



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2121 OF 1996

Dr. Ramdas Bhagwan Chaudhary
Age : 63 years, Occu. Medical Practitioner,
Residing at Ranade Smriti,
Nagarpatti, Dhule

Since deceased through LR's.

- 1-A) Smt. Vinabai Ramdas Chaudhari,
Age 53 years, Occu. Household,
R/o Near Ranade Smruti, Khol Galli,
Dhule
- 1-B) Dr. Bhushan Ramdas Chaudhari,
Age 23 years, Occu. Doctor,
R/o. Near Ranade Smruti, Khol Galli,
Dhule
- 1-C) Dr. Monica Ashish Tarate,
Age 26 years, Occu. : Business (Doctor)
R/o 5, Prabhuprasad Apartments,
Kirti Society, Krushi Nagar,
Near H.P.T. College, College Road,
Nasik – 5

.. Petitioners
(Orig. Plaintiff)

VERSUS

Madhyavarti Sahakari Grahak
Bhandar Limited, Dhule
Ranade Smriti, Nagarpatti,
Dhule

.. Respondent
(Orig. Defendant)

...
Advocate for petitioners : Mr. P.R. Katneshwarkar, Senior Advocate
i/b. Mr. Aummaheshwari S. Jadhav and Y.G. Gujrati
Advocate for the respondent : Mr. S.B. Deshpande, Senior Advocate
i/b. Mr. C.R. Deshpande
...

CORAM : SACHIN S. DESHMUKH, J.

DATE : 19 DECEMBER 2025

JUDGMENT :

Rule was issued in this petition on 07.10.1993 which is presented by the landlord seeking possession of the premises, on account of default committed by the tenant. However on appeal, the appellate Court reversed the decision of the trial Court, maintaining the finding of default of some lapses. Aggrieved by the same, the petitioner has approached this Court.

2. Mr. Katneshwarkar, learned Senior Counsel for the petitioners submits that the notice below Exhibit - 69 dated 11.05.1979 was served on the respondent indicating the default committed by the tenant coupled with notice for payment of the amount towards the education cess. It is further submission on behalf of the petitioners that the default on the part of the tenant is apparent that the tenant has failed to deposit the amount of rent even, as mandated by the statutory provision, more particularly, to be read with section 12(1) of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as 'Rent Control Act').

3. It was further submitted that the finding of lapse / default rendered by the appellate Court, is not assailed by the respondent, as such, has attained finality. Therefore, the statutory protections are not

available to the tenant in view of the default on the part of the tenant.

As such, prayed to restore the decree of trial Court.

4. The petitioners has further presented an affidavit stating that the tenant has breached the mandate of explanation appended under section 12(1) since, 'C' number register maintained by the trial Court indicates and establishes the default, rather persistent default by the tenant, as such, the statutory protection is not available to the tenant.

5. In the process, learned counsel for the petitioners places reliance on the following judgments of the Hon'ble Apex Court :

- (i) ***Kalidas Bhavan V. Bhagvandas Sakalchand 1958 SCC OnLine Bom 108,***
- (ii) ***Shah Dhansukhlal Chhaganlal V. Dalichand Virchand Shroff (Dead) by his LRs; AIR 1968 SC 1109,***
- (iii) ***Ganpat Laddha V. Shashikant 1978 (2) SCC 573;***
- (iv) ***Mranalini B. Shah and another V. Bapalal Mohanlal Shah (1980) 4 SCC 251,***
- (v) ***K. Subramaniam (Died) through LRs K.S. Balakrishnan and others V. M/s. Krishna Mills Pvt. Ltd. (Civil Appeal No. 2561 of 2025)***

Further reliance is placed on the reference answered by a Full Bench of this Court dated 12.06.2017 in case of ***Babulal S/o Fakirchand Agrawal V. Suresh S/o Kedarnath Malpani another*** (Civil Revision Application No. 76 of 2010).

6. Per contra, Mr. Deshpande, learned Senior Counsel has submitted that the notice at Exhibit 69, served upon the tenant is confined to the amount of education cess, which was not payable by the month. Since it includes a portion which was not payable by month and same is dependent upon determination by the local planning authority. As such, it cannot be regarded as default attributable to the tenant. Therefore, in absence of notice of default, the landlord had no cause of action to present the suit itself. Hence, the error committed by the trial Court is corrected by the appellate Court while reversing the decision.

