

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4329 OF 1993

1. Shri.Babu Mathu Gaikwad (since deceased through
Legal Heirs and Representatives)
1A Smt.Suman Shridhar Gaikwad (since deceased)
1B Smt Jayashri Sunil Pardeshi (Original name
Smt. Jayashri Shridhar Gaikwad)
1C Shri. Jayant Shridhar Gaikwad ...Petitioners

V/s.

1. Shri. Gulabchand Tarachand Bore. (since deceased
through Legal Heirs)
1a. Shantilal Gulabchand Bora
2b. Balu @ Shamlal Gulabchand Bora
3c. Bija Subhashchandra Lunavat
3d. Asha Subhash Lunavat
3e. Pushpa Ramesh Sancheti
3f. Chanda Pradipkumar Binayakye
3g. Sarla Mohanlal (Lalchand) Lunkad
3h. Rajendra Gulabchand Bora,(since deceased)
3i. Smt. Nanda Rajendra Bora. ...Respondents

Ms. Rukmini Khairnar with Mr. Pratik Rahade with Anish Kikle i/b. Mr. P.N. Joshi,
for the Petitioners.

CORAM: G. S. KULKARNI &
ADVAIT SETHNA, JJ.

DATE: 08 May 2026.

P.C. :-

1. The present proceedings are before this larger Bench in pursuance of the same
being constituted by the Hon'ble the Chief Justice, in view of an order dated 28 April
2010 passed by the learned Single Judge, referring the following issues of law to be
answered:

“(i) Whether the deposit of the amount made by the tenant in a standard rent application filed under Section 11 read with 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.”

2. Thus: the proceedings concern the interpretation of Section 11(3) read with Section 12 of the Bombay Rent Act.

3. In such context, we note the relevant observations made by the learned Single Judge in the referral order, while noting two decisions of this Court, firstly, in **Narhar Damodar Wani vs. Narmadabai T. Nave deceased through L.Rs.**¹ and secondly, in **Pannalal Khivraj Dugad vs. Janardhan Gopal Deshpande & Ors.**² thereby raising a doubt, as to the correctness of the decision in **Pannalal Khivraj Dugad** (supra) are as follows:-

“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 12th January 1979. On 18th January 1979, tenant filed an application for fixation of standard rent. On 3rd 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

1 1984 Mah LJ 313

2 1987 Bombay Rent Cases 34

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 demanded 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.”

4. In *Narhar Damodar Wani v. Narmadabai T. Nave (supra)*, the Division Bench of this Court on a reference was called upon to consider the conflict between two judgments rendered by two learned Single Judges of this Court, as also the judgment of the learned Single Judge referring the issue to the Larger Bench, in the case of **Waman Deoram Sonawane v. Shri Ganesh Mandir, Dhulia & Anr³**.

³ Writ Petition No.1437 of 1979 decided on 8th September 1983

5. In **Waman Deoram Sonawane** (supra), Waman was a tenant. A decree of eviction was passed against him under the provisions of Section 12(3)(a) & (b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short '**The Bombay Rent Act**'), on default of payment of the education cess. It was contended on behalf of the tenant that a decree could not have been passed under section 12(3) (a) of the Bombay Rent Act, as Waman contended that the total amount of rent due for the period 1 July, 1963 to January 1971 was Rs. 3,185/- which was paid in the proportion of Rs. 2,860/- to the Municipal Council towards the taxes and Rs. 325/- being sent by Money Order. Thus, according to Waman, there was no default in payment of rent, hence, no cause of action had arisen to the landlord to file a suit and obtain a decree. Waman placed reliance on the decision of learned Single Judge in **Ayodhyabai v. Sumapchand**⁴ and on the decision of learned Single Judge in **Shamrao v. Chaturbai**⁵. Whereas, on behalf of the landlord, reliance was placed on the decision of the Supreme Court in **Mranalini Shah v. B.W. Shah**⁶, the effect of which, according to the landlord, was not considered in the said two decisions **Ayodhyabai v. Sumapchand** (supra) and **Shamrao v. Chaturbai** (supra) relied on behalf of the tenant/Waman. In such facts of the case, the Court observed that the question involved in the proceedings was not whether the provisions of section 12(3)(b) of the Bombay Rent Act could be availed of by the tenant, but on the maintainability of the suit itself, on the ground that the entire amount of rent demanded by notice under section 12(2) was sent by money order within the period of one month from the date

4 Writ Petition No.156 of 1983 decided on 1st July 1983

5 1998 MhLJ 347

6 (1980) 4 SCC 251 : AIR 1980 SC 954

of notice which was refused by the landlord, hence, there was no cause of action for the suit for eviction to be filed. The Division Bench was thus concerned with the limited question as to whether in a case where the tenant has already remitted the entire amount due and demanded by the notice under section 12(2) of the Bombay Rent Act, such compliance with the said notice, or alternatively, where the amount was sent by the tenant being refused by the landlord, whether such refusal, has to be treated as equivalent to payment and whether a cause of action for seeking a relief of eviction at all survived for a suit for eviction to be filed by the landlord. It is in such context, the Court examined the provisions of Section 12(2) of the Bombay Rent Act and taking a review of the position in law on the applicability of Section 12(2) and 12(3)(a) & (b) of the Act, the Court made the following observations:-

