Supreme Court of India
Ramchander Narsey & Co. vs Wamanrao Shenoy on 13 March, 1969
Equivalent citations: 1969 (2) UJ 333 SC
Author: Hegde
Bench: Sikri, Bachawat, Hegde
JUDGMENT Hegde, J.

1. Mr. Chhaya, learned Counsel for the appellant formulated three questions for decision in this appeal by special leave and those are (1) the appellate court erred in holding that it had no jurisdiction to give the appellant the benefit oi Section 12(3)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for brevity sake to be hereinafter referred to as the Act); (2) the notice of ejectment issued under Section 12(2) of the Act is invalid and (3) the transferee-landlord was not entitled to take advantage of the default in the payment of rent to the transferor-landlord.

2. The facts relevant for the purpose of this appeal are these. The 1st respondent was the owner of the suit premises. The appellant was the tenant under him in respect of the same. The case of the 1st respondent is that the appellant defaulted in the payment of rent from the year 1950. The 1st respondent issued to the appellant an ejectment notice on December 12, 1955. The ejectment of the appellant was sought on various grounds but at present we are concerned with only one of them namely failure to pay the rent due for more than six months. In his reply the appellant pleaded that the standard rent of the premises is much less than the rent fixed under the contract and the rent payable has been duly discharged in accordance with the adjustment put forward therein. Though the appellant raised the dispute as regards the standard rent payable he did not file any application for fixation of standard rent till April 18, 1958. Respondent No. 1 filed the suit from which this appeal has arisen on August 4, 1958. During the pendency of the suit respondent No. 1 sold the suit premises to his wife, respondent No. 2 who was thereafter impleaded in the suit as supplemental 2nd plaintiff.

3. The trial court decreed the suit in favour of both the plaintiffs but the appellate court altered the same and gave a decree exclusively in favour of the 2nd plaintiff. The High Court summarily dismissed the revision petition filed by the appellant. Thereafter this appeal was filed after obtaining special leave from this court.

4. Re: point no. 1.--IT was contended on behalf of the appellant that the appellate court erred in opining that it had no jurisdiction to extend the time for depositing the arrears of rent due, in exercise of its' discretion. According to the appellant the court" referred to in Section 12(3)(b) includes the appellate court. We have not thought it necessary to go into that question as in our opinion the facts of (sic) militate against the exercise of any discretion in favour of the appellant. Both the trial court as well as the ap-pellate court have come to the conclusion that the appellant had defaulted in playing the rent due from him right from 1950. Further they held that he had put forward a false plea of adjustment & tried to support the same by false evidence. One of the documents produced by him in support of his plea of discharge of rent is Exh. H. The courts below have come to the conclusion that it is not a genuine document. Though the appellant raised the

contention that the standard rent which he was liable to pay under law is much less than the contractual rent in reply to the notice of ejectment yet he failed to move the court for fixing the standard rent for over two years, Ejectment notice was given on December 12, 1955. He made application for fixation of standard rent only on April 18, 1958. Even though the standard rent was fixed on January 15, 1960, yet he did not deposit the rent due from him not only till the suit was disposed of by the trial court but even in the appellate court till the appeal came up for hearing. Under these circumstances we do not think that the appellate court would have been justified, assuming it had power to do so, in extending the time for payment of the arrears. In this view of the mitter it is not necessary for us in this case to spell out the scope of Section 12(3)(b).

5. Re: Point No. 2.--There is no merit in the contention that the ejectment notice issued is invalid. This question has been elaborately considered by the trial court as well as the appellate course. We agree with the conclusions reached by them.

6. Re : Point No. 3.--It was urged an behalf of the appellant that in view of the assignment by the 1st respondent in favour of the 2nd respondent, no decree for possession could have been passed in favour of the second respondent. The argument in this regard proceeded thus : As soon as there was an assignment of the arrears of rent, those arrears ceased to be rent; they became debt in law and therefore there was no question of paying the same or tendering them in court as required by Section 12(3)(b); hence on decree for ejectment could have been passed. In support of this contention reliance was placed on the decision of Calcutta High Court in (1) Sm. Daya Debt vs. Chapala Debi. We are unable to accept this contention. In the case referred to above the assignment of the rent had taken place prior, to the institution of the suit. Under that circumstance the Calcutta High Court opined that at the time of the institution of the suit there were no arrears of rent. It is not necessary for our present purpose to consider the correctness of that decision. Suffice it to say that on the facts of this case, the rule laid down in that case is not apposite. Herein admittedly, on the date the suit was instituted, there was a valid cause of action for evicting the appellant. What the court has to consider in every case is whether the suit was validly instituted. If a suit is validly instituted a decree must necessarily follow, unless the law prescribes otherwise, Undoubtedly the present suit is based on a valid cause of action. Therefore all that we have to see is whether any subsequent event has happened necessitating the denial of the relief asked for. Paying or tendering the money under Section 12(3)(b) is merely a concession granted to the tenant. He may avail of that concession or he may not avail of it. If he avails of that concession then the relief of ejectment asked for will not be granted though the landlord will ordinarily be entitled to the costs of the suit. There is no denying the fact that at the time the suit was instituted, the 1st respondent was the "landlord" as defined in the Act and at the time the decree came to be made, the 2nd plaintiff was the "landlord." The deed of assignment has not been printed. Therefore we do not know its terms. We have to proceed on the basis that the 1st respondent had assigned all his rights, title and interest in the suit premises to the 2nd plaintiff. We must assume that in particular he had also assigned his right in the decree that may be passed in the suit. Learned Counsel for the respondents referred to us in this connection the decision of the Calcutta High Court in (2) Kanto M. Mullick vs. Jyotisk Chandra Mukherjee. Undoubtedly that decision supports the contention of the respondent but it is not necessary for us to rest our decision on the basis of the rule laid down in that case,

7. For the reasons already mentioned, we think that the contention of the appellant that no degree could have been passed in favour of the 2nd respondent is untenable. In the result this appeal fails and the same is dismissed (sic) costs. One month's time is granted for vacating the premises.