



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1998 OF 1995

Shaikh Ibrahim Shaikh Mohamad Hanifsaheb
since deceased through his legal heirs:

- 1a) Jakiya Ibrahim Shaikh
Age 54 years, Occ. House wife
- 1b) Nadim Ibrahim Shaikh
Age 36 years, Occ. Service,
- 1c) Naim Ibrahim Shaikh
Age 34 years, Occ. Business,
- 1d) Parvej Ibrahim Shaikh
Age 32 years, Occ. Business,
- 1e) Shargupta Husain Shaikh
(married daughter) age 35 years,
Occ. House wife,

All r/o at House No.3309, Kazipura,
Ground Floor, Nashik – 1, District Nashik.

....Petitioners

V/S

Mohamudkhan Kadar Khan Pathan
since deceased through his heirs and
legal representatives:

- 1A Hadmumiya Mehamudkhan Pathan
since deceased through his heirs and
legal representatives 1B to 1H:

1B Iqbal Mahemudkhan Pathan
since deceased through its heirs and
legal representatives:

1B-1 Dabirj Iqbal Pathan,
Age Adult,

1C Khalik Mehamudkha Pathan
Age 43 years,

1D Khamadnissa Mehmudkhan Pathan
Age 45 years,

1E Najunnissa A. Pathan
Age 40 years,

1F Alafunnissa A. Khan
Aged 38 years,

1F Saheba Mehmudkhan Pathan,
Age 34 years,

1H Aljumanbanu I. Shaikh
Age 22 years,

*Deleted as per
order dated 30
August 2024*

All residents of at presently
residing at Flat No.1, Phodkar Complex
'A' Wing Patwardhanwadi,
Udyam Nagar, Ratnagiri,
District Ratnagiri.

....Respondents

Mr. Pradeep Thorat with Ms. Aditi Naikare *for the Petitioners.*

Mr. Pramod N. Joshi *for Respondents.*

CORAM : SANDEEP V. MARNE, J.

Reserved On : 5 July 2024.

Pronounced On : 15 July 2024.

JUDGMENT:

1 By this Petition, Petitioner challenges the decree dated 28 July 1994 passed by District Judge, Nashik dismissing Civil Appeal No.91 of 1998 and confirming the decree dated 9 April 1987 passed by the Court of Joint Civil Judge Junior Division, Nashik in Regular Civil Suit No.73 of 1984 and Miscellaneous Application No.279 of 1985.

2 Facts of the case, as pleaded in the Plaint filed in Regular Civil Suit No.94 of 1984 are as follows. Three rooms and enclosed platform abutting road on ground floor of southern portion of Municipal House No.3309, City Survey No.4316 at Kazipura in Nashik City are the suit premises. The property bearing Municipal House No.3309 was owned by Late Hafizabi Kadar Khan Pathan. Defendant was inducted as monthly tenant in respect of the suit premises for monthly rent of Rs.55/- by Hafizbi. After her death on 12 November 1974, Hafizabi left behind three sons viz, Abdul Gani Khan, Abdul Gafar, Abdul Karim and one daughter Zebrunisa. Plaintiff-Mohamudkhan Kadar Khan Pathan is the step-son of Hafizabi. According to Plaintiff, Hafizabi had partitioned various properties and had submitted application to the City Survey Office and accordingly entries were made to the record of rights. According to Plaintiff, the entire ground-floor of Municipal House No.3309 came to the share of the Plaintiff and his name was recorded to the

records of rights. Accordingly Plaintiff is the landlord in respect of the suit premises from 12 November 1974 and he alone had right to recover rent from the Defendant-tenant. Plaintiff pleaded that Defendant tenant paid the rent upto October 1974 to Late Hafizabi and the rent after 1 November 1974 was in arrears.

3 Plaintiff further pleaded that he gave written intimation to the Defendant not to pay rent to any other person on 14 December 1974. However, Defendant failed to pay rent to the Plaintiff despite raising repeated demands. That the Defendant was in arrears of rent from 1 January 1975 to 31 October 1983 of Rs.5,830/-. Plaintiff served Notice dated 19 November 1983 terminating the tenancy of the Defendant and demanded arrears of rent and possession of the premises. That Defendant refused to accept the said notice. Plaintiff further pleaded that if Defendant had paid any amount to the Nashik Municipal Corporation, the details thereof were not furnished to Plaintiff and in the event of production of details and receipts of such payments, Plaintiff was willing to adjust the said amount from arrears of rent. Plaintiff instituted Regular Civil Suit No.73 of 1984 for recovery of possession of the suit premises and for recovery of arrears of rent of Rs.1,980/- as well as for payment of rent of Rs.55/- per month from 1 January 1984 till recovery of possession.