6. Section 12(2) of the Bombay Rent Act creates a positive bar in respect of a suit for recovery of possession and it expressly provides that no suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of 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. Sub-Section (3)(a) undoubtedly provides that if the tenant is in arrears of rent for a period of six months or more and the tenant neglects to make payment thereof within a period of one month after the notice referred to in sub-section (2), the Court has to pass a decree for eviction in any such suit for recovery of possession. It is well established that clause (b) of sub-section (3) of section 12 applies to a case which does not fall under clause (a). Attention must also be invited to the provisions of sub-section (1) of section 12 which provides that 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 the Bombay Rent Act. The scheme of sub-sections (1), (2) and (3) of section 12, therefore, is that if a tenant is ready and willing to pay the amount of standard rent and permitted increases, a landlord is not entitled to recovery of possession. The tenant has been given one month's time during which he must pay the rent which is demanded by a notice under section 12(2) and if he does not pay that rent or the amount due, then the consequences specified in clauses (a) and (b) follow depending upon which clause is attracted to the facts of a given case. One thing which is, however, clear on the face of section 12 and its provisions is that if the tenant pays the arrears demanded by the notice under section 12(2), then the landlord is not entitled to

file a suit for possession on the ground of arrears in respect of which he has to give or has given a notice under section 12(2). In such a case, the provisions of sub-section (1) will also come into operation because if the tenant pays the amount required to be paid by the notice under section 12(2), then the tenant is a person who is ready and willing to pay the standard rent and the permitted increases, as the case may be, and the landlord is disabled from filing a suit for recovery of possession. In a case where the tenant has paid or must in law be deemed to have paid the amount demanded by the notice under section 12(2), not only are the provisions of section 12(3)(a) not attracted, but there is no occasion to call in aid the provisions of section 12(3)(b), because even the provisions of section 12(3)(b) will be attracted only if there is a claim for recovery of possession. If by the compliance with the requirements of the notice under section 12(2) the landlord is disabled from filing a suit for recovery of possession, there is no question of the provisions of section 12(3)(b) being attracted at all.

7. In the referring judgment reference has been made to the three Supreme Court decisions which, in our view, and with respect, were not relevant for the decision of the question which arises before us. In Dhansukhlal's case (Supra), the facts show that the tenant was in arrears of rent on the date on which the landlord filed the suit because the tenant had not made payment even though he had received the notice under section 12(2) of the Bombay Rent Act. The notice in that case was dated 18th April, 1955 demanding the arrears of rent and, as the Supreme Court observed, "No reply was sent thereto nor was any payment made to the plaintiff.". The suit for ejection in that case was filed on 15th March, 1956 on the ground that the defendant was in arrears of rent and permitted increases and was, therefore, not entitled to the protection of the Bombay Rent Act. The judgment of the Supreme Court shows that in that case, the applicability of section 12 (3)(a) was not canvassed and the High Court had found that there being default on the part of the defendant, the operation of section 12(3)(b) of the Bombay Rent Act was attracted. Even before the Supreme Court the material question raised was whether applying section 12(3) (b) there was no default on the part of the defendant which would render him liable to eviction. It was while dealing with this contention that the Supreme Court held that to be within the protection of section 12(3)(b), the tenant must not only pay all the arrears due from him on the first day of hearing of the suit, but he must thereafter continue to pay and tender in Court regularly the rent and the permitted increases till the suit is finally decided. Dhansukhlal's case was, therefore, a case which dealt only with the provisions of section 12(3)(b) on the admitted position that no payment was made in pursuance of the notice under section 12(2).

....

10. The learned Judge in the present case has taken the view that "once a notice under section 12(2) of the Bombay Rent Act is given terminating the tenancy on the ground of non-payment of rent, the landlord is entitled to file a suit and maintain it and in case the conditions of section 12(3)(a) are satisfied, he is entitled to a decree under section 12(3)(b) of the Act, if the tenant has not availed of the protection afforded by that provision" and that once the notice is issued, "what reliefs can be given are provided for by section 12(3)(a) and section 12(3)(b) of the Act". These observations, in our view, overlook the fact that it is implicit in the provisions of section 12(2) that if within a period of one month specified in section 12(2) the tenant pays the entire amount of rent demanded by the notice, then the landlord does not have a right to file a suit for recovery of

possession. Further, once there is no cause of action for a suit for recovery of possession, the question as to whether the tenant claim the protection of section 12(3)(b) cannot also arise.

.....

14. We must also, therefore, further hold that the view taken in Ayodhyabai's case and in Eknath Radhakishan Bajaj v. Madhav Bhagwan Bhore is the correct view. On the facts of the present case it must, therefore, be held that on the finding recorded, the refusal of the landlord to receive the entire amount of rent as was demanded by the notice under section 12(2) of the Bombay Rent Act must be treated for the purposes of sub-sections (1) and (2) of section 12 as being equivalent to payment and on this finding, no suit for the recovery of possession for non-payment of those arrears could have been filed by the landlord and no decree for possession could have been asked for by him in his favour.

