Supreme Court of India
Chase Bright Steel Limited vs Shantaram Shankar Sawant And ... on 2 March, 1994
Equivalent citations: AIR 1994 SC 2114, JT 1994 (2) SC 192, 1994 (1) SCALE 832, (1994) 4 SCC 89, 1994 2 SCR 287, 1994 (1) UJ 544 SC
Author: S Mohan
Bench: S Mohan, M Mukherjee
ORDER S. Mohan, J.

The short facts leading to this Civil Appeal are as under:

1. The original owner of suit property situate at Ramamaruti Road, Then (Maharashtra) was. one Omji Mulji. He leased out three small flats having two rooms and a kitchen in favour of the appellant company in 1963. The rent was fixed at Rs. 300 plus Rs. 20 municipal taxes and Rs. 15 water charges.

2. In 1968, Omji Mulji sold away the property to one Gavand. There-after, the appellant tendered the rent including the taxes to the said Gavand from 1968. In the same year of 1968, the municipal taxes were increased. The appellant paid a lump-sum of Rs. 338.58 as rent. Due to further increase in the taxes, the appellant tendered Rs. 358.29 including taxes to the owner.

3. In the year 1975, the respondents came to purchase the suit property. Since then, the appellant had been paying regularly rent and taxes at the rate of Rs. 358.29 p.m.

4. The Advocate for the respondents issued a notice dated 27.7.1977 to the appellant terminating their tenancy and called upon the appellant to hand over vacant possession since the appellant was in arrears of permitted increase amounting to Rs. 5,650 from February, 1976. The notice also stated two of the grounds for eviction, in that the appellant had altered the premises and causing nuisance to the neighbours.

5. On receipt of the above notice, the appellant filed an application under Section 11(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Act') for fixation of standard rent. On 30.8.1987, an interim order fixing the rent at Rs. 358 was passed. It was directed to be deposited in the court on or before 10th of every month. For the months of August, September, the appellant paid the interim rent to the respondents. The same had been accepted. However, since October, 1977 the appellant was depositing the interim rent in the court of Civil Judge, Junior Division, Thane.

6. On 26.4.1979, the respondents filed Civil Suit No. 384/79 in the Court of Civil Judge, Junior Division, Thane for arrears of permitted increases, rent and for possession. The ground urged was that the appellant was in arrears of permitted increased amounting to Rs. 56.50 per month since October, 1976. This was on the basis of calculation at 7% as education cess on the rent of Rs. 358.29, Rs. 30 water charges, 1/4% as unemployment charges and 1/4% as tree cess. Further grounds for eviction namely unauthorised alteration and creating nuisance were also urged. In September, 1981 the application for fixation of standard rent was dismissed in default for non-appearance. This

dismissal came to be noted by the Advocate only in the year 1985. However, the appellant had been depositing the interim standard rent all along.

7. In defence to the Regular Civil Suit No. 384 of 1979, it was urged that the payment of standard rent had been made without fail throughout and,therefore, he was not in arrears. The other grounds namely, unauthorised construction and causing nuisance were also denied. The Trial Court decreed the suit for eviction on account of arrears of rent but not permitted increases.

8. Aggrieved by the said order, appellant filed Civil Appeal No. 452/1983 before the District Judge, Thane. The said appeal was dismissed. Thereafter, the appellant preferred Writ Petition No. 5035 of 1985 before the High Court. That was dismissed on 19.2.1987 that the tenant was not in arrears of rent but had defaulted in payment of permitted increases. Thus, the present civil appeal.

9. Mr. Soli J. Sorabjee, learned Senior Counsel for the appellant raised the following points for our consideration.

(i) A valid notice of demand is a condition precedent for the maintainability of suit for arrears of rent or permitted increase. In the absence of requisite demand, there can be no question of non-compliance. In such a case, the consequences mentioned under Section 12(3) Sub-section (3)(a) or (b) will not be attracted. In support of this submission, reliance is placed on Chiman Lal v. Mishrilal .

(ii) In the present case, the notice of demand dated 27.7.1977 does not mention the period of alleged arrears or the permitted increase. The demand is only for the payment of entire arrears of rent and not permitted increases.

(iii) Permitted increase, though part of rent, is not payable monthly. It is well settled that education cess being payable on a year to year basis, the rent ceases to be payable every month within Section 12(3)(a) of the Act as laid down in R.K. Shetty v. R.P. Shirole .

(iv) The landlord can have no cause of action to recover permitted increase until he had paid the permitted increases, Therefore, he must plead and prove payment of permitted increase. There is no such pleading in this case. In spite of this point having been urged before the lower appellate court as well as the High Court it has not been dealt with. The High Court has gone wrong in misreading the provisions of Section 12 of the Act. It has read into it obligations and conditions which are not statutorily prescribed. It should have taken note of the following facts:

(a) That the application for standard rent was made in time,

(a) That the interim rent as Fixed by the Court has been paid regularly throughout the pendency of the suit and the appeal,

(c) That the interim rent fixed was the same as the contractual rent.

10. Mr. A.M. Khanwilkar, learned Counsel for the respondents in answering these submissions would urge that it is not correct to state that there is no valid demand. The notice specifically states as to what exactly the tenant was liable to pay namely; the rent at Rs. 358.29 7% education cess Rs. 30 for water charges, 1/4% as unemployment charges, 1/4% as tree cess. All these total up to Rs. 56.50 per month as permitted increases. When the notice called upon the tenant to pay the entire arrears of rent, all these which are part of rent required to be paid. As a matter of fact, the plaint clearly discloses as to what exactly was the demand. Therefore, on facts the ruling of Chiman Lal case (supra) has no application.

