



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3751 OF 1996

1. Smt. Sakhubai Baburao Kadam

since deceased through her legal heirs

1A. Shri. Shivaji Baburao Kadam

1B. Sou. Kamal Babanrao Dhumal

1C] Smt. Shanta Sanjay Pawar

1D] Sou. Manda Vilas Shinde

2. Shri. Rajaram Baburao Kadam

3. Sou. Chandarani Rajaram Kadam

} ...Petitioners

: Versus :

1] Shri. Sudhakar Sambhaji Kadam

(Deceased) No legal heirs.

2] Shri. Suryakant Sambhaji Kadam

(Deceased) through his legal heirs

2A. Smt. Laxmibai Suryakant Kadam

2B. Shri. Avinash Suryakant Kadam

2C. Kum. Avanti Suryakant Kadam

} ...Respondents

Mr. Sanjay Kshirsagar, for the Petitioners.

Mr. N.C. Walimbe, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Reserved on : 2 AUGUST 2024.

Pronounced on : 9 August 2024.

JUDGMENT :

1) This Petition is filed challenging the judgment and decree dated 20 January 1996 passed by the 9th Additional District Judge, Pune allowing Civil Appeal No.550/1992 and setting aside the decree dated 1 October 1992 passed by the Third Additional Judge, Small Causes Court, Pune in Civil Suit No. 613 of 1985. The Appellate Court has decreed Civil Suit No. 613 of 1985 and has held that the Plaintiff-Respondent is entitled to recover possession of the suit premises directing the Petitioner-Defendant to handover possession thereof to the Plaintiff within a period of 6 months.

2) Two rooms on ground floor of the house property bearing City Survey No. 302, Shukravar Peth, Pune are the '**suit premises**'. Plaintiffs are landlords of house property bearing No.302 and Defendant was inducted as monthly tenant in respect of the suit premises. It was averred in the Plaint that Defendant was not paying the rent from time to time and was in arrears since 01 August 1971. That the standard rent in respect of the premises were fixed at Rs. 8.60/- and after 1 April 1981, there was increase in water charges, sewerage charges etc. and the rent became Rs.9.40/-. Plaintiff demanded the arrears of rent by Notice dated 7 January 1985 and after adjusting Rs.857/- deposited in the court from total arrears of Rs. 1,420.60/-, Defendant was claimed to be in arrears of Rs. 563.60/- as on 31 December 1984 and Plaintiff demanded the same. Despite receipt of notice, the Defendant did not pay the rent within the prescribed time limit. Since

Defendant was in arrears of rent in excess of period of 6 months, Plaintiff instituted Civil Suit No. 613/1985 in the Court of Small Causes, Pune.

3) The suit was resisted by the Defendant by filing written statement contending, *inter-alia* that though she was willing to pay the rent, Plaintiffs refused to accept the same. That various money orders were not accepted by Plaintiffs. Defendant disputed increase in rent and prayed for dismissal of the suit. Defendant also filed Misc. Application No. 140 of 1985 seeking fixation of standard rent in respect of the suit premises on 12 February 1985.

4) Plaintiffs led evidence by examining Plaintiff No.1 as witness. Defendant examined herself as a witness. After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to dismiss the Suit by decree dated 1 October 1992 holding that Plaintiffs did not prove that Defendant had defaulted payment of rent under Section 12(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (**Bombay Rent Act**). Plaintiffs filed Civil Appeal No. 552 of 1992 before the District Judge, Pune. The Appellate Court has allowed the Appeal by its judgment and decree dated 20 January 1996 and has set aside the Trial Court's decree dated 1 October 1992. The Appellate Court has decreed the suit directing the Defendant to handover possession of the suit premises to the Plaintiff within six months. Aggrieved by the decree of the Appellate Court dated 20 January 1996 passed in Civil Appeal No. 550 of 1992, Petitioner-Defendant has filed the present petition. By order dated 24 July 1996 this Court admitted the petition and stayed the decree of the Appellate Court.