15. The decree for possession passed by the trial Court and confirmed by the appellate Court as well as the decree for costs against the present petitioner is, therefore, set aside. Having regard to the uncertain legal position, the proper order for costs, in our view, would be that each party bears its own costs throughout.”

6. A learned Single Judge of this Court in **Pannalal Khivraj Dugad vs. Janardhan Gopal Deshpande & Ors.**⁷ referring to the decision of the Division Bench in **Narhar Damodar Wani** (supra) was dealing with a case considering a challenge to the confirmation of a decree for ejection, based on the alleged default in payment of rent as also the professed need of the landlords of the premises for their personal use and occupation of the premises. The question, which fell for determination in the proceedings before the learned Single Judge, was whether the landlord was entitled to a decree of ejection. In the context of Section 12 of the Bombay Rent Act, the learned Single Judge made the following observations:

“7. The main question is whether the words, ‘the tenant pays’ appearing in section 12(1) would cover a case like the present one, where the rent is not paid directly to the landlord but paid to his credit in Court, and upon an application, for fixation of the standard rent? There are no words qualifying the expression, ‘the tenant pays’. If there be no qualification to that expression, the natural meaning will have to be given effect to. In other words, why, how, and in what circumstances, the payment is made, is irrelevant, and, once it is established that

the same has been made, the landlord is disabled from suing for recovery of possession. In the words of Narhar Vani's decision, "the tenant has paid and, therefore, the provisions of section 12(3)(a) are not attracted". Further, "there is no occasion to call in aid the provisions of section 12(3)(b)". As made clear by the Division Bench the provisions of section 12(3)(b) will be attracted, only, if there is a claim for recovery of possession. But this claim for recovery of possession can be made only if at the date of the suit, **the arrears have not been paid or deemed to have been paid.** The crediting of the arrears in Court within a month of the service of the suit notice would attract the disabling clause contained in section 12(1) of the Act. The contention that defendant's liability would have to be considered under section 12(3)(b) because he had filed an application for fixation of the standard rent, loses sight of section 12(1). Unless the right to seek recovery of possession is first established, it is not necessary to go into the applicability of the first or the second clause of section 12(3). The exposition in Narhar Vani's case, reproduced above, fully supports the argument advanced by Mr. Rane. I would therefore hold that the statutory Courts were in error in directing the ejectment of the defendants, whether under section 12(3) or 12(3)(b), of the Act.

7. The aforesaid observations as made by the learned Single Judge are questioned in the order under reference.

8. To answer the questions as referred to this Bench, at the outset, it is necessary to note the provisions of Sections 11 and 12 of the Bombay Rent Act. Section 11, in the context of an application for fixation of standard rent, provides that "*the Court may fix the standard rent at such amount as, having regard to the provisions of the Act and the circumstances of the case, it deems just*". Whereas Section 12, in the context of ejectment of suits, provides that "*no ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard permitted increases*". Since the interplay between the provisions of Section 11 and their applicability to Section 12, and vice versa, is the issue for consideration, it is imperative to note both provisions, which read thus:-

"Section 11. Court may fix standard rent and permitted increase in certain cases. (1) [Subject to the provisions of section 11A in any of the following cases the Court may, upon an application made to it for that purpose, or in any suit or proceedings, fix the standard rent at such amount as, having regard to the

provisions of this Act and the circumstances of the case, the Court deems just-

(a) where any premises are first let after the first day of September 1940, and the rent at which they are so let is in the opinion of the Court excessive; or

(b) where the Court is satisfied that there is not sufficient evidence to ascertain the rent at which the premises were let in any one of the cases mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (10) of section 5; or

(c) where by reason of the premises having been let at one time as a whole or in parts and at another time in parts or as a whole, or for any other reason, any difficulty arises in giving effect to this Part; or

(d) where any premises have been or are let rent-free or at a nominal rent or for some consideration in addition to rent; or

(e) where there is any dispute between the landlord and the tenant regarding the amount of standard rent.

(2) If there is any dispute between the landlord and the tenant regarding the amount of permitted increases the Court may determine such amount.

(3) If any application for fixing the standard rent or for determining the permitted increases is made by a tenant who has received a notice from his landlord under sub-section (2) of section 12, the Court shall forthwith specify the amount of rent or permitted increases which are to be deposited in Court by the tenant, and make an order directing the tenant to deposit such amount in Court or at the option of the tenant make an order to pay to the landlord such amount thereof as the Court may specify, pending the final decision of the application. A copy of the order shall be served upon the landlord. Out of any amount deposited in Court, the Court may make an order for payment of such reasonable sum to the landlord towards payment of rent or increases due to him as it thinks fit. If the tenant fails to deposit such amount or, as the case may be, to pay such amount thereof to the landlord, his application shall be dismissed.

