be noticed that the rent was in arrears for a period of more than six months. The tenant neglected to make payment of the arrears of rent within one month of the service of the notice by the landlord under sub-section (2) of Section 12. The rent was payable by the month, and there was no dispute regarding the amount of the rent. The case was, therefore, precisely covered by sub-section (3)(a) of Section 12. Nevertheless, the appellant submitted that as she was ready and willing to pay the rent before the institution of the suit, she could claim protection under sub-section (1) of Section 12. She submitted that the decided cases support this contention. In *Mohanlal v. Maheshwari Mills Ltd.*, (1962) 3 Gujarat Law Reporter, 574 at pp 618 to 620, P. N. Bhagwati, J. held that even in a case falling under sub-section (3) (a), a tenant could, by paying or showing his readiness and willingness to pay the arrears of rent before the institution of the suit, claim protection from eviction under sub-section (1). A similar opinion was expressed by a Divisional Bench of the Gujarat High Court in *Ambalal v. Babaidas* (1962) 3 Gujarat Law Reporter, 625, 644. The judgment under appeal dissented from the view expressed by the Gujarat High Court. **The Bombay High Court held, and, in our opinion, rightly, that in a case falling under sub-s. (3)(a), the tenant could not claim protection from eviction by showing his readiness and willingness to pay the rent before the institution of the suit.**

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4. If the conditions of sub-section (3)(a) are satisfied, the tenant cannot claim any protection from eviction under the Act. By tendering the arrears of rent after the expiry of one month from the service of the notice under sub-section (2), he cannot claim the protection under sub-section (1). It is immaterial whether the tender was made before or after the institution of the suit. In a case falling within sub-section (3)(a), the tenant must be dealt with under the special provisions of sub-section (3)(a), and he cannot claim any protection from eviction under the general provisions of sub-section (1).

(emphasis added)

22) The judgment in *Manorama S. Masurekar* (supra) has been followed in subsequent judgment in *Shah Dhansukhlal Chhaganlal* (supra) in which it is held in paragraphs 10, 11 and 12 as under:

10. **It appears to us that there is no substance in the contention put forward on behalf of the appellant. Section 12(1) must be read with the Explanation and so read it means that a 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.** We have already noted that the tenant made no payment within the period of one month of the notice of ejectment and 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 readiness and willingness to pay has therefore to be judged in the light of the facts of the case. Whereas here a suit is filed on the ground that the tenant was in arrears for a period of more than 6 months and although raising a dispute as to the standard rent or permitted increases recoverable under the Act, the tenant makes no application in terms of Section 11(3) he cannot claim the protection of Section 12(1) by merely offering to pay or even paying all arrears due from him when the court is about to pass a decree against him. In *Vora Abbasbhai Alimahomed v. Haii Gulamnabi Haji Safibhai*(1962) 2 SCR 159 it was pointed out that Section 12(1) of the Act applied to a tenant who continued to remain in occupation even after the expiry of the contractual tenancy so long as he paid or was, ready and willing to pay the amount of the standard rent and permitted increases. The protection was howsoever available to a tenant subject to the provisions of Section 13 and to the limitations contained in Section 12(2) and Section 12(3)(a) of the Act.
11. In *Mrs. Manorama Masurekar v. Mrs. Dhanlaxmi G. Shah and another* [1967] 1 S.C.R. 135. rent was in arrears for a period of more than six months and the tenant neglected to make payment of the same within one month of the notice under Section 12(2). There the rent was payable by the month and there was no dispute regarding the amount of the rent. It was held that if the conditions of sub-Section (3)(a) of Section 12 were satisfied the tenant could not claim any protection from eviction by tendering the arrears of rent after the expiry of one month from the service of notice under sub-section (2). It was observed :

"It is immaterial whether the tender was made before or after the institution of the suit. In a case falling within sub-section (3)(a), the tenant must be dealt with under the special provisions of sub-section (3)(a), and he

cannot claim any protection from eviction under the general provisions of sub-section (1)"

12. As already noted, **if sub-section (3)(a) is not attracted, the tenant, if he is in arrears, cannot sit quiet and offer to pay all the amount** due from him at the time of the hearing of the suit so as to get the protection of section 12(1). To be within the protection of subs. (1) where he raises a dispute about the standard rent payable, he must make an application to the court under sub-section (3) of Section 11 and thereafter pay or tender the amount of rent and permitted increases, if any, specified in the order made by the Court. If he does not approach the court under s. 11(3), it is not open to him thereafter to claim the protection of Section 12(1).