5) Mr. Kshirsagar, the learned counsel appearing for the Petitioner would submit that the Appellate Court has erred in reversing well-reasoned decree of the Trial Court ignoring the fact that there was no default in payment of rent on the part of Petitioners/Defendants and that Plaintiff was repeatedly filing Suits with a view to somehow seek ouster of the Defendant from the suit premises. That earlier Suit No. 3355 of 1974 on the ground of default which came to be dismissed and the decree of the Trial Court came to be confirmed by the Appellate Court, this Court and finally by the Supreme Court. That the said litigation remained pending till 23 July 1984. Immediately thereafter, Plaintiff served fresh Notice dated 7 January 1985. That though standard rent was fixed in the previous proceeding at Rs. 8.60/-, Plaintiff illegally demanded rent of Rs. 9.40/- from the year 1981. That it has come in evidence that Defendant deposited rent in the Small Causes Court, which has been noticed by the Small Causes Court in paras-6 and 7 of its judgment. That before issuance of the notice, rent of Rs. 550/- was deposited in the Court vide receipts dated 23 December 1983, 10 July 1984 and 9 August 1984 amounting to Rs.550/-. That the notice itself was thus faulty and therefore the Suit could not have been decreed by the Appellate Court under Section 12(3) of the Bombay Rent Act. That the Defendant was justified in depositing the rent in the Court on account of pendency of proceedings of the first suit before the Supreme Court on 23 July 1984. The Appellate Court has erred in holding that mere non-intimation to the landlord about deposit of Rs.550/- in the Court can lead to drawl of inference about default on Defendant's part. So far as deposit of rent in the Court under Section 12(3)(a) of the Bombay Rent Act is

concerned, it is an admitted position that Defendant filed application for fixation of standard rent and the Appellate Court has erroneously refused to take cognizance thereof on the ground of fixation of standard rent at Rs. 8.60/- in the previous proceedings. That the Appellate Court failed to appreciate that Plaintiff demanded higher amount of Rs. 9.40/- and that therefore Defendant was justified in filing fresh application for fixation of standard rent and filing of such application provided him the protection under Explanation-I of Section 12 of the Bombay Rent Act for drawl of inference of readiness and willingness on the part of the Defendant to pay the rent. That in any case, since the notice demanding rent itself was invalid since the Defendant was not in arrears of rent for a period of 6 months preceding the notice, the suit itself was not maintainable and therefore the Defendant's failure to pay/tender rent in the Court by filing application for standard rent cannot be a reason for passing of decree of eviction. Mr. Kshirsagar would therefore pray for setting aside the decree of the Appellate Court.

6) The petition is opposed by Mr. Walimbe, the learned counsel appearing for the Respondents/Plaintiffs submitting that no interference is warranted in well-reasoned decision of the Appellate Court in exercise of jurisdiction by this Court under Article 227 of the Constitution of India. He would submit that deposit of rent in the Court, in absence of pendency of any suit cannot be treated as payment of rent to the landlord for the purpose of defeating the suit for eviction on the ground of default. That the Appellate Court has correctly relied upon judgment of the Apex Court in

Shri. Vidya Prachar Trust V/s. Pt. Basant Ram¹ in which it is held that Courts are not a clearing house in the matter of payment of rent or an agent between landlord and tenant. Mr. Walimbe would further submit that after fixation of standard rent of Rs. 8.60/- in the previous proceedings, there was increase in the water charges by 80 paise and drainage charges by 25 paise. That therefore Defendant was under obligation to pay the said increase of Rs. 1.05 paise and therefore the Plaintiff rightly demanded higher amount of Rs. 9.40/- from the Defendant vide Notice dated 7 January 1985. That the said Notice was not responded to by Defendant, who did not dispute the quantum of rent demanded by Plaintiffs and in these circumstances, filing of fresh application for fixation of standard rent was nothing but a ruse for avoiding payment of rent. In such circumstances, there was no necessity for filing of fresh application for fixation of standard rent. Mr. Walimbe would take me through the evidence on record, as well as the findings recorded by the Appellate Court in support of his contention that default in payment of rent is conclusively proved and therefore the decree passed by the Appellate Court does not warrant any interference.

7) Rival contentions of parties, now fall for my consideration.

8) The Suit was filed seeking recovery of possession of the suit premises from Defendant on the ground of default in payment of rent. It appears that there was previous round of litigation between the parties in the form of Suit No. 3355 of 1974, which again was on the ground of default in payment of rent in addition to the ground of nuisance/annoyance. In

1 AIR 1969 SC 1273

that suit, the Defendant filed Misc. Application No. 602 of 1974, in which interim rent was fixed at Rs.15/-. Both, Suit No. 3355 of 1974 and Misc. Application No. 602 of 1974 were decided by the Trial Court by decree dated 30 March 1978. While the suit was dismissed, standard rent of the premises was fixed at Rs. 8.60/-. Civil Appeal no. 336 of 1978 was dismissed by the District Judge by decree dated 25 March 1980. The Plaintiffs unsuccessfully tested the decree of the Trial and the Appellate Court in the previous round of litigation before this Court and the Supreme Court. It appears that the Special Leave Petition was dismissed by the Apex Court on 23 July 1984.