(4) Where at any stage of a suit for recovery of rent, whether with or without a claim for possession of the premises, the Court is satisfied that the tenant is withholding the rent on the ground that the rent is excessive and standard rent should be fixed, the Court shall, and in any other case if it appears to the Court that it is just and proper to make such an order the Court may make an order directing the tenant to deposit in Court forthwith such amount of the rent as the Court considers to be reasonably due to the landlord, or at the option of the tenant an order directing him to pay to the landlord such amount thereof as the Court may, specify. The court may further make an order directing the tenant to deposit in Court periodically, such amount as it considers proper as interim standard rent or at the option of the tenant an order to pay to the landlord such amount thereof as the Court may specify, during the pendency of the suit. The Court may also direct that if the tenant fails to comply with any order made as aforesaid, within such time as may be allowed by it, he shall not be entitled to appear in or defend the suit except with leave of the Court, which leave may be granted subject to such terms and conditions as the Court may specify.

(5) No appeal shall lie from any order of the Court under sub-section (3) or (4).

(6) An application under this section may be made jointly by all or any of the tenants interested in respect of the premises situated in the same building].

Section 11A. No new application for standard rent, etc. to be entertained if already duly fixed by a competent Court at the instance of other parties- No Court shall upon an application or in any suit proceeding fix the standard rent of any premises under section 11, or entertain any plea that the rent or increases are excessive, if the standard rent of the permitted increases, in respect of the same premises have been, duly fixed by a competent Court on the merits of the case, without any fraud or collusion or an error of the facts, and there has been no structural alterations or change in the amenities or in respect of any other factors which are relevant to the fixation of the standard rent, or change in such increases thereafter in the premises.]

Section 12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard permitted increases. (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.]

[(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 a 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 purpose of sub-section (2), reference to "standard rent" and "permitted increases" 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.]

9. A plain reading of Section 11 indicates that, subject to the provisions of Section 11A (supra), in the cases set out in clauses (a) to (e) of sub-section (1), the Court may, upon an application made to it for that purpose, or in any suit or proceedings, fix the standard rent at such amount, having regard to the provisions of the Act and the circumstances of the case, the Court deems fit. Sub-section (2) provides that the Court may determine the dispute between the landlord and the tenant regarding the amount of permitted increases. Sub-section (3), which is crucial for determination of the issues at hand, provides that where any application for fixing the standard rent or for determining permitted increases is made by a tenant who has received a notice from the landlord under sub-section (2) of section 12 (supra), the Court shall forthwith specify the amount of rent or permitted increases to be deposited in Court by the tenant, and shall make an order directing the tenant either to deposit such amount in Court or, 'at the option of the tenant', to pay to the landlord such amount as the Court may specify, pending the 'final decision of the application'. A copy of such order is required to be served upon the landlord.

10. The said provision further empowers the Court to direct payment to the landlord, out of any amount deposited in Court, of such reasonable sum towards rent or permitted increases due to him as it thinks fit. It is further provided that if the tenant fails to deposit such amount or, as the case may be, to pay such amount, his application 'for fixing standard rent' shall be dismissed. Sub-section (4) of Section 11

contemplates a situation arising at any stage of a suit for recovery of rent, whether or not accompanied by a claim for possession of the premises. It provides for the consequences of non-compliance with an order directing the tenant to deposit rent in Court, and further empowers the Court to direct the tenant to deposit such amount periodically as it considers proper, either as interim standard rent or, at the option of the tenant, to pay such amount to the landlord during the pendency of the suit. It further provides that the Court may direct that if the tenant fails to comply with any such order within such time as may be allowed by it, the tenant shall not be entitled to appear in or defend the suit except with leave of the Court, which leave may be granted subject to such terms and conditions as the Court may specify. This would mean that the tenant may be permitted to cure the default, subject to the Court's discretion.

11. Having noted the implications as brought about by Section 11, we now consider the provisions of Section 12 and the bearing it would have insofar as the proceedings for the standard rent under Section 11 are concerned. At the outset, it is clear from the title of Section 12, which provides that no ejection would ordinarily be made if tenant pays, or is ready and willing to pay 'standard permitted increases'. Sub-section (1) of Section 12 reflects the basic entitlement of the landlord to the recovery of possession of any premises, when it provides that the 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 the Act. Sub-section (1) is couched in negative

terms when it uses the words that the landlord shall not be entitled to the recovery of possession unless the tenant fails to pay or is not ready and willing to pay the amount of the standard rent or permitted increases etc. So also, Sub-section (2) of Section 12 is also couched in negative terms when it ordains that 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. In other words, only after a notice as stipulated under sub-section (2) in writing making a demand of the standard rent or permitted increases, is served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882 and after the period of one month expires, only in such event, the landlord would be entitled to institute a suit for recovery of possession. Thus, there ought not to be any ambiguity whatsoever on the plain purport of what is provided for in sub-sections (1) and (2). The issue, in the context of the observations as made by the learned Single Judge, would in fact arise in the context of sub-section (3)(a) and (b) of Section 12 read with Explanation I.

12. We examine the purport of sub-section (3) and its clauses. Sub-section (3)(a) provides that 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. To our mind, the provision is quite plain, which contemplates a situation of there being no dispute regarding the standard rent or permitted increases and an admitted default on the part of the tenant for a period of six months or more, which continues for a period of one month after receipt of notice as contemplated under sub-section (3)(a) of Section 12. This would entitle the landlord for recovery of possession by decree to be passed in such suit for possession.