7. The learned Senior Counsel for the respondent placed reliance on the judgment of this Court in case of ***Madhavsingh Tulsidas since deceased through LRs V. Bhaktiben Narandas Paleja since deceased through LRs.; 2006 (5) Bom.C.R. 604*** and further submitted that if the notice under section 12(2) of the Rent Control Act, does not satisfy the legal requirements, there is no cause of action for initiating the eviction proceedings.

8. It is further submitted that at the most, the proceedings presented by the landlord, can be regarded as the recovery proceedings for arrears of employment guarantee cess. Therefore,

prayed to dismiss the petition, endorsing the order of the appellate Court.

9. Heard the respective counsel for the litigating sides, perused the record made available and the judgment on which reliance is placed by the litigating sides.

10. The landlord inducted the respondent – tenant, in suit premises on an agreed rent. On account of the default of payment, a notice terminating tenancy was served on 11.05.1979, calling upon the respondent to hand over the possession of the suit premises. Thereafter, Regular Civil Suit No. 476 of 1979 was presented before Court of Joint Civil Judge Junior Division, Dhule for recovery of the possession and arrears of rent, employment guarantee scheme cess, education cess, taxes etc. future mesne profit.

11. The respondent resisted the suit by presenting written statement and denied the claim of the petitioners and prayed for dismissal.

12. The trial Court, after considering the rival claims put forth by the litigating sides, the statutory provisions, has held that the defendants has committed default since 01.04.1979. The issue in relation to defendant being in arrears of land and permitted increase with eventual default was answered in affirmative, upholding the

entitlement of the plaintiff for possession. Resultantly, the trial Court decreed the suit. It was further held that the employment guarantee cess, education cess, are to be considered as part of rent and those are required to be paid. Non-payment of the same would constitute default.

13. The appellate Court in an appeal, reversed the decision of the trial Court on the ground that the cess would be payable only upon determination of the same by the municipal council. Therefore, non-payment of the same, cannot be regarded as default by the tenant and the refusal to pay cess monthly, cannot be regarded as default, maintaining a finding that there are some lapses here or there, on average, the payment is regular.

14. When confronted with the finding rendered by the appellate Court and whether it has been subjected to challenge by the tenant, the learned Counsel fairly concedes that no challenge to that effect is raised. However, it was submitted that the appellate Court was basically considering the notice below Exhibit - 69 and the amount claimed therein. As such, stray observations may not be construed as a default committed by the tenant. Further attempt is made to submit that since the notice below Exhibit - 69 itself is invalid and illegal, therefore, the petitioner had no cause to present the suit.

15. At this juncture, it would be appropriate to refer to the judgment of the Hon'ble Apex Court in the case of **K. Subramaniam (Died) through LRs K.S. Balakrishnan** (supra) in paragraph no. 27 thereof, held as under : -

"27. Thus, on consideration of the proposition of law laid down by the majority in Sundaram Pillai (supra), this Court is not persuaded to accept the contention of the appellants that the absence of a two months' notice under the Explanation to Section 10(2)(i) of the Rent Control Act, 1960 would ipso facto disentitle the landlord from maintaining the proceedings for eviction on the ground of wilful default. The statute, when read as a whole, does not render such notice an indispensable condition precedent to the assumption of jurisdiction by the Rent Controller. The Explanation merely provides an additional instance where, service of notice and continued non-payment, the default may be presumed to be wilful; it does not, by necessary implication, obliterate the discretion vested in the Controller under the proviso to determine wilfulness even in the absence of such notice."

The Hon'ble Apex Court in the case of **Mranalini B. Shah and another** (supra) in paragraph nos. 12 and 13 thereof, held as under :-

"12. We have perused the recent judgment of this Court in Ganpath Ladha v. Shashikant Vishnu Shinde 19 G.L.R. 502. In our opinion, the point raised by the appellants before us is fully covered by that judgment. The following observations of Beg, C.J., who spoke for the Court, are apposite :

...We think that the problem of interpretation and application of Section 12(3)(b) need not trouble us after the decision of this Court in Shah Dhansukhlal Chhaganlal's case (supra) (9 G.L.R. 759) followed by the more recent decision in Harbanslal Jagmohandas and Anr. v. Prabhudas Shivilal which completely covers the case before, us.

