

ssp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.4329 OF 1993

Babu Mathu Gaikwad

...Petitioner

vs.

Gulabchand Tarachand Bore  
(since deceased through L.Rs)

1a Shantilal Gulabchand Bora  
1b Balu @ Shamlal Gulabchand Bora  
1c Bija Subhashchandra Lunavat  
1d Asha subhash Lunavat  
1e Pushpa Ramesh Sancheti  
1f Chanda Pradipkumar Binayakya  
1g Sarla Mohanlal (Lalchand) Lunkad  
1h Rajendra Gulabchand Bora  
(since deceased through L.Rs)  
1h-i Smt.Nanda Rajendra Bora  
1h-ii Chetan Rajendra Bora  
1h-iii Vinit Rajendra Bora

...Respondents

Mr.R.M.Hardas a/w Mr.Pramod N. Joshi for the petitioner  
Mr.Ramesh Karale for the respondents

CORAM :A.S.OKA,J.  
DATE : APRIL 28, 2010

P.C.

1 I have heard the learned counsel for the parties. By this writ petition under Article 227 of Constitution of India, the original plaintiff has taken an exception to the decree passed by the Appellate Court by which the suit for eviction filed by the petitioner has been dismissed.

2 With a view to appreciate the submissions, a reference to the facts in brief will be necessary. The suit is filed on the ground of arrears of rent, bona fide requirement and acquisition of suitable residence.

Notice of demand of arrears of rent was issued by the petitioner-plaintiff on 19<sup>th</sup> May 1982. Notice was served to the respondent-defendant on 21<sup>st</sup> May 1982. Arrears demanded were from November 1981 to April 1982. As compliance was not made by tendering the amount within the stipulated time, a suit for possession was filed by the petitioner. It must be stated here that an application for fixation of standard rent was filed by the respondent on 15<sup>th</sup> June 1982. In the said standard rent application, on 15<sup>th</sup> June, 1982, the respondent deposited a sum of Rs.400/- which represented the entire arrears of rent due.

3 The trial Court came to the conclusion that there was no regular deposit of rent as per the direction of the Court issued in standard rent application. Therefore, the trial Court did not grant relief against forfeiture under clause (b) of sub-section 3 of section 12 of the said Act. The trial Court decreed the suit on the said ground. As far as the grounds of bona fide need and acquisition of suitable residence are concerned, the trial Court held against the petitioner. The findings on the said two grounds were confirmed in appeal. However, the Appellate Court interfered by setting aside the decree passed on the ground of arrears of rent. The finding of the Appellate Court is that in the standard rent application filed by the respondent, entire amount of arrears demanded by the petitioner was deposited on 15<sup>th</sup> June 1982. The Appellate Court observed as the said deposit was made within one month from the date on which the notice of demand was served, in view of the decision of this Court in case of Narhar Vani Vs. Narmadabai (1984 Mh.L.J. 313), there was no cause of action for filing the suit. This view was taken in light of decision of this Court in the case of Pannalal Khivraj Dugad Vs.

Janardan Gopal (1987 Bombay Rent cases 34).

4 The learned counsel for the petitioner has made submissions on the ground of arrears of rent and bona fide requirement. At this stage, it is not necessary to reproduce the submissions in support of the ground of bona fide requirement. The submission of the learned counsel for the petitioner is that there is no dispute that the rent is payable by month and there is no dispute that on the date on which notice of demand was issued, the respondent was in arrears of rent for a period of more than six months. He invited my attention to the explanation -I and explanation-II to section 12 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (hereinafter referred to as the said Act). He submitted that in the light of explanation I, read with explanation-II, the tenant will be entitled to relief against forfeiture under clause (b) of sub section 3 of section 12 only if he complies with the order passed under section 11 (3) of the said Act by regularly depositing either the rent or interim standard rent. He submitted that if there is no regular deposit of the amount, the tenant will not be protected under clause (b) of sub section 3 of section 12 of the said Act. He submitted that the amount deposited in standard rent application cannot be said to be the amount validly tendered in response to notice of demand. He submitted that the very fact that the respondent-tenant filed an application for fixation of standard rent shows that he was disputing the rent demanded by the petitioner. He, therefore, submitted in view of clear finding of the trial Court that there was no regular deposit, decree under section 12(3) (b) of the said Act ought to have been confirmed.

5 The learned counsel for the respondent relied upon the decision of this Court in case of Pannalal Khivraj Dugad (supra). He pointed out that this Court has held that if entire amount demanded by the demand notice is deposited in the standard rent application within one month from the date on which service of notice of demand is effected, the same shall be treated as compliance with the notice and therefore, the suit filed thereafter will be without any cause of action.