13. Clause (b) of sub-section (3) of Section 12 contemplates a situation that in any other case, meaning thereby, in a case otherwise than a case as contemplated in clause (a) i.e. where a dispute regarding the amount of standard rent or permitted increases subsists or when it is not the case that there is no dispute regarding the amount of standard rent, in such situation, 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.

14. The question, therefore, is as to what would be the effect of a pending standard rent application as filed under Section 11 and any deposit of the standard rent as made by the tenant in the proceedings of a standard rent application filed under the said provision, insofar as the applicability of clause (b) of sub-section (3) of Section 12 is concerned.

15. Upon a careful reading of the provisions of Section 11 (3) and 12 (3)(a) and 12(3)(b), the legislative scheme, these provisions would contemplate, appears to be quite clear, that the proceedings under Section 11 are in the realm of determination of standard rent and permitted increases and Section 12 is in regard to the entitlement of the landlord to the recovery of possession only in the event, when the tenant does not pay or is not ready and willing to pay the standard rent or permitted increases. Sub-section (3) of Section 11 clearly postulates a situation on a tenant making an application for fixing the standard rent, who has received a notice from the landlord under Section 12(2) demanding the standard rent and permitted increases. It is in such situation that the Court, on such application, would specify the amount of standard rent or permitted increases, which can be ordered to be deposited in Court by the tenant, or even at the option of the tenant, an order to pay to the landlord such amount thereof as the Court may specify, can be passed pending final decision of the application.

16. In the event of non-compliance of such order, when the tenant fails to deposit such amount or, as the case may be, to pay such amount thereof to the landlord, the provision ordains that the standard rent application shall be dismissed.

17. Per contra, insofar as Section 12(3)(b) is concerned, it clearly provides that no decree for eviction shall be passed, 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. Obviously by the very wording of the provisions, it contemplates two fold effect; the first being of what being deposited i.e. the standard rent or permitted increase 'then due' being deposited on the first day of hearing of the suit and secondly, insofar as the wording 'thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided' as also pays costs of the suit as directed by the Court', is a future incident, as it pertains to such future deposit of rent as also the cost which would be decided ultimately in the suit. These are aspects which are completely within the realm and jurisdiction of the Court qua the suit or aspects completely seisin of the suit.

18. Having so observed, the question is whether the deposit of the standard rent as made by the tenant under sub-section (3) of Section 12 in the proceedings of the standard rent application would be irrelevant and/or of no consequence insofar as the effect and operation of clause (b) of sub-section (3) of Section 12 is concerned. The Court cannot be oblivious of any deposit of the standard rent during the proceedings of a standard rent application, as there is a clear legislative indication in sub-section (3) of Section 12 of such deposit being made by the tenant in the standard rent application after receipt of a notice under Section 12(2). Clause (b) of sub-section (3) of Section 12 would not contemplate the tenant requiring to deposit the amount in the standard rent application as also making a separate deposit of the rent in the suit of the nature as contemplated by Section 12. This more so in the context of the basic premise and foundation on which Section 12 rests and couched in negative terms, that the landlord would not be entitled to the recovery of any premises so long

as the tenant not only pays, which includes deposit in the Court, but also is ready and willing to pay the amount of the standard rent and permitted increases. Thus, once the amount of the standard rent is deposited in the standard rent application, it has automatic relevance insofar as the operation of clause (b) of sub-section (3) of Section 12 is concerned.

19. The aspect of readiness and willingness to pay is further clarified by the provisions of Explanation I below Section 12, which categorically provide that in any case where there is dispute as to the amount of standard rent or permitted increases, recoverable under the 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. Thus, the obligation is on the tenant to demonstrate his readiness and willingness by depositing such amounts as may be ordered by the Court under sub-section (3) of section 11. It would depend on as to what would be the appropriate order being passed by the Court, is completely within the realm of sub-section (3) of Section 11, when the words specifically used in sub-section (3) are 'such amount as the Court may specify'. Thus, the order under sub-section (3) of Section 11 would be of a distinct nature and as clearly specified under sub-section (3) of Section 11, such order passed by the Court in the proceedings of the standard rent application under sub-section (3) of Section 11 in no manner should be confused to an order which may be passed by the Court under clause (b) of

sub-section (3) of Section 12. Therefore, these are specific and distinct provisions entailing different consequences.

20. Insofar as any default in depositing future rent required to be paid or tendered by the tenant, as contemplated by Section 12(3)(b), till the final decision of the suit is concerned, such obligation is conjunctive, when the said provision uses the words “and also pays costs of the suit as directed by the Court” which is something, as noted hereinabove, wholly seisin to the Court and with the realm of the Court passing an appropriate order in respect of any future default. However, any future defaults in the deposit of the rents, by themselves, would be purely a subject matter for consideration of the Court in the suit of the nature with which Section 12 is concerned. Thus, whether such default would entitle the landlord to a decree of recovery of possession is subjective and would depend on the facts and circumstances of the case for the Court to consider, for the reason that any default of the nature as may arise in the suit, whether was a curable irregularity or non-compliance or the same was incurable and need to aid the conclusion that the tenant has refused to pay and/or was not ready and willing to pay, would be purely a subject matter of appropriate consideration of the Court in the given suit. However, in a straight-jacket manner to consider that a future default in not regularly depositing the amount of the standard rent and permitted increases in the Court, although ordered by the Court under Section 12(3)(b), would *ipso facto* entitle the landlord to a decree of recovery of possession when the initial order of deposit was complied with, would not be an appropriate reading of the provisions.