It is clear to us that the Act interferes, with the landlord's right to property and freedom of contract only for the limited purpose of protecting tenants from misuse of the landlord's power to evict them, in these days of scarcity of accommodation, by asserting his superior rights in 'property or trying to exploit his position by extracting too high rents

from helpless tenants. The object was not to deprive the landlord altogether of his rights in property, which have also to be respected. Another object was to make possible eviction of tenants who fail to carry out their obligation to pay rent to the landlord despite opportunities given by law in that behalf, But where the condition of Section 12(3)(b) are not established, 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 claim for eviction. If, however, he does not fulfil these 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 legislation in Kalidas Bhman's v. Bhagwandas (supra) 60 Bom.LR. 1369. In converting the provisions of Section 12(3)(b) into a sort of discretionary jurisdiction of the Court to relieve tenants from hardship. The decisions of this Court referred to above, in any case, make the position quite clear' that Section 12(3)(b) does not create any discretionary jurisdiction in the Court. It provides protection to the tenant or 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 of relieve the hardship of the tenant, the remedy lies with the legislature. It is not in the hands of Courts.

13. The above emaciation, clarifies beyond doubt that the provisions of Clause (b) of Section 12(3) are mandatory, and must be strictly complied with, by the tenant during the pendency of the suit or appeal if the land lord's claim for eviction on the ground of default in payment of rent is to be defeated. The word "regularly" in Clause (b) of Section 12(3) has a significance of its own. It enjoins, a payment offender characterised by reasonable punctuality that is to say, one made at regular times or intervals. The regularity contemplated may not be a punctuality, of clock like precision and exactitude, but it must reasonably conform with substantial proximity to the sequence of times or intervals at which the rent falls due. Thus, where the rent is

payable by the month, the tenant must, if he wants to avail of the benefit of the latter part of Clause (b), tender or pay it every month as it falls due, or at his discretion in advance. If the persistently defaults during the pendency of the suit or appeal in paying the rent, such as here he, pays it at irregular intervals of 2 or 3 or 4 months as is the case before us the court has no discretion to treat what were manifestly, irregular payments, as substantial compliance with the mandate of this clause irrespective the fact that by the time the judgment was pronounced all the arrears had been cleared by the tenant."

Similarly, the Hon'ble Apex Court in case of **Shah Dhansukhlal Chhaganlal** (supra) in paragraph nos. 9, 10, 12 and 13 thereof, held as under :-

9. In order to appreciate the first contention it is necessary to set out section 12 of the Act as it stood at the relevant time :

"12(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 a 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 may 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 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. - In any case where there is a dispute as to the amount of standard rent or 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."

10. Learned counsel drew our attention to a judgment of this Court in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha. There the landlord had filed a suit for possession of the premises on April 25, 1957, the period of tenancy fixed under the rent note having expired on March 14, 1957. Under s. 6 of the Act a notification was issued applying Part II of the Act to the area where the property was situate. The appellants claimed protection of s. 12 of the Act and the main question which engaged the attention of this Court was, whether by virtue of the first proviso to s. 50 of the Act, all the provisions in Part II including s. 12 were made expressly applicable to all suits; and secondly, whether by virtue of s. 12(1) of the Act the suit was rendered incompetent. This Court turned down the contention of the respondent that the operation of s. 12(1) was limited to suits filed after it came into force in a particular area and observed that under s. 12(1) the landlord was not to be entitled to recover possession and the point of time when the sub-section would operate was when the decree for recovery of possession would have to be passed.

12. In *Mrs. Manorama Masurekar v. Mrs. Dhanlaxmi G. Shah and another*, 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 s. 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-s. (3)(a) of s. 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-s. (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-s. (3)(a), the tenant must be dealt with under the special provisions of sub-s. (3)(a), and he cannot claim any protection from eviction under the general provisions of sub-s. (1)."

13. As already noted, if sub-s. (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 s. 12(1). To be within the protection of sub-s. (1) where he raises a dispute about the standard rent payable, he must make an application to the court under sub-s. (3) of s. 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 s. 12(1). (Emphasis supplied.)"

16. So far as reliance placed by the learned Senior Counsel for the petitioners on the reference by the Full Bench of this Court in case of ***Babulal Agrawal Vs. Suresh Malpani*** (supra), wherein the issue i.e. the tenant's compliance to notice issued by the landlord and pays the amount within the time stipulated under section 15(2) of the Rent Control Act and whether the landlord can still file a suit for eviction

on the ground of arrears of rent, whether eviction can be ordered by invoking the provisions of section 15(3) of the Rent Control Act.