(emphasis added)

23) In my view, therefore, in absence of any valid dispute created by Defendant about the amount of standard rent or permitted increases by filing application for fixation of standard rent under Section 11(3) within 30 days of receipt of demand notice, tenant cannot escape the eviction under Section 12(3)(a) of the Bombay Rent Act. Mr. Damani has relied upon judgment of the Apex Court in ***Priya Bala Ghosh*** (supra), which has interpreted provision of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947. Under Section 12(1) of the Bihar Act, it was lawful for the tenant to tender rent by postal money order when landlord refuses to accept the rent. The controversy before the Apex Court was about eviction of tenant, who tendered rent by money order to the landlord. In the above factual background, the Apex Court has held in paragraph 3 as under:-

3. ...It is not difficult to conceive of several situations which may arise and necessitate the remittance of the rent by money order. We have referred to one and the High Court had referred to another. But there could be many more such situations and it must be realised that the law intended to ensure on the one hand regular payment to the landlord and on the other protection to the tenant from a not-too-co-operative landlord. If the tenant is sure on account of a consistent course of conduct of the landlord that the latter will not accept the rent if paid hand to hand, it would be futile for him to make the trip

every time; in such a situation he would be justified in remitting the rent by money order. What is it that the landlord requires? He must be assured of his rent. If the tenant pays the rent, whether by hand to hand or by money order at his cost, that should not make any difference to the landlord. Why should a tenant who resorts to the latter mode of payment be evicted even though he has shown readiness and willingness to pay the rent due and payable by him to the landlord? The law has to be broadly construed because it is not intended to trap the tenant into a situation so that the landlord can evict him. We are afraid that the High Court construed the relevant provisions of the law in a rather hyper-technical manner without keeping in mind the fact that Rent Restriction Legislations were enacted to protect the tenants from eviction by not-too-co-operative landlords.

24) In my view, the judgment in **Priya Bala Ghosh** (supra) provides no assistance to the Petitioner in the present case as he did not offer to pay rent by money order at any point of time. Defendant's eviction appears imminent on account of coverage of the case by Section 12(3)(a) of the Bombay Rent Act. Mr. Damani has relied upon **Yashodabai Ganpat Wani** (supra), in which the issue was about irregular payment of rent during pendency of the Suit under Section 12(3)(b) of the Bombay Rent Act. In that case, there was no controversy about application under Section 12(3)(a) or Section 12(3)(b) of the Bombay Rent Act. Therefore, the judgment in **Yashodabai Ganpat Wani** (supra) is inapplicable to the facts of the present case. In **Sitaram Maruti Nagpure** (supra), the Division Bench of this Court has resolved conflict between two judgments of the learned Single Judge of this Court. Justice Bhole in **Suka Ishram Chaudhari v. Ranchhoddas Manakchand Shet Gujarathi**¹⁰ held that when tenant sent the rent by money order and landlord refused to accept the same, tenant could not be held to be in arrears of rent. Justice Jahagirdar in **Abdul Gani Dinalli Momin v. Mohamed Yusuf Mohamed Isak**¹¹ disagreed with the judgment of Justice Bhole and held that the tenant cannot be said to be ready and willing

