

Mohan Laxman Hede vs Noormohamed Adam Shaikh on 7 April, 1988

Equivalent citations: 1988 AIR 1111, 1988 SCR (3) 461, AIR 1988 SUPREME COURT 1111, 1988 (2) SCC 481, (1988) 2 JT 56 (SC), 1988 BOM LR 90 182

Author: M.H. Kania

Bench: M.H. Kania, R.S. Pathak, N.D. Ojha

PETITIONER:
MOHAN LAXMAN HEDE

Vs.

RESPONDENT:
NOORMOHAMED ADAM SHAIKH

DATE OF JUDGMENT 07/04/1988

BENCH:
KANIA, M.H.
BENCH:
KANIA, M.H.
PATHAK, R.S. (CJ)
OJHA, N.D. (J)

CITATION:
1988 AIR 1111 1988 SCR (3) 461
1988 SCC (2) 481 JT 1988 (2) 56
1988 SCALE (1) 656
CITATOR INFO :
D 1988 SC1817 (5)

ACT:
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947-Section 12(3)(b)- 'Regularity' in payment-Significance of-Exact or mathematical punctuality not required.

HEADNOTE:
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Appellant took the tenancy of the premises in question on an agreed monthly rent of Rs.22 + Rs.2.20 per month on account of Education Cess. Respondent purchased the house on December 3, 1976. Appellant was in arrears of rent from

1.6.1976 to 30.11.76. In response to the notice issued by the Respondent, appellant sent a money order to Respondent treating him as the Muktyar or agent of the previous landlord. The respondent refused the money order. Thereafter the appellant filed an application in the trial court for fixing the standard rent of the premises under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

The Respondent filed a suit claiming arrears of rent and possession of the suit premises on the ground of non-payment of arrears of rent and bona fide requirement under section 12(3) and section 13(1) of the Act. Trial Court passed an order fixing the interim rent of Rs.20 and directed the appellant to pay all arrears of rent and future rent accordingly. Appellant deposited the arrears and thereafter made payment not monthly but at some irregular intervals.

The Trial Court held that the respondent had failed to prove that he was in bona fide need of the suit premises, but passed a decree for eviction on the ground that the Appellant had committed default in payment of rent as contemplated under section 12(3)(b) of the Act. On appeal these findings were confirmed by the Additional District Judge. The Appellant filed a Writ Petition in the High Court, which was dismissed. In the appeal by special leave, it was contended on behalf of the appellant that payments of rents were made with substantial regularity and that no decree for eviction could be passed against the Appellant. The contention of the Respondent was that there was irregularity in the deposit of the rent and that the appellant was liable to be evicted on the ground of default in payment of rent.

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Disposing of the appeal this Court,

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HELD: 1. Section 12(3)(a) of the Act will not be applicable since there was dispute regarding the amount of standard rent. Section 12(3)(b) is applicable, which makes it clear that no decree for eviction can be passed in a suit for recovery of possession on the ground of non-payment of standard rent or permitted increases instituted by the landlord against the tenant, if on the first day of the hearing of the suit or on or before such a date, as the court may fix, the tenant pays or deposits in court the standard rent and permitted increases then due and thereafter continues to pay or deposits in court regularly such rent and permitted increases till the suit is finally decided and also pays the costs of the suit as directed by the court. [466E-F]

2. As ordered by the Trial Court, the monthly rent should have been deposited on the fifth day of each succeeding month. There were a few defaults committed by the Appellant varying from 2 to 3 days into a maximum of 23

days. On the other hand, rent for most of the months had been deposited in advance. In the circumstances of the case the Appellant had been depositing the rent with reasonable punctuality and can be regarded as having deposited the rent 'regularly' as contemplated in Section 12(3)(b) and it is incorrect to say that exact or mathematical punctuality was required in the deposit of rent by a tenant to take advantage of the provisions of Section 12(3)(b). [467G-H; 468A-C]

(Mranalini B Shah and another v. Bapalal Mohanlal Shah, [1980] 4 S.C.C. 251, followed.

[The decree for eviction was set aside and the court directed that the suit filed by the Respondent shall stand dismissed.]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1449 of 1987.

From the Judgment and Order dated 25.2.1987 of the Bombay High Court in W.P. No. 6028 of 1986.

V.M. Tarkunde and S.C. Birla for the Appellant. V.B. Joshi and Janardan for the Respondent. The Judgment of the Court was delivered by KANIA, J. This is an Appeal by a tenant against a decree for eviction passed against him at the instance of the Respondent who is the landlord. The Appeal has been preferred pursuant to Special Leave granted by this Court under Article 136 of the Constitution.

In view of the short controversy before us, the relevant facts can be very briefly stated.