6 As far as the first submission is concerned, it will be necessary to consider the view taken by this Court in case of Pannalal Khivraj Dugad (supra). In the said case, notice of demand was served on 12<sup>th</sup> January 1979. On 18<sup>th</sup> January 1979, tenant filed an application for fixation of standard rent. On 3<sup>rd</sup> February 1979, the entire amount demanded under the demand notice was deposited by the tenant in the pending standard rent application. The view taken by this Court is that deposit of the said amount in the standard rent application by the tenant will be treated as compliance as contemplated by clause (a) of sub section 3 of section 12 and therefore, such deposit will constitute the compliance with the demand notice. This Court relied upon the decision of Division Bench in case of Narhar Vani (supra) and came to the conclusion that there is no cause of action for filing a suit.

7 Section 12 of the said Act prior to its amendment 1987 reads thus :

12(1) landlord shall not be entitled to the recovery 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 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

(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(I)- In any case where there is 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.

Explanation II- For the purposes of sub-section (2), reference to standard rent and permitted increase shall include reference to interim standard rent and interim permitted increase specified under sub-section (3) or (4) of section 11]

Explanation III- For the purposes of this section, where a tenant has deducted any amount from the rent due to the landlord under section 173C of the Bombay Municipal Corporation Act for recovery of any water tax or charges paid by him to the Commissioner, the tenant shall be deemed to have paid the rent to the extent of deductions so made by him].

Clause (a) of sub-section 3 of section 12 applies where the rent is payable by month and there is no dispute as regards the standard rent. Clause (b) of sub-section 3 applies when there is a dispute about the standard rent or where the rent is not payable by month. Therefore, in a case where rent is admittedly payable by month but there is a dispute about the standard rent, clause (a) will never apply and only question to be considered by the Court will be whether tenant is entitled to relief against forfeiture in view of clause (b) of sub-section 3. The law on this aspect is no longer res-integra. The Apex Court held that only method by which the dispute as

regards standard rent can be raised is by filing an application for fixing standard rent under section 11 of the said Act.

8 In case of Narhar Vani (supra) this Court considered the case where there was a complete compliance with the notice of demand by validly tendering the amount demanded within the time stipulated by law. This was a case where clause (a) of sub section 3 was applicable and therefore, this Court held that as there was compliance with notice of demand, there is no cause of action for filing the suit and therefore, the Court cannot consider the question of passing a decree relying upon clause (b) of sub-section 3. As stated earlier, clause (b) will not apply where clause (a) is applicable. In a case where rent is payable by month and arrears of rent demanded by demand notice are of a period of more than six months, if there is no dispute regarding standard rent, unless there is a valid tender of entire arrears within one month from the date of service of notice of demand, the Court has no option but to pass a decree. Once, the tenant raises a dispute regarding standard rent by filing an application, clause (a) of sub-section 3 cannot have any application, though the rent is payable by month. In such a case, only aspect to be considered is whether a compliance with the requirements of clause (b) of sub-section 3 has been made. In view of explanation I read with II, if the tenant fails to deposit the amount of interim standard rent fixed by the Court in application for standard rent regularly and punctually, relief against forfeiture under clause (b) of sub section 13 cannot be granted to tenant.

9 The view taken by this Court in case of Pannalal Khivraj Dugad (supra) that the deposit of the amount

demand in notice of demand within stipulated time in standard rent application amounts to compliance with the notice of demand, prima facie does not appear to be correct. In any case it cannot be said that by virtue of such deposit, there is no cause of action to seek eviction under 12(3). Notwithstanding such deposit, the case under section 12(3)(b) will have to be considered. Therefore, the view taken in said decision needs reconsideration. In my view, the issue needs to be decided by a larger Bench.

10 Following issues need to be considered by a larger Bench :

- i) Whether the deposit of the amount made by the tenant in standard rent application filed under section 11 r/w explanation I to section 12 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 can be treated as a valid tender of arrears of rent in compliance with notice of demand issued under sub-section 2 of section 12 of the said Act ?
- ii) Whether it can be said that in such a case, there is no cause of action for filing a suit on the ground of arrears of rent and that the Court has no power to pass a decree on account of non-compliance with clause (b) of sub-section 3 of section 12 of the said Act ?

11 In my view, aforesaid questions can be more advantageously decided by a larger Bench. The Registrar (Judicial-I) will place the papers of this writ petition before the Hon ble the Chief Justice in accordance with clause 7 of Chapter I of the High Court Appellate Side Rules.

12 It is made clear that this Court has not considered the merits of the other grounds urged by the petitioner.

JUDGE