4 Defendant appeared in the suit and filed Written Statement denying that Plaintiff alone had become owner in respect of the premises. He pleaded that Late Hafizabi did not have any right to make any arrangement with regard to her estate and in any case, the other heirs had not consented for such

arrangement. That the Defendant paid rent of Rs.55/- per month till November 1976, however since third room fell down in November 1976, the rent got reduced at Rs.40/- per month from December 1976. Defendant claimed that his signature was obtained on one letter while he was busy teaching in the school, which appears to be the letter dated 14 December 1974. That Defendant acquired knowledge about the said letter only after receipt of notice dated 22 June 1978. That Defendant received only one Notice from Plaintiff on 22 June 1978 which was replied by him on 19 July 1978. That Defendant did not receive notice dated 19 November 1983.

5 Defendant further pleaded that after death of Late Hafizabi, names of Plaintiff and other four heirs were mutated to the record of rights and Mr. Abdul Gani Kadar Khan started recovery of rent with consent of other heirs. That as per the consent of heirs the amount paid by Defendant towards taxes have been adjusted in the amount of rent and the Defendant had paid excess amount of Rs.1,727/-. Defendant prayed for dismissal of the suit.

6 In addition to defending Plaintiff's suit, Defendant also filed Miscellaneous Application No.279 of 1985 for fixation of standard rent in respect of the suit premises on 2 December 1985. The Defendant prayed for fixation of Rs.40/- per month towards standard rent in respect of the suit premises.

7 The Trial Court framed issues on 8 September 1986. After considering the evidence on record, the Trial Court proceeded to decree the Regular Civil

Suit No.73 of 1994 by its judgment and order dated 9 April 1987. The Trial Court held that Plaintiff is the landlord in respect of the suit premises and that Defendant was in arrears of rent for a period exceeding six months. Accordingly, the Trial Court directed Defendant to handover vacant possession of the suit premises to the Plaintiff and to pay Rs.1,980/- by way of arrears of rent. The Trial Court further directed enquiry into mesne profits under Order 20 Rule 12 (1)(c) of the Code of Civil Procedure, 1908 (**Code**) in respect of the suit premises from the date of filing of the suit till delivery of the possession. Defendant's Miscellaneous Application No.279 of 1985 came to be dismissed holding that it was not necessary to fix standard rent in respect of the suit premises.

8 Defendant filed Regular Civil Appeal No.91 of 1988 challenging the decree dated 9 February 1987 passed by the Trial Court. In that Appeal, Defendant filed Application at Exhibit-17 under Order 41 Rule 27 of the Code for leading additional evidence. The Appellate Court directed, by order dated 8 October 1993 that application for additional evidence would be heard and decided alongwith the Appeal. By judgment and decree dated 20 July 1994, the Appellate Court has dismissed the Appeal filed by the Defendant and has also rejected the Application for leading additional evidence.

9 Aggrieved by the Decree of the Appellate Court dated 20 July 1994 Defendant-tenant has filed the present Petition. The Writ Petition came to be admitted by this Court by granting interim stay on usual terms.

10 It appears that during pendency of the suit Plaintiff-Mohamudkhan Kadar Khan Pathan passed away and his legal heirs were brought on record. Petitioner also passed away during pendency of the Writ Petition and his legal heirs are brought on record during pendency of the Petition. Some of the legal heirs of the deceased Plaintiff have also passed away and their legal heirs are brought on record.

11 Mr. Pradeep Thorat, the learned counsel appearing for Petitioners would submit that the Trial Court has erred in decreeing the suit filed by the Plaintiff on the ground of arrears of rent. That the alleged demand notice dated 19 November 1983 was never served upon the Defendant. That the said notice was sent on the school address of the Defendant instead of sending the same at the address of the suit premises, where he was admittedly residing. He would submit that the previous notice dated 22 June 1978 was sent by Plaintiff to the Defendant at the address of the suit premises and that therefore there was no reason for Plaintiff to address the notice dated 19 November 1983 at the school at which Defendant was serving. He would further submit that there is a report of Public Relation Inspector available on record stating that the records relating to the service of the envelope containing the notice has been destroyed and that no information can be supplied. That therefore the remark of refusal on the said notice cannot be treated as due service thereof on the Defendant that since notice demanding rent is not proved to be served on Defendant, the suit filed by the Plaintiff was not maintainable under provisions of section 12 of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947 (**Bombay Rent Act, 1947**).