¹⁰. Vol. LXXIV BLR P. 220,

¹¹. Vol. LXXX BLR 646,

to pay the rent within the meaning of Section 12(1) unless he had complied with other requirements made in Section 12, particularly unless he pays or tenders the amount in arrears within one month after expiry of the notice under Section 12(2) of the Bombay Rent Act. The Division Bench upheld the view of Justice Bhole and overruled the view taken by Justice Jahagirdar. Relying upon judgment in ***Sitaram Maruti Nagpure*** (supra) Mr. Damani has contended that provisions of Section 12(3)(a) cannot be hyper-technically construed or interpreted when the Defendant shows readiness and willingness to pay the rent. In my view, the judgment in ***Sitaram Maruti Nagpure*** will have no application to the present case. It must be noted that Justice Bhole in ***Suka Ishram Chaudhari*** (supra) encountered a case where the landlord therein had refused to accept money orders, by which rent was sought to be tendered by the tenant and had thereafter served notice under Section 12(2) of the Bombay Rent Act. In the present case, there is nothing on record to indicate that Defendant had attempted to send the rent by money order prior to issuance of demand notice or that the Plaintiff-landlady had refused to accept the same. Therefore, the judgment of Justice Bhole in ***Suka Ishram Chaudhari*** (supra) or of Division Bench in ***Sitaram Maruti Nagpure*** (supra) would have no application to the facts and circumstances of the present case. On the contrary, judgment of the Apex Court in ***Manorama S. Masurekar*** (supra) squarely covers the present case.

25) Mr. Damani has sought to contend that the objective behind subsequent amendment of Section 12 in the year 1987 must be borne in mind while considering the issue of default in payment of rent. I am unable to agree. Plaintiff's Suit for eviction instituted in the year 1983 cannot be decided on the basis of subsequent amendment of

Section 12 of the Bombay Rent Act, under which the amended provision provided for an opportunity to the tenant to make good default on first day of hearing of Suit. As on 1983, when the Suit was lodged, no such opportunity was available for tenant, who had refused to pay the standard rent and permitted increases within one month period specified under Section 12(2) of the Bombay Rent Act. This issue is no more *res integra* and covered by direct judgment of the Apex Court in ***Raju Kakara Shetty*** (supra) the Apex Court has held in paragraph 7 as under:-

7. Dr. Chitale, the learned counsel for the appellant frankly conceded that in view of the decision of this Court in *Arjun Khaimal Makhijani v. Jamnadas C. Tuliani* (1989) 4 SCC 612 the case would be governed by Section 12(3) as it stood before its amendment by Amending Act 18 of 1987, since the substituted Section 12(3) was found to be prospective in nature. This Court in paragraph 14 of the judgment at page 624 repelled the submission that it was retrospective in operation in the following words:

“In our opinion, the tenants are not entitled even to the benefit of the amended sub-section (3) of Section 12 of the Act inasmuch as on a plain reading of the sub-section it is not possible to give it a retrospective operation.”

26) Therefore, submission of Mr. Damani about consideration of objective behind 1987 amending Act cannot be accepted while deciding Plaintiff's claim for eviction based on unamended provisions of Section 12 of the Bombay Rent Act as they applied at the time of filing of the Suit.

27) Considering the overall conspectus of the case, I am of the view that the ground of default in payment of rent under Section 12(3(a) of the Bombay Rent Act is clearly established in the present case. The Trial Court has clearly erred in going into the issue of readiness or willingness on the part of the Defendant to pay the rent and permitted increases. Section 12(3)(a) did not leave any discretion for the Trial Court to go into the issue of readiness and willingness to pay rent since there was no dispute about amount of rent nor

Defendant file application for fixation of standard rent within notice period. The statutory scheme of Section 12(3)(a) is such that immediately upon noticing the non-payment of arrears of rent and permitted increases to the landlord within the statutory notice period provided under Section 12(2), the eviction decree becomes imminent.

28) In my view, therefore, the Appellate Bench has rightly reversed the erroneous judgment and decree of the Trial Court. I do not find any valid ground to interfere in the decree of the Appellate Bench. Writ Petition must fail. Writ Petition is accordingly **dismissed**. Rule is discharged. However, considering the facts and circumstances of the present case Defendant is granted time of three months to vacate the suit premises.

29) In view disposal of the Writ Petition, Interim Application does not survive and hence stands disposed of.

[SANDEEP V. MARNE, J.]