9) In their true litigative spirit, Plaintiffs continued their litigation sojourn by addressing Notice dated 7 January 1985 to the Defendant within six months of finalisation of the earlier round of litigation, possibly on account of the legal profession practiced by the First Plaintiff. In the Notice dated 7 January 1985, Plaintiffs gave chart of rent due from 1 August 1971 to 31 December 1984, under which the rent payable was shown at Rs. 1420.60/-. Plaintiffs thereafter referred to the report of the Nazir, under which the rent deposited upto 5 November 1981 in the Court was Rs.857/-. Plaintiffs allege that after 7 February 1980, Defendant did not deposit the rent in the Court nor paid the same to the landlord. Plaintiffs gave credit of Rs.757/- deposited in the Court and stated that the rent of Rs. 563.60/- was due and payable, which was equivalent of rent representing period of 5 years. Plaintiffs alleged in the Notice that Defendant was in arrears of rent for period exceeding six months and was thereafter a defaulter within the meaning of the Bombay Rent Act.

Plaintiffs accordingly terminated the tenancy and demanded vacant possession of the suit premises in addition to arrears of rent.

10) While dismissing the suit, the Trial Court took note of the fact that the Defendant was depositing rent in the Court and that following deposits were made by her in the Court:

Sr.No.	Receipt No.	Date	Amount
1.	17933	23.12.83	300/-
2.	6481	10.07.84	200/-
3.	8898	09.08.84	50/-
Total Rs.			550/-

11) The Trial Court accused Plaintiffs of not being diligent in seeking proper information from the Court about deposit of rent and in selectively procuring information in the form of Nazir report on 20 November 1981. The Trial Court noticed that after the said report of 20 November 1981, rent was deposited on 22 December 1983, 10 July 1984 and 9 August 1984 and that Plaintiff ought to have taken note of the said deposits while selectively relying on Nazir's report of 1981 when the notice was sent in the year 1985. The Trial Court thereafter held that it could not be said that the Defendant had failed to pay the rent at any point of time. The Trial Court also took note of deposition of the Defendant about the approach made by her to the Plaintiff for payment of rent, on noticing their refusal to accept the rent, deposits were made in the Court. It also appears that an admission was given by Plaintiff No.1 during the course of his cross-examination that *'It is true that Defendant had deposited rent in earlier*

proceedings also and *'It is true that the rent deposited in the Court has been withdrawn by him'*. However, the said admissions could be in respect of the deposit of rent during the course of previous round of litigation and therefore not much can be inferred on the basis of said admissions.

12) If chart of payment of rent reflected in para-6 of the Trial Court's judgment is taken into consideration, it appears that the last deposit was made by the Defendant on 9 August 1984 of Rs. 50/-. Before that, another deposit appears to have been made on 10 July 1984 of Rs.200/-. This shows that during the year 1984, two deposits totaling Rs.250/- were made by the Defendant in the Court. However, there are no particulars in respect of such deposits. The Trial Court has not conducted any exercise as to whether the three deposits amounting to Rs.550/- were sufficient to take care of the entire rent payable upto the date of filing of the suit.

13) When Plaintiff dispatched Notice dated 7 January 1985, Defendant took a defence in para-7 of the written statement that the notice was ludicrous and therefore she thought that Plaintiff would not institute a fresh suit on the basis of such notice and therefore in order to save expenses towards sending reply to the notice, she did not respond to the same. Thus, receipt of notice is not disputed by the Defendant. The Notice dated 7 January 1985 was for twin reasons of communicating the factum of non-payment of rent, as well as increase in municipal taxes. Plaintiffs communicated to Defendant that from the year 1981, there was increase in municipal taxes which warranted increase in the rent from Rs. 8.60/- to Rs.

9.40/-. In the standard rent application (Misc. Application No.140 of 1985) the Small Causes Court has fixed the standard rent at Rs.9.40/- by its decree dated 24 November 1988. Thus Plaintiff's demand of increased rent from 1981 of Rs.9.40/- is ultimately found to be valid. In such circumstances, if Defendant did not even bother to respond to the notice either by intimating deposit of rent in Court to Plaintiffs or disputing the increased rent of Rs.9.40/-, this factor would definitely go against the Defendant and would show that she was in default of payment of rent.