17. While answering the said issue, the Full Bench in clear and unequivocal terms held that once the tenant pays the amount indicated in the notice, or tenders the same, the landlord has no right to institute a suit for possession for recovery of possession for non-payment of those arrears or continue with such proceeding for eviction and no decree for possession can be asked for, is not within the contemplation of provisions of section 15 of the Act and, therefore, the provision does not interfere with the right of the landlord to initiate proceeding for eviction, however, sub-section (2) of section 15 prescribes a pre-condition for presentation of suit.

18. Thus, it is evident that there is no embargo to present a suit, however, the only stipulation is that the notice by the landlord and further fulfilment of the conditions stipulated in sub-section (1) and (3) of section 15 of the Rent Control Act. It would be appropriate at this juncture, to refer to provisions of section 15 of the Rent Control Act, which reads as under :-

“ 15. No ejectment ordinarily to be made if tenant pays or its 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 the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days 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 (IV of 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 increase if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen 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.

(4) Pending the disposal of any suit, the court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the court thinks fit."

19. Thus, the perusal of the statutory provision makes it abundantly clear that the entitlement of landlord for recovery of possession of any premises exists, so long as tenant fails to pay or is not ready and willing to pay the amount of standard rent and permitted to increase and fails to observe and perform the other conditions of the tenancy. Thus, the obligation of the tenant to comply with and observe, perform, the other requisites of tenancy are not to be ignored.

20. Equally, the explanation appended to section 12(3) also confers the protection to the tenant from decree of eviction only in the event where tenant pays or tenders in the Court the standard rent and permitted increase then due and even thereafter continues to pay or

tender rent regularly and permitted increase till the suit is finally decided and also pays the cost of the suit as directed by the Court.

21. Thus, the reading of section 12 and the explanation thereunder is to be considered that the tenant can only be considered to be ready and willing to pay if before the expiry of period of ninety days after notice referred to in sub-section 2, presents an application to the Court under sub-section 3 of section 12 and can thereafter, tenders the amount of rent or permitted increase specified by the Court. In the present case, attempt of the respondent - tenant to dispute, whether the rent amount is inclusive of the employment guarantee cess or otherwise. Admittedly, the respondent - tenant has not presented an application as contemplated under sub section (b) of section 12, therefore is not open for the tenant to raise the dispute in relation to the issue of inclusivity of education cess along rent.

22. Nonetheless, as is evident from the 'C' number register maintained by the trial Court that the default is apparent. Even under the statutory provisions, the tenant is under an obligation to pay or tender in Court regularly such rent till the suit is decided. Thus, the reliance placed by the learned counsel for the petitioners on the judgment of the Hon'ble Apex Court in case of ***Mranalini B. Shah and another V. Bapalal Mohanlal Shah*** (supra) that the protection available to the tenant, as contemplated under section 15(3) does not

confer any discretionary jurisdiction to the Court. However, it provides protection to the tenant on certain conditions and those conditions have to be strictly observed by the tenant, seeking the statutory protection.

23. The persistent default during the pendency of the proceeding in paying the rent, as is evident from the extract of 'C' number register, cannot be regarded as the compliance with the statutory provisions. Although the affidavit is presented by the petitioner pointing out default by the tenant, same is not countered by the respondent – tenant.

24. Thus, the default on the part of tenant is rather evident. In the wake of established default, the case of tenant does not fall within the ambit of section 15(3) which confers protection. In order to seek statutory protection, the tenant must not only pay all the arrears due from him on the first date of hearing of the suit and even thereafter rent due to pay or tender in the Court regularly till the proceedings are decided finally.

25. Thus, the attempt of the tenant to assert that the plaintiff - landlord had no cause of action on the ground of invalidity of the notice of eviction, is fallacious. Having failed to comply to deposit the amount constitutes a default and even the appellate Court has categorically held that there is default, may be here and there, that by itself does not salvage the situation contending that notice is invalid, does not warrant

consideration in the backdrop of the settled legal position. The non-compliant approach on the part of the tenant, disentitles to claim benefit of the statutory provisions.

26. In that view of the matter, it can be held that the finding of the appellate Court, in the backdrop of a positive finding, there are lapses on the part of the tenant which, is illegal and contrary to the statutory provisions, and is unsustainable in law. Hence, the petition is allowed. Rule is made absolute in aforesaid terms.

27. Pending Civil Application no. 264 of 2025, also stands disposed of.

[SACHIN S. DESHMUKH]
JUDGE

arp/