

Jaywant S. Kulkarni & Ors vs Minochar Dosabhai Shroff & Ors on 9 August, 1988

Equivalent citations: 1988 AIR 1817, 1988 SCR SUPL. (2) 296, AIR 1988 SUPREME COURT 1817, 1988 (4) SCC 108, (1988) 3 JT 360 (SC), 1988 3 JT 360, (1988) 3 BOM CR 531, (1988) MAH LJ 828, 1988 BOM LR 90 288

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, R.S. Pathak, L.M. Sharma

PETITIONER:

JAYWANT S. KULKARNI & ORS.

Vs.

RESPONDENT:

MINOCHAR DOSABHAI SHROFF & ORS.

DATE OF JUDGMENT 09/08/1988

BENCH:

MUKHARJI, SABYASACHI (J)

BENCH:

MUKHARJI, SABYASACHI (J)

PATHAK, R.S. (CJ)

SHARMA, L.M. (J)

CITATION:

1988 AIR 1817	1988 SCR Supl. (2) 296
1988 SCC (4) 108	JT 1988 (3) 360
1988 SCALE (2) 384	

ACT:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947: S. 12-Tenant in arrears of rent for six months or more-Failure to pay within one month from notice-Dispute regarding standard rent not raised-Eviction--Held valid.

HEADNOTE:

Section 12(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 bars suits for recovery of possession against the tenant on the ground of non-payment of the standard rent until the expiration of one month next after notice in writing. Section 12(3)(a) provides for passing of a decree for eviction of the tenant who is in

arrears for a period of six months and neglects to make payment until the expiration of the notice period provided there is no dispute regarding the standard rent. Section 12(3)(b) interdicts passing of the decree if the tenant pays or renders in the court the standard rent and permitted increases then due.

The appellants were served with a notice under s. 12(2) of the Act terminating the tenancy and calling upon them to pay arrears of rent from 1st September, 1971 to 31st December, 1972. They did not pay the amount claimed. No dispute was raised regarding the standard rent. The trial court and the appellate court came to the conclusion that there was neglect on the part of the appellants within the meaning of s. 12(3)(a) of the Act meriting, a decree for eviction. The High Court dismissed the appeal.

In the appeal by special leave, it was contended for the appellants that the landlord was not granting receipts, that he was not demanding rent but compensation for use and occupation, that the landlord was acting mala fide and preventing the tenant from performing his obligation, that this was not a case of bona fide need and that the landlord was affluent and the tenant was poor.

Dismissing the appeal,

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HELD: 1.1 In view of the provisions of s. 12(3)(a) and (b) of the Act and in the background of the facts and circumstances of the case, the courts below were right. The eviction order had to follow by operation of law. [301H-D]

1.2 Sub-section 3(a) of s. 12 categorically provided that where the rent was payable by the month and there was no dispute regarding the amount of standard rent or permitted increases, if such rent or increases were in arrears for a period of six months or more and the tenant neglected to make payment thereof until the expiration of the period of one month after notice referred to in sub-s. (2), the court shall pass a decree for eviction in any such suit for recovery of possession. [301B]

1.3 In the instant case, the rent was payable month by month. There was no dispute regarding the amount of standard rent or permitted increases. Such rent or increases were in arrears for a period of six months or more. The tenant had neglected to make payment until the expiration of the period of one month after notice referred to in sub-s. (2). The court was bound to pass a decree for eviction in, any such suit for recovery of possession. [301C]

Harbanslal Jagmohandas & Anr. v. Prabhudas Shirlal, [1976] 3 SCR. 628 referred to.

Mohan Laxman Hede v. Noormohamed Adam Shaikh, AIR 1988 SC. 1111 distinguished.

2. The expression "court shall pass a decree" in sub-s. 3(a), of s. 12 was substituted for the words "court may pass a decree" by an amendment passed in 1963, making it

mandatory to pass the decree. When the legislature has made its intention clear in specific terms, there was no scope for appeal to the "spirit of the law" and not to the strict letter of the law. [302C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 258 of 1982.

From the Judgment and Order dated 3.11.1981 of the Bombay High Court in Spl. Civil Appln. No. 2598 of 1978. S.B. Bhasme and V.N. Ganpule for the Appellants.