21. A similar view was taken by the learned Single Judge of this Court in a significant judgment in **Mohanlal Gokulchandji vs Khimraj Bhagaji**⁸ wherein the case of the respondent therein was that the petitioner was in arrears of the rent of the suit premises for three months as alleged by the respondent/plaintiff-landlord. The landlord also alleged that the petitioner was not a person ready and willing to pay the amount of standard rent and permitted increases within the meaning of Section 12(7) of the Bombay Rent Act. The case of the landlord was contested by the petitioner/tenant to deny that he was not a person who was not ready and willing to pay the rent. His contention was accepted by the learned trial Judge, when the Court held that the petitioner/tenant was ready and willing to pay rent. In the very same order, the trial Court has fixed the standard rent for the suit premises. In the proceedings of the suit, while rendering an order treating the contention relating to the reasonableness of the standard rent raised by the petitioner as a contention under Section 11(4) of the Bombay Rent Act, on an application made by the petitioner, the trial Court fixed the interim rent at Rs. 200/- which was the rent claimed by the respondent - landlord. The trial Court while fixing the interim rent of Rs.200/- per month also directed that the arrears shall be deposited within two months and thereafter directed the tenant to continue to pay the rent on or before tenth of every month. Two years after the interim rent was fixed by the trial Court, the respondent presented an application to the Court wherein he pointed out that after 35 months upto the date of that application nearly rent of Rs. 7,000 was due towards arrears of rent by the petitioner and that the petitioner had paid only Rs.4,800. The contention

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was that the petitioner thus remained in arrears of rent of 11 months. To this, the case of the petitioner was that the rent upto date was paid, except for an amount of Rs.200 which remained to be paid because of a mistake in the calculation, and accordingly, an amount of Rs.200 was paid one day prior to the decision on the suit.

22. It is on such backdrop, the question which fell for consideration of the Court was whether there was readiness and willingness on the part of the petitioner to pay the rent, and more particularly, when it was alleged that there was a default on that. In answering this question, the learned Single Judge held that although the petitioner did not strictly obey the terms of the orders passed initially in regard to deposit of the rent but the subsequent payments being accepted by the Court, as if they were made in pursuance of its order. The Court significantly observed that it was not correct to read into the words of Section 12(3)(b) a schedule of payments which once fixed by the order of the Court, remains inflexible without any power in the Court to make variations in it. We are in complete agreement with the view taken by the Court in this decision. The following are the relevant observations made by the Court:-

“8. In my opinion, the reliance placed by the learned Joint Judge on *Sd. Umar's* case is not correct. It is not correct to read into the words of s. 12(3) (b) a schedule of payments which once fixed by the order of the Court remains inflexible without any power in the Court to make variations in it. The judgment in *Sd. Umar's* case apparently follows the judgment of the Supreme Court in *Dhansukhlal v. Dalichand Virchand*, which has in the opinion of Mr. Tipnis, appearing for the respondent, impaired the authority contained in *Kalidas Bhavan v. Bhagvandas*. According to Mr. Tipnis, to whose submission I will make further reference, the judgment of the Supreme Court in *Dhansukhlal's* case itself fully covers the facts and circumstances of this case and the judgment in *Sd. Umar's* case only follows the Supreme Court judgment in *Dhansukhlal's* case. Before I consider the judgment of the Supreme Court in *Dhansukhlal's* case or the judgment of this Court in *Sd. Umar's*, it would be convenient to refer to the judgments of this Court delivered by Chagla C.J. They are: (1) *Gulam Hussein v. Mahomed Umar* and (2) *Kalidas Bhavan v. Bhagvandas*.

9. In the first of these cases, the tenant had not on the first day of hearing made payments of the arrears as was apparently required under s. 12(3)(b) of the Bombay Rent Act. Few days after the issues were settled, the tenant made an application stating that he should be permitted to pay the arrears of rent. The learned trial Judge thought that after the first date of the hearing, he had no jurisdiction to permit the tenant to make payment of the rent in the Court and accordingly he disallowed the tenant's application. The learned appellate Judge took contrary view and allowed the tenant in the appeal itself to make payments. The learned appellate Judge thought that the trial Judge had discretion to allow the tenant to make payments even after the first day of hearing and if the trial Court had not exercised that discretion at the trial stage he was free to exercise that discretion at the appellate stage. When the matter came up before the High Court in revision, Chagla C.J. repelled the contention raised on behalf of the landlord that the tenant must pay the arrears of rent and costs on the first day of hearing or at least he must apply on the first day of hearing to the Court to fix some other date by which this payment should be made. In other words, it was suggested that either payment of the arrears should be made on the first day of the hearing or an application must be made for fixing a date on which payment could be made. **Chagla C.J. pointed out that two conditions laid down in s. 12(3)(b) were that the arrears of rent and costs must be paid on the first day of hearing or on or before such other date as the Court may fix. The section does not lay down that the Court must fix such other date on the first day of the hearing. He proceeded to lay down**

"...There is no restriction on the power of the Court to fix such other day at anytime before the decree is passed, and inasmuch as in this case the application was made before the hearing was completed, the Court was competent to exercise its discretion in favour of the tenant."