The Appellant took the tenancy of the premises in question, namely, shop in a house bearing CTS No. 168, Bhavant Peth, Satara City in Maharashtra on an agreed rent of Rs.22 per month. Apart from the rent, a sum of Rs.2.20 per month was payable on account of Education Cess. The Respondent purchased the said house on December 3, 1976 and on the next day the previous owner of the said house informed the Appellant that the property was sold to the Respondent and the tenancy was attorned and further stated that the Appellant was in arrears of rent from 1.6.1976 to 30.11.1976. On January 11, 1977, the Appellant received a notice from the Respondent dated January 10, 1977 demanding the arrears of rent from the Appellant. On January 17, 1977, the Appellant sent a money order to the Respondent for the arrears of rent but the money order stated that the payment was being made to the Respondent as the Muktyar or agent of the previous landlord. This money order was refused by the Respondent. On February 14/15, 1977, the Appellant filed a standard rent application in the Trial Court for fixing the standard rent of the premises under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which we shall refer to hereinafter as "the Bombay Rent Act". The Respondent filed a suit, being Regular Civil Suit No. 123 of 1977, in the Court of Civil Judge Junior Division, Satara claiming arrears of rent and

possession of the suit premises on the ground of non-payment of arrears of rent and bona fide requirement as contemplated under Section 12(3) and Section 13(1) respectively of the Bombay Rent Act. The issues in the said suit were framed by the Trial Court on September 12, 1978, and that is accepted as the first day of hearing of the suit. Although the Appellant made applications on 24-12-1977, 15-1-1980, 9-12-1980 and 27-1-1981 for fixation of interim rent, the Trial Court passed an order only on January 27, 1981 fixing the interim rent at Rs.20 per month and gave directions to the Appellant to pay all the arrears of rent on or before February 10, 1981. The Appellant deposited all the arrears of rent at the rate fixed by the Court for the period from 1-6-1976 to 31-1-1981 in the Trial Court on January 29, 1981, that is, within two days from the date of order fixing the rent. The Appellant thereafter deposited the rent in the Trial Court as set out in the following manner:

| ' C ' N o . | R e c e i p t | D a t e | A m o u n t | P a r t i c u l a r s | N o . |
|-------------|---------------|---------|-------------|-----------------------|-------|
|-------------|---------------|---------|-------------|-----------------------|-------|

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|------|------|---------|---------|-----------------------|---|
| 1269 | 1094 | 29-1-81 | 1158.60 | June 1976 to Feb'1981 | 1416 1208 25-2-81 20.00 March, 1981 13 12 2-4-81 60.00 April, May, June, 1981 409 366 8-7-81 60.00 July, Aug., Sept', 1981 849 755 5-10-81 60.00 October, November Dec., 1981 1322 1166 11-1-82 60.00 January, February, March, 1982 54 51 8-4-82 60.00 April, May, June, 1982 682 630 10-8-82 60.00 July, August Sept, 1982 1153 1055 1-11-82 60.00 October, November, Dec., 1982 1728 1596 7-2-83 40.00 January, February, 107 100 12-4-83 60.00 March, April May 1983 528 484 14-7-83 40.00 June, July, 998 910 28-9-83 40.00 August, Sept., 1983 1213 1203 7-11-83 40.00 October, Nov. 1983, 1689 1603 11-1-84 20.00 December, 1635 1551 5-1-84 20.00 January, 2079 1952 15-3-84 100.00 February to June, 1984 354 316 26-6-84 120.00 July to Dec, 1984 434 256 18-12-84 240.00 January to Dec', 1985 456 290 17-12-85 240.00 January to Dec', 1986 |
|------|------|---------|---------|-----------------------|---|

The Trial Court held that the Respondent had failed to prove that he was in bona fide need of the suit premises but passed a decree for eviction on the ground that the Appellant had committed default in payment of rent as contemplated under section 12(3)(b) of the Bombay Rent Act. On an appeal by the Appellant, these findings were confirmed by the Additional District Judge, Satara and the appeal was dismissed. Being aggrieved, the Appellant filed a writ petition, being Writ Petition No. 6028 of 1986, in the High Court of Bombay. This writ petition was dismissed by a learned Single Judge of the High Court by a short order taking the view that the Appellant was in arrears and had committed default in payment of rent and there was no reason for the High Court to interfere with the decisions of the courts below. The present Appeal is directed against this decision.