11. There is no demur to the proposition that the permitted increases, though part of rent, is not payable monthly. But, in this case, the plaint clearly states that the permitted increases were from 1.2.1976 till the date of filing of suit in 1979. Hence this proposition does not in any way affect either the claim or the recovery thereof.

12. The landlord never disputed that the tenant had not paid the municipal taxes. As a matter of fact, the municipal demands had been produced in evidence. The High Court had appropriately appreciated the matter and it warrants no interference.

13. As a proposition of law, it cannot be disputed that there must be a valid demand for maintainability of suit for arrears of rent or permitted increases. It has been so laid down in Chiman Lal's case (supra) at pages 43-44.

14. In this case, the notice dated 27.7.1977 is as follows:

You have been leased out the entire second second floor. You are in occupation of the entire second floor. The month of tenancy is according to British Calendar Month. You have accommodated your three officers in the three blocks on the second floor. The net rent in respect of the said second floor is Rs. 358.29. Over and above the said rent you require to pay to my client 7% as education cess, Rs. 30 for water charges and 1/4% as unemployment charges and 1/4% as the tree cess. Thus you are supposed to pay to my client Rs. 56.50 per month as permitted increases. You are at present in arrears of rent from February 1976. My client has demanded the same but you have neglected and failed to pay the same. You are thus a defaulter. You are not ready and willing to pay the rent as and when it becomes due.

You are also called upon to pay the entire arrears of rent on receipt thereof. Failing compliance of which, my client will be compelled to go to the court of law for getting their grievances redressed entirely at your risk as to the costs and consequences which please note.

15. No doubt, the word 'supposed' in paragraph 3 has been incorrectly used. But that does not in any way affect the validity of the notice. Besides, merely because it is stated 'arrears of rent', it does not mean that there is no demand for permitted increases since those permitted increases are part of rent. The plaint in no mistakable terms says as follows The month of the tenancy of the defendant was according to British Calendar Month. The net rent in respect of the said second floor was Rs. 358.29 over and above the said rent the defendant was required to pay to these defendant 7% as

education cess, Rs. 30 for water charges, 1/4% as unemployment charges and 1/4% as tree cess. These plaintiffs submit that thus the defendant was required to pay the permitted increases per month amounting to Rs. 56.90. The defendant was in arrears of permitted increases since February, 1976. These plaintiffs demanded the same time and again but the defendant has failed to pay the same. The defendant is, thereby a defaulter.

16. Therefore, this contention of Mr. Soli J. Sorabjee cannot be accepted. Factually, the ruling stated as Chiman Lal's case (supra) is distinguishable. In R.K. Shetty's case (supra), it is stated at page 581 as under:

In Maheshwari Mills Ltd., under the terms of the tenancy the tenant was obliged to pay the municipal taxes and property taxes in respect of the demised premises. The court took the view that such payment was by way of rent and since the municipal taxes and property taxes were payable on year to year basis, a part of the rent was admittedly not payable by the month and, therefore, Section 12(3)(a) was not attracted. In Prakash Surya the tenant had agreed to pay the municipal tax and education cess. The amount payable towards these taxes constituted rent and since the same was payable at the end of the year the court held that the rent had ceased to be payable by the month and hence Section 12(3)(a) had no application.

17. As rightly urged by Mr. Khanwilkar, learned Counsel for the respondent the permitted increased may not be payable monthly; but in the instant case, the period, for which the permitted increases are claimed, is between 1.2.1976 till 27.4.79. This is evident from paragraph 6 of the plaint as under:

The cause of action for the purpose of filing of this suit first arose on or about 1.3.1976, for arrears of permitted increases and for possession on 1.9.1977 and is being continued respectively from time to time till the filing of this suit.

Therefore, R.K. Shetty's case (supra) cannot be pressed into service.

18. At no point of time, the tenant disputed the payment of municipal taxes by the landlord. In fact, the evidence is to the following effect:

Permitted increase was amounting to Rs. 56.50 since February 1976. I have produced the xerox copy of the notices issued by Municipality at Ex.13. We demanded the permitted increase to the defendant. But they failed to pay the same.

19. On 14.9.1983, the standard rent was fixed at Rs. 358 per month and the permitted increases were fixed at Rs. 56 per month. The appellant continued to pay Rs. 358 per month being the standard rent. He did not pay the permitted increases. The fact that he was depositing throughout Rs. 358 and even during the stage of writ petition, can hardly relieve him from such an obligation. Under Section 12(3)(a) of the Act, there is an obligation to deposit the permitted increases not only during the pendency of the standard rent application which in this case has come to be dismissed for default but even during the pendency of suit for eviction. As rightly held by the High Court, if this were not to be so, the tenant could claim protection on its showing that he had within a period of

one month from the date of service of notice of demand under Section 12(2) filed an application for standard rent and that he had obeyed that order; in this case the interim standard rent.

20. Accordingly, we hold that there are no merits in this Civil Appeal which stands dismissed. The tenant shall hand over vacant possession of the said premises within six months on condition that he files the usual undertaking within four weeks from the date of this order.