10. In the case of Kalidas Bhavan v. Bhagvandas the facts were slightly different. There the tenant had not made any application in the trial Court but had deposited various amounts in the Court from time to time before the trial Judge passed a conditional decree on August 31, 1955. The conditional decree stipulated that if all the arrears of rent till the end of September 1955 and the cost of the suit were deposited by the defendant in the Court before September 30, 1955, the decree for possession which the Judge was passing, should not be executed. The decree was challenged by the landlord in the District Court unsuccessfully and that is how the matter came up before this Court in its revisional jurisdiction. Discussing the merits of that case and after analysing the provisions of s. 12(3) (a) and 12(3) (b) of the Bombay Rent Act, Chagla C.J, pointed out that what the Legislature intended was that arrears should be paid before the judgment was delivered in the suit. He also pointed out that if the tenant does not pay the arrears of rent on the first day he must take permission of the Court and deposit the arrears on such subsequent day as the Court may fix. **Referring to the facts before him, the learned Chief Justice observed that the tenant had made the deposit of the full amount of arrears before the judgment was delivered. It was true, he noted, that the tenant did not deposit this amount on the very first day nor did he formally apply to the Court for fixing some other date nor did the Court pass any formal order fixing some other date on which he could make the payment. He concurred with the view taken by the learned Assistant Judge that when the Court accepted the two deposits, in the eye of the law the Court had permitted the tenant to make these deposits and to make them on the dates on which these deposits were accepted. It was pointed out that deposit could not be made in**

the Court without the permission of the Court and the Court if knowing that the tenant has not made the deposit on the first day permits him to make the deposit on the subsequent date, it would in doing so, in substance if not in form, be permitting the tenant to make the deposit on the date on which it accepted the deposit.

11. Mr. Tipnis, the learned advocate appearing on behalf of the respondent, predictably relied upon the judgment of Joshi J. in Sd. Umar's case wherein there is an observation to the effect that the authority of Kalidas Bhavan's case is considerably shaken by the Judgment of the Supreme Court in Abbasbhai v. Gulamnabi. Mr. Tipnis referred to a more recent decision of the Supreme Court in Dhansukhlal v. Dalichand Virchand, and contended that a careful reading of the decision of the Supreme Court would show that Chief Justice Chagla's judgment cannot any longer be good law and in any case Joshi J. having found that the authority of Kalidas Bhavan's case is considerably impaired by the later decision of the Supreme Court, it would be in the fitness of things that I follow the judgment of Joshi J. and not of Chagla C.J. If there are observations in the judgment of the Supreme Court in Dhansukhlal's case which would in any manner dilute the authority of Kalidas's case, I would be, with all respect be bound by the same. If there is in the judgment of Joshi J. a firm view that the judgment in Kalidas's case is no longer good law, then with respect, I would be bound by that judgment. But as I will show presently, in neither of these judgments there is a reference to the material parts of the judgments in the case of Gulam Hussein v. Mahomed Umar and Kalidas Bhavan v. Bhagvandas decided by Chagla C.J. **As I have mentioned above, both the judgments of Chagla C.J. lay down that though there is provision for regular compliance with the terms mentioned in s. 12(3) (b) before a tenant can ask for protection, that compliance will necessarily be inferred if the tenant has, from time to time, deposited the amounts which have been accepted by the Court or at any rate which have not been treated by the Court as not in accordance with the terms of the order made under s. 12(5) (b). It is true, as Mr. Tipnis rightly points out, that in Dhansukhlal's case, examining the scheme of the Bombay Rent Act the Supreme Court pointed out "...To be within the protection of that provision, the tenant must not only pay all the arrears due from him on the first day of hearing of the suit, but he must thereafter continue to pay or tender in Court regularly the rent and the permitted increases till the suit is finally decided."**

12. This is in fact the language of the section itself but nowhere has the Supreme Court even suggested that the Court before which the suit is pending cannot allow the tenant to make payment on a date other than the first day of hearing Nor is it suggested that once the dates are fixed by the trial Court those dates cannot be altered to meet the requirement of justice or the exigencies of the situation that may later on arise in the suit.

13. Similarly, Joshi J. in Sd. Umar's case has referred to another decision of the Supreme Court in Abbasbhai v. Gulamnabi, and has mentioned what has been pointed out by the Supreme Court in that decision viz. that the tenant cannot remain content by raising a defence of there being a dispute about the standard rent so as to bring the case within the four corners of s. 12(3)(b). It is further mentioned that if the tenant is keen on getting the protection under the said section. he must move the Court at the earliest- soon after the written statement is filed to fix the interim rent and should go on making deposits till the disposal of the suit at the rate of the interim rent. In Abbasbhai's case there