12 That the Trial Court and the Appellate Court have erred in not appreciating the fact that there were disputes amongst various heirs of late Hafizabi after her death with regard to the Municipal House property No.3309 and the position about ownership was unclear. That on account of such disputes, property taxes were not being paid in respect of the concerned Municipal House property leading to issuance of notice by the Municipal Corporation. That therefore it was Defendant who used to pay property taxes in respect of the entire house property. That receipts of such payments from the year 1983 were produced on evidence. Mr. Thorat would submit that Plaintiff himself admitted payment of Municipal Taxes by Defendant and was willing to give credit in respect of the said amounts. That there is no discussion by the Trial and the Appellate Court about payment of property taxes and adjustments of said amount towards rent. That therefore the finding of default in payment of rent recorded by the Trial and the Appellate Court suffer from the vice of non-application of mind and are accordingly perverse.

13 Mr. Thorat would further submit that glaring error committed by the Trial Court is in not permitting Defendant to examine Mr. Abdul Gani Khan to prove payment of rent to him. That the Appellate Court continued the said error in rejecting the application filed by Plaintiff for leading additional evidence under Order 47 Rule 27 of the Code. That if the said witness was permitted to be examined, payment of rent by Defendant could have been proved. That since payment of rent has been made to co-owner, Plaintiff cannot be termed as defaulter within the meaning of section 12 of the Bombay Rent Act, 1947.

14 Mr. Thorat would further submit that the Trial Court has erred in dismissing the Miscellaneous Application No.279 of 1985 for fixation of standard rent on the ground of absence of jurisdiction. That the Trial Court erroneously held that the application for fixation of standard rent should have been filed within one month. That the requirement to file application for fixation of standard rent within one month of service of summons is only for demonstrating readiness and willingness on the part of tenant to pay the rent. That otherwise there is no prescription of any time limit under section 11 of the Bombay Rent Act, 1947 for filing of the application for fixation of standard rent. That the Trial Court has committed a gross error in wording it did not have jurisdiction to fix the standard rent. He would submit the fact that application for fixation of standard rent was filed by the Defendant clearly shows his *bonafides* with regard to readiness and willingness to pay the rent. Mr. Thorat would therefore pray for setting aside the decrees passed by the Trial and the Appellate Court.

15 Mr. Pramod Joshi, the learned counsel appearing for Respondents would oppose the Petition and support the concurrent findings recorded by the Trial and the Appellate Court. He would submit that default on the part of the Defendant-tenant in payment of rent is conclusively proved before the Trial and the Appellate Court. That he would take me through various findings recorded by the Trial and the Appellate Court in support of his contentions that service of notice dated 3 September 1983 is correctly held to be proved on account of refusal on the part of the Defendant to accept the same. He would submit that, in any case, the Defendant failed to deposit rent even during pendency of the suit and thus defaults committed by him

continued even during pendency of the proceedings. That perusal of the written statement filed by the Defendant would indicate that he essentially raised the issue about Plaintiff's title to the suit property, which cannot be permitted to be raised by tenant. That once Plaintiff intimated the Defendant that the rent must be paid to him, it was his duty to pay rent only to Plaintiff and there was no reason or occasion for him to make any payments to Mr. Abdul Gani Khan. That in any case, no evidence is led to prove any payment being made to Abdul Gani Khan. Mr. Joshi would pray for dismissal of the Petition.

16 Rival contentions of the parties now fall for my consideration.

17 Plaintiff filed Regular Civil Suit No.73 of 1984 seeking recovery of possession from the Defendant essentially on the ground that default in payment of rent under section 12 of the Bombay Rents Act. According to Plaintiff, the Defendant failed to pay rent after 1 January 1975. Plaintiff relied upon notice dated 19 November 1983 by which arrears of rent were demanded from him. There is a great degree of debate between the parties about service of the said notice dated 19 November 1983. Before going to the issue of service of notice, it would be first necessary to consider the contents of the said notice dated 19 November 1983. In that notice, Plaintiff contended that he had become owner and landlord in respect of suit premises from 12 November 1974 and that no other person had any right, title or interest therein. Plaintiff further contended that on 14 December 1974, Plaintiff had communicated to the Defendant that he had become owner and that rent in respect of the suit premises should not be paid to any other person. It was