It was submitted by Mr. Tarkunde, learned counsel for the Appellant that the Appellant had deposited well within time the entire arrears of rent on the basis of the interim rent fixed by the Trial Court and had thereafter deposited the amount of accruing rent in court with substantial regularity and in view of this, no decree for eviction could be passed against the Appellant under the provisions of Section 12(3)(b) of the Bombay Rent Act read with the other provisions contained in Section 12. It was, on the other hand, contended by Mr. Joshi, learned counsel for the

Respondent, that there was irregularity in the deposit of the interim rent after the initial deposit of arrears was made by the Appellant, and he was not entitled to the protection of the Bombay Rent Act and was liable to be evicted on the ground of default in payment of the rent. In order to appreciate these arguments, we have to consider the relevant provisions of Section 12 of the Bombay Rent Act. The material portion of Section 12 runs as follows:

"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 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.

x x x x x"

The provision of Section 12(1) has already been set out. In the present case, the provisions of clause (a) of sub-section (3) of Section 12 have no application as there was a dispute regarding the amount of standard rent. Hence the provisions which we have to consider are those contained in clause (b) of sub-section (3) of Section 12 of the Bombay Rent Act. This clause read in the context makes it clear that no decree for eviction can be passed in a suit for recovery of possession on the ground of non-payment of standard rent or permitted increases instituted by the landlord against the tenant, if on the first day of the hearing of the suit or on or before such a date, as the court may fix, the tenant pays or deposits in court the standard rent and permitted increases then due and thereafter continues to pay or deposits in court regularly such rent and permitted increases till the suit is finally decided and also pays the costs of the suit as directed by the court.

In the present case, both sides accepted the position that the Appellant had deposited in Court the entire arrears of rent on the basis of interim rent fixed well within time as directed by the court. It is common ground that until the application of standard rent made by the tenant is finally decided, the interim rent fixed by the court must be regarded as the standard rent. The only question, therefore, is whether it can be said that the Appellant, after the first deposit, of the arrears of rent, continued to deposit in court the rent and the permit-

ted increases "regularly" till the suit was finally decided as contemplated under Section 12(3)(b) of the Act. In *Mranalini B. Shah and another v. Bapalal Mohanlal Shah*, [1980] 4 S.C.C. 251 a Division Bench of this Court was called upon to consider the very provisions of Section 12(3)(b) of the Bombay Rent Act which fall for consideration in the present case before us. In dealing with these provisions, Sarkaria, J., speaking for the Court stated as follows:

"The above enunciation, 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 landlord'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 or tender 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 every month as it falls due, or at his discretion in advance. If he persistently defaults during the pendency of the suit or appeal in paying the rent, such as where 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 of the fact that by the time the judgment was pronounced all the arrears had been cleared by the tenant."

If we examine the chart of deposits made by the Appellant in the court set out earlier, it shows that during the period 29-1-1981 to 17-12-85 the Appellant has been depositing the rents in court for two or three months at a time. In respect of some months, there are undoubtedly a few defaults in the sense that the deposits have been made a few days later than directed. In this connection, it must be noticed that Trial Court directed that in respect of accruing rent after the order for deposit of arrears was passed, the monthly rent must be deposited on the fifth day of each month which, it is undisputed, must mean the fifth day of each succeeding month. On this basis there are undoubtedly a few defaults committed by the Appellant in the sense that in respect of the first month to which the deposit relates, there is some delay amounting to from two or three days upto a maximum of 23 days. But, on the other hand, the rent for most of the months has been deposited in advance. In these circumstances, applying the principle laid down in the aforesaid decision referred to, we are of the view that the rent has been deposited by the Appellant with reasonable punctuality and hence the Appellant/tenant can be regarded as having deposited the rent 'regularly' as contemplated in

clause (b) of subsection (3) of Section 12 of the Bombay Rent Act. We are of the view that the courts below were in error in taking the view that exact or mathematical punctuality was required in the deposit of rent by a tenant to take advantage of the provisions of Section 12(3)(b) of the Bombay Rent Act.

In these circumstances, we set aside the decree for eviction passed by the courts below and order that the suit filed by the Respondent shall stand dismissed.

So far as the costs of this Appeal are concerned, however, that is a different question. It has been pointed out to us by the learned counsel for the Respondent that the Appellant has been persisting in his unjustified stand that the Respondent was not his landlord in respect of the premises in question and on that ground he opposed the withdrawal by the Respondent of the amount deposited by the Appellant in the Trial Court. We agree that this stand was unjustified. Mr. Tarkunde, however, made it clear that the Appellant unconditionally accepts the title of the Respondent to the suit building and also accepts that he is the landlord of the Appellant and that the Respondent is entitled to recover the amount of rent from the Appellant. If any rent remains deposited by the Appellant in the Trial Court, the Respondent shall be at liberty to withdraw the same forthwith.

In these circumstances, we direct that the entire costs throughout shall be borne and paid by the Appellant.

G.N.

Appeal disposed of.