PG NO 298 Dr. Y.S. Chitale. R.F. Nariman, B.H. Antia and Mrs. A.K. Verma for the Respondents.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. This is an appeal by the tenant. It arises out of an order of eviction passed by the Civil Judge, Thane and confirmed by the learned Assistant Judge of Thane on or about 24th July, 1976. The High Court of Bombay on or about 3rd November, 1981 dismissed an application under Article 227 of the Constitution challenging the said decision. Civil Suit No. 176 of 1974 was filed by the respondent-landlord against the appellants for possession of the building called Jamshed Villa at Thane. The ground floor of the building consists of one hall, tow bed rooms, two side rooms and a kitchen. The said premises was let out to one Shri S.H. Kulkarni the deceased father of the appellants some years ago by the respondent on the rent of Rs. 50 per month. The former owner, it is stated, terminated the tenancy of the appellants on 20th June, 1976, and the deceased Shri Kulkarni continued to occupy it as a statutory tenant. On the sale of the suit property the tenancy of Shri S.H. Kulkarni was duly attorned to the present plaintiff. Shri S.H. Kulkarni then expired. On 11th January, 1973 the respondents served the notice upon the appellants requiring them to vacate the suit premises on various grounds. By the said notice the respondent also called upon the appellants to pay the arrears of rent for the period from 1st September, 1971 to 31st December, 1972 at the rate of Rs. 50 per month. The total arrears came to Rs. 800. Indubitably, the amount claimed in this notice was not paid by the appellants to the respondent. The appellants replied to the notice. In that reply, several contentions were urged. It may be mentioned that the suit was filed on various grounds, namely, that the appellants have created a nuisance and they are irregular in paying the rent and further it was stated that the respondent required the suit premises reasonably and bona fide for his personal use and occupation. The learned trial Judge after framing the issues, on all issues held in favour of the tenant except the issue of the arrears of rent. The learned trial Judge held that the appellants had failed and neglected to pay the arrears of rent within the statutory period in spite of the notice under Section 12(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter called 'the Act'). The trial court, however, on the question whether the appellants have raised a substantial plea that the rent is excessive, did not go into this aspect in view of the decision of this Court in Harbanslal Jagmohandas & Anr. v. Prabhudas Shivilal, [1976] 3. S.C.R. 628.

PG NO 299 Accordingly. the trial Judge decreed the suit on the ground that the are in arrears of rent. There was an appeal from the said. decision of the trial Judge to the learned Assistant Judge,

Thane. The learned Assistant Judge affirmed the order of the learned trial Judge but reiterated that the tenant could claim protection from the operation of Section 12(3)(a) of the Act, only if the tenant had made an application within one month from the service of the notice under Section 12(1)(i) of the Act terminating the tenancy wherein a dispute was raised regarding the standard rent. It is common ground that the appellants in this case did not make any application within one month from the service of the notice under Section 12(2) of the Act terminating the tenancy wherein a dispute was raised regarding the standard rent. The learned Assistant Judge, therefore, confirmed the order for eviction. The appellants moved the Bombay High Court. The Bombay High Court by the judgment under appeal on 3rd November, 1981 dismissed that application holding that neglect on the part of the appellants in making payment as mentioned in Section 12(3)(a) of the Act has to be decided on the facts of each case. The High Court reiterated that after considering all the facts and circumstances both the Courts below had rightly come to the conclusion that there was on the part of the appellants within the meaning of Section 12(3)(a) of the Act, meriting a decree for eviction. Shri Bhasme appearing for the appellants concluded before us the High Court was wrong and did not properly consider the conduct of the respondent in not giving receipts. Before we consider this contention, it may be appropriate to refer to the provisions of Section 12 of the Act. It provides that the landlord shall not be entitled to the recovery of possession of any premises a, long as the tenant pays, or is ready and willing to pay, the amount of the standard rent permitted increases, if any. and observes and performs the other of the tenancy, in so far as they are consistent with the of the Act. Sub-section (2) of Section 12 of also stipulate that no suit for recovery of possession shall be instituted by a landlord 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 has been served upon the tenant in the manner provided in 106 of the Transfer or Property Act, 1882. Sub- section (3)(a) and (b) of Section 12 of the Act are important and set out here under:

"(3)(a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or PG NO 300 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 regular 14' such rent and permitted increases till the suit is finally decided and also pay costs of the suit as directed by the Court. " .