14) Coming to the deposit of amount of Rs.550/- by Defendant in the Court, in my view, it was necessary for her to atleast give an intimation to Plaintiff about deposit of rent in the Court. The rent is paid to the landlord towards tenant's use and occupation of the premises owned by him/her. If tenant by his/her conduct, prevents the landlord from enjoying the amount of rent by paying the same on the due date, the same amounts to default making the landlord entitled to claim possession of the suit premises. Ultimately, the rent payable by the tenant to the landlord constitutes, atleast to some extent, return on investment. Though the provisions of the Bombay Rent Act has capped the amount of rent payable by tenant, it still doesn't change the position that rent payable in respect of the premises would constitute some return for the landlord towards ownership of the premises by him/her. Seen from this angle, tenant's act in depriving the landlord to enjoy the return on his property in the form of rent would clearly constitute breach of covenants of tenancy. This is also clear from the fact that under the provisions of the Maharashtra Rent Control Act, 1999 which is a subsequent legislation, the tenant is made

liable for payment of 15% interest on arrears of rent to save his tenancy. Though the provision for payment of interest is not to be found under Section 12(b) of the Bombay Rent Act, the same would not alter the position that rent ultimately represents some form of return to the landlord in respect of his ownership over the suit premises. Seen from this angle, Defendant's action in clandestinely depositing random amounts in the Court, in absence of pendency of suit and thereby depriving the landlord from enjoying the rent for over 5 years would clearly constitute breach of conditions of tenancy.

15) In my view, therefore it was incumbent for the Defendant to atleast intimate to the Plaintiff that she was depositing some amount intermittently in the Court so that Plaintiff could have atleast approached the Court and withdrawn the said amount. A tenant cannot randomly make some deposits in the court in absence of pendency of any suit, or give intimation of such deposits to the landlord, makes the landlord incur expenses for service of notice and for filing of the suit and then raise a specious defence that the rent was actually deposited in the Court. In my view therefore the Defendant was entitled to serve notice under Section 12(2) of the Bombay Rent Act.

16) It is also a matter of fact that Defendant in the present case has not paid or tender in the Court arrears of rent under Section 12(3) of the Bombay Rent Act. Section 12 of the Bombay Rent Act as it applied at the relevant time reads thus :

12. (1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay the

amount of the standard rent and permitted increases, if any and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

- (2) No suit for recovery of possession shall instituted by a landlord against 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.
- (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 land 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-I II- For the purposes of sub-section (2), reference to "standard rent" and to "permitted increase" shall include reference to "interim standard rent" and "interim permitted increase" specified under sub-section (3) or (4) of section 11.

- 17) Thus, in order to save herself from decree of eviction, it was incumbent for the Defendant to pay to the landlord or atleast tender in the Court, the standard rent and permitted increases, then due and thereafter continue to pay or tender in the Court regularly, such rent and permitted increases till final decision of the suit, in addition to payment of costs of the suit. True it is that under Explanation-I, tenant's readiness and

willingness is required to be inferred if an application is made under Section 11(3) of the act for fixation of standard rent and payment/deposit of rent or permitted increases is made after passing of order by the Court on such application. In the present case, after service of the suit summons, it appears that Defendant was advised to file Misc. Application No. 140 of 1985 seeking fixation of standard rent in respect of the suit premises. Perusal of averments in the said application would indicate that the same was made only for the purpose of avoiding payment of rent. It is also a matter of fact that in the said Application, standard rent came to be ultimately fixed at Rs.9.40/- by order dated 24 November 1988 which was the amount demanded by the Plaintiff in the notice dated 7 January 1985 payable from the year 1981. As observed above, Defendant never disputed the increased amount of rent by responding to the Notice dated 7 January 1985. In the previous proceedings, the standard rent of the premises was fixed at Rs.8.60/- by order dated 30 March 1978. Plaintiffs had clearly intimated to Defendant that there was increase in the monthly taxes in the form of water charges and sewage charges and accordingly increased rent of Rs.9.40/- was demanded w.e.f. April 1981. The increase in the rent was by minuscule amount of 80 paise. However, Defendant unnecessarily filed application for fixation of standard rent immediately after receipt of suit summons in absence of any dispute about the rent demanded by the landlord. In my view, therefore the findings recorded by the Appellate Court about lack of *bonafides* in filing fresh application for standard rent cannot really be found fault with.