is a general review of the provisions contained in s. 12 of the Bombay Rent Act but nothing inconsistent with the view in Kalidas's case. The words of s. 12(3) (b) themselves are clear and they allow the tenant to pay or tender in the Court the arrears of rent on the first day of hearing of the suit or on or before such other date as the Court may fix. The payment on the very first date of the hearing of the suit, therefore, can be dispensed with if the Court allows the payment on or before any other date. I do not see how this section presupposes the fixation of an inflexible schedule of payment which cannot be altered by the Court. It is true that Joshi J. pointed out that from the observations of the Supreme Court in Dhansukhlal's case it appears that the emphasis is on regular payment of rent and permitted increases as ordered by the Court and not consolidated payment just before the delivery of the judgment. From these observations it does not, in my opinion, follow that a consolidated payment cannot be made at all if the Court so desires or so directs or so allows. The crux of the ratio of Kalidas's case is this that if the Court allows explicitly or by necessary implication the payment of rent on dates other than the first day of hearing and the tenant makes payments which are treated as payments as per its order, it would be compliance with the provisions contained in s. 12 (3)(b) of the Bombay Rent Act. This central part of the judgment in Kalidas's case has not been referred to at all by Joshi J. and therefore it cannot be said that Joshi J. doubted the validity or authority of that part of the judgment. As I have already mentioned, neither in Abbasbhai's case nor in Dhansukhlal's case is there any prohibition against the Court from allowing the tenant from making payments on dates other than the first day of hearing. If the payments are made even after the dates fixed for the payment and the Court accepts the same without treating them as defaults, I do not see how there is no compliance with the provisions of s. 12(3)(b) because ultimately all the payments are made into the Court and are accepted by the orders of the Court. I am, therefore, of the opinion that the learned Joint Judge was in error in holding that the petitioner was not ready and willing to pay the rent. This is especially so when the learned trial Judge has specifically mentioned in his judgment that he is treating the tenant as a person ready and willing to pay the rent after noticing that the tenant had from time to time deposited the entire amount due before the judgment was delivered. The ratio in Kalidas's case relating to the acceptance of the rent by the Court and then the Court treating various payments as in compliance with a fresh schedule of payments is, in my opinion, not considered in, let alone shaken by any of the judgments of the Supreme Court. Indeed, it would be unfortunate if one holds that the Court will be completely helpless if after it fixes the schedule of payments or makes an order for any payment, the tenant is for unforeseen or accidental reason unable to obey and that the Court is rendered helpless in giving relief warranted by any alteration in the circumstances. That could not be the intention of the Legislature viz. to tie down the hands of the Court after it makes an initial order for the payment of the rent."

(emphasis supplied)

23. We may also refer to the decision of the Supreme Court in **Mohan Laxman Hede Vs. Noormohamed Adam Shaikh**⁹, interpreting the provisions of Section 12(3)

(b) of the Bombay Rent Act, when the Court held that in order to take an advantage of Section 12(3)(b) exact or mathematical accuracy is not required in the deposit of rent by a tenant. The word 'regularly' in Section 12(3)(b) contemplates deposit of rent with reasonable punctuality. In this regard, the following observations are made by the Court are required to be noted which read thus:

6. 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 permitted increases "regularly" till the suit was finally decided as contemplated under Section 12(3) (b) of the Act. In *Mranalini B. Shah v. Bapalal Mohanlal Shah* 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 characterized 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 it 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.”

7. If we examine the chart of deposits made by the appellant in the court set out earlier, it shows that during the period January 29, 1981 to December 17, 1985 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 up to 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 afore-said 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 sub-section (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 of 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."

24. In this view of the matter, we are of the clear opinion that the effect of provisions of Sections 11 and 12 is although mutually exclusive, however, the deposit of the standard rent as per the orders passed by the Court under Section 11(3) would certainly be of relevance to the Court passing an order under Section 12(3)(b), for the reasons as discussed hereinabove. In the aforesaid premises, we answer question no.(i) in the affirmative.

25. Insofar as question no. (ii) is concerned, the obvious corollary would be that once the amount of the standard rent is tendered in the Court in the standard rent application, certainly, it will not be possible for the Court to consider the tenant to be in default of non-payment of rent as contemplated under Section 12(2) which itself is couched in negative language, read with Section 12(3)(b). In such event, the landlord would not be entitled to a decree or, in other words, when the Court passes an order under sub-section (3) of Section 11 directing the tenant to deposit the amount of standard rent or permitted increases is complied, and if such amounts are deposited, there would not be any occasion to label the tenant as a defaulter, so as to institute a suit for recovery of possession against the tenant. It is institution of the

suit which is barred in the situation of sub-section (2) of Section 12, which clearly has a bearing as recognized by Section 11(3) of the Court permitting the tenant who is in receipt of notice under Section 12(2) to deposit such amount, as the Court may specify and direct by its order passed in the suit, pending determination of the standard rent application. For such reasons, certainly it needs to be held, that in this situation, there would not be any cause of action for institution of a suit on the ground of arrears of rent, and a decree for recovery of possession cannot be passed by the Court for the reason that there was non-compliance of clause (b) of sub-section (3) of Section 12 when the amount of the standard rent is deposited in the Court by the tenant in the proceedings under Section 11(3). Question no. (ii) is answered accordingly.

26. The Reference as made by the learned Single Judge, is accordingly answered in the aforesaid terms. The proceedings of the writ petition be placed before the learned Single Judge.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)