(Emphasis supplied) This question. as to how a payment to be made under Section 12(3)(a) and (b), had been considered by this Court in Harbanslal Jagmohandas and Anr.(supra). There, both the appeal raised a common question as to whether a tenant in order to resist passing of a decree of eviction under the provisions contained in Section 12 (3)(a) of the Act must dispute the standard rent

within one month from the date of receipt of the notice from the landlord terminating the tenancy on the ground of arrears of rent or whether a tenant can raise such a dispute in the written statement. There was difference of opinion between Bombay and Gujarat High Courts. The Gujarat High Court took the view that the dispute as to Standard rent had to be raised within one month from the service of the notice on the tenant. The Bombay High Court had taken a contrary view and held that the tenant could raise a dispute as to standard rent in his written statement in answer to the suit and in such a case the provisions of Section 12 (3)(a) of the act would apply. In the Gujarat case, the High Court found that the tenant did not raise the dispute within one month of the service of the notice terminating the tenancy. *inter alia*, on the ground of arrears of rent for more than 6 months. In the Bombay appeal the dispute was not raised within one month from the date of the receipt of the notice. It was, however, raised in the written statement. Under Section 11 of the Act the Court had power to determine standard rent when there was a dispute between landlord and tenant regarding the amount of standard rent. It was held by this Court that under Section 12 of the Act the landlord is not entitled to recover possession of the premises so long as the tenant pays or is ready and willing to pay the amount of standard rent and permitted increases. Section 12(2) provides that 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 until the expiration of one month next after notice in writing of the payment of the standard rent. This Court held that the view of the Bombay High Court was erroneous and the view of the Gujarat High Court was correct. Sub-section 3(a) of section 12 categorically provided that where the rent was payable by the month and there was no dispute regarding the amount of standard rent or permitted increases, if such rent or increases were in arrears for a period of six months or more and the tenant neglected 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. In the instant case, as has been found by the Court, the rent is payable month by month. There is no dispute regarding the amount of standard rent or permitted increases. Such rent or increase are in arrears for a period of six months or more. The tenant had neglected to make payment until the expiration of the period of one month after notice referred to in sub-section (2). The Court was bound to pass a decree for eviction in any such suit for recovery of possession. In terms of the decision of this Court in *Harbanslal Jagmohandas supra*), the eviction order had to follow by operation of law.

Shri Bhasme, however, submitted before us that here there was no question of negligence in proper light because he drew our attention to several letters whereby the tenant to pay then rent of the landlord. "The tenant's case was that the landlord Was not granting receipts. The landlord was not demanding rent but was demanding compensation"

for use and occupation. He drew our attention to several decision and urged that the tenant was willing to pay the rent provided receipts were granted to him. Shri Bhasme urged that the landlord did not comply with the request to give written receipts. He was punishable with fine which might extend to one hundred rupee under sub-section (2) of Section 26 of the Act. Shri Bhasme submitted that in this case, the landlord was mala fide and by his mala fide act he was preventing the tenant from performing his obligation. He further urged that this was not a case of bona fide need. The landlord was affluent and the tenant was a poor. There was a great

shortage of accommodation. In view of the decision of this Court in Harbanslal jagmohandas and Anr. V. Prabhudas Shivilal (supra) and the provisions. of Section 12(3) (a) and (b) and in the Court below were right. circumstances of the case, we must hold that the Courts below were right.

PG NO 302 Our attention was drawn to a decision of this Court in Mohan Laxman Hede v. Noormohamed Adam Shaikh, A.I.R. 1988 S.C. 1111, where this Court reiterated that to take advantage of protection from eviction under Section 12(3)(b) of the Act, it cannot be said that exact or mathematical punctuality was required in the deposit of rent by a tenant. The tenant had been depositing the rents in that case in Court for two or three months at a time. There the Court was concerned with the expression "regularly" as contemplated in clause (b) of sub-section (3) of Section 12 of the Act. It was not concerned with clause (a) of sub-section (3) of Section 12 of the Act. It was not concerned with the question of total failure or neglect on the part of the tenant to pay the rent. It may be instructive in this connection to note that in sub-section (3)(a) of Sec. 12 of the Act, the expression "Court shall pass a decree" was substituted for the words "Court may pass a decree" by an amendment passed in 1963, making it mandatory to pass the decree. When the Legislature had made its intention clear in specific terms, there was no scope for Shri Bhasme's appeal to 'the spirit of the law' and not to the strict letter of the law.

In the aforesaid view of the matter, this appeal fails and is accordingly dismissed. But in the facts and circumstances of the case. the parties will pay and bear their own costs. Furthermore, in order to cause less hardship in the situation, we direct that the appellant will have six months time to vacate the premises in question, provided they file an undertaking within six weeks from this date to this Court that they will deliver vacant possession of the premises to the landlord after the expiry of six months from this date and to go on paying rent compensation until possession is given and not to induct or let anybody in the premises in question. in the usual terms.

P.S.S

Appeal dismissed.