18) Mr. Kshirsagar has relied upon judgment of this Court in *Shamrao Abaji Jadhav* in support of his contention that deposits made even in suit dismissed for default, would come to the aid of the tenant in protecting possession of the suit premises. This Court held in paras-6 and 7 as under:

6. Now, it is relevant to note that in this suit a total claim towards rent was Rs.210/- which was far less than the amount of Rs.232 already deposited long back by the tenant in two standard rent proceedings aforesaid. There was, therefore, no question of the tenant being in any arrears as such of rent either at the date of the quit notice or on the date of the suit. The trial court rightly, therefore, came to the conclusion that this was not a case where any decree for possession of the suit premises could be passed in favour of the landlord under the provisions of [S. 12\(3\)\(a\)](#) of the Rent Act. The Appellate court, unfortunately for the tenant, reversed this finding on the ground that the deposit made by the tenant in the first standard rent proceedings after the said proceedings were dismissed for default cannot come to the aid of the tenant in protecting his possession of the suit premises. In other words, the reasoning was that the deposits made in the first standard rent proceedings after the same were dismissed for default were not valid tenders and, therefore, had to be excluded from consideration while determining the readiness and willingness of the tenant in terms of [S. 12\(1\)](#) of the Rent Act.

7. It is difficult to accept this reasoning and the ultimate conclusion of the Appellate court. There is no dispute of the fact of the aforesaid deposits. There is also no dispute of the fact that these deposits covered the entire period of arrears. There is also no dispute of the fact that the deposits in fact covered even payment of advance rent. There is also no dispute of the fact that as at the date of the suit notice issued to the tenant in Mar. 1973, the tenant was factually not in any arrears at all. Nor is there any dispute of the fact that even as at the date of the suit, the tenant was factually not in arrears at all. Whole claim in support of her case for eviction by the plaintiff was that though the tenant had made full deposits and though the tenant was factually not in arrears at the date of the quit notice or at the date of the suit itself, payment made in the standard rent proceedings after the said proceedings stood dismissed for default cannot be termed as valid tenders and, therefore cannot come to the aid of the tenant for protecting his possession of the suit premises. In my view, to accept such a contention would be a hypertechnical approach in a matter relating to eviction

of the tenant from the suit premises. In enacting [sec. 12](#) of the Rent Act. It cannot be said to be the intention of the Legislature to penalise a person such as the tenant herein and bisit him with the penalty of eviction even though he has paid the entire arrears in judicial proceedings between the parties and even though he is found factually not to be in any arrears at all either at the date of the quite notice or at the date of the suit itself. Indeed, the intention of the Legislature is, at the outset, clear from the provisions of sub-sec. (1) of [S. 12](#) of the Rent Act. By virtue of the said provisions, the Legislature has, at the very threshold, put a bar against a landlord's claim for possession by enacting that he shall not be entitled to 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. Thus, if the tenant is found to have paid or if the tenant is found to be ready and willing to pay, it is not open to the landlord to recover possession. This readiness and willingness has, of course, been interpreted as being, in a case to which [S. 12\(3\)\(a\)](#) may apply readiness and willingness within a period of one month of the receipt of the notice referred to herein. But even in that light, when we see the facts of the present case, it is clear that much prior to the notice in question and even before receipt of any notice by the landlord to the tenant . the tenant had himself deposited in judicial proceedings between the parties the entire amount of rent which covered not only the entire period of arrears but also period subsequent thereto. Here is, in my view, a case of a tenant who has paid the entire rent long prior to the receipt of the quite notice. On this ground itself, he deserved to be protected in his possession of the suit premises.

19) In my view, the judgment of learned Single Judge of this Court in *Shamrao Abaji Jadhav*, rendered in the facts of that case would not constitute a binding precedent that in every case, random deposits made by tenant in Court without giving intimation to landlord of such deposits would constitute readiness and willingness on the part of the tenant to pay the rent. Another distinguishing factor in the present case is Defendant's non-response to the Plaintiff's notice dated 7 January 1985 which not only alleged arrears of rent but also demanded enhanced rent on account of increase in the municipal taxes.

20) In the present case, Defendant has prevented Plaintiff from enjoying the rent for over 5 years by clandestinely making some deposits in the Court in which no proceedings were pending.

21) After considering the overall conspectus of the case, no palpable error is traced in the judgment and order passed by the Appellate Court, which has rightly held that there was default in payment of rent on the part of the Defendant. I therefore do not find any valid ground to interfere in the decree passed by the Appellate Court. The Writ Petition is devoid of merits and is accordingly **dismissed**. Rule is discharged. There shall be no order as to costs.

SANDEEP V. MARNE, J.

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