further contended that despite full knowledge of the position, Defendant deliberately failed to pay rent to the Plaintiff from 1 January 1975. Plaintiff claimed that for the period from 1 January 1975 to 31 October 1983 the rent due was Rs.5,830/-. While contending so, Plaintiff did acknowledge the fact that Defendant had paid the amount of taxes to the Municipal Corporation and accordingly called upon Defendant to furnish copies of receipts of such payment for the purpose of giving credit of the said amount from the arrears of rent. Plaintiff accordingly demanded possession of the suit premises and called upon Defendant to pay arrears of rent of Rs.5,830/- minus the payments made by him to the Municipal Corporation.

18 Defendant claims that he did not receive the notice dated 19 November 1983. The envelope by which the said notice was dispatched has been filed on record, which shows that the notice was addressed to Defendant in his capacity as teacher by showing address “*C/o Principal, Dayabhai Devasi Bytco Boys High School and Junior College, Nashik*”. The envelope containing the notice is returned to the sender with the remark ‘*refused*’. The Trial Court has held that there was no other person by the name Ibrahim Shaikh Mohamad and that therefore it must be the Defendant alone who must have refused to accept the notice.

19 Mr. Thorat has highlighted the position that the earlier notice dated 21 June 1978 was addressed to the Defendant at his address of “*Municipal House No.3309, Kazipura, Nashik*” and that therefore there was no reason to address the subsequent notice dated 19 November 1983 at the school address. It appears that the earlier notice dated 22 June 1978 was not just received by

the Defendant but also replied by him through his advocate. It appears that apart from the notice dated 19 November 1983, one more notice dated 3 September 1983 was addressed to the Defendant on behalf of the Plaintiff which appears to have been served on him since the acknowledgment of the Defendant appears on the record. By the said notice dated 3 September 1983 as well, possession of the suit premises was demanded on the ground of arrears of rent. However, in the Plaint, Plaintiff chose to make reference only to the notice dated 19 November 1983 and no reference is made to the earlier notice dated 3 September 1983. However, in his examination-in-chief Plaintiff has given evidence on the notice dated 3 September 1983 and factum of Defendant receiving the same. It appears that the Defendant did not give any suggestion to Plaintiff in cross-examination disputing receipt of notice dated 3 September 1983. However, he questioned Plaintiff about the reason for not making reference to the notice dated 3 September 1983 in the Plaint and not sending the same on address of the school. Considering the above evidence on record and particularly the conduct of the Defendant in not responding to the notice dated 3 September 1983, which he admittedly received, it is difficult to accept Defendant's case that the suit ought to be dismissed on the ground of non-service of notice before filing of the suit. Mr. throat has relied upon judgment of single judge of this Court in ***Ramavtar Ramsahaya Khatod Vs. Baban Gurunath Pathari***¹ in support of his contention that if notice of demand is not proved, no decree for possession could be passed. In case before this Court, the issue is about proof of service of demand notice by 'Under Certificate of Posting' and in the facts of that case, it was held that service of notice could not be proved. In the present case, notice dated 3 September

1 2005(1) Mh.L.J. 932.

1983 demanding arrears of rent is admittedly received by Defendant. Envelope containing Notice dated 19 November 1983 is returned with the remark 'refused'. This was not the first time that any communication was served on Defendant at his school. Admittedly, he had received letter dated 14 December 1974 in the school. Therefore it cannot be inferred that the notice dated 19 November 1983 was deliberately sent at the school address. The defence of non-service of demand notice is therefore rightly rejected by both the courts below.

20 Coming to the aspect of default committed by the Defendant in payment of rent, Defendant took a defence of payment of rent to the other co-owners Abdul Gani Khan. Perusal of the contents of the Reply sent on behalf of the Defendant on 19 September 1978 as well as the pleadings in the written statement would indicate that Defendant was unnecessarily questioning the title of the Plaintiff to the suit property and pleading that the other heirs of Hafizabi were the actual owners. Letter dated 14 December 1974 is produced by Plaintiff on record which is counter-signed by the Defendant in which he was intimated about right of Plaintiff as landlord and with specific instructions not to pay rent in respect of the premises to any other person. Defendant raised defence in his Reply dated 19 July 1978 that his signature was obtained on the said letter while he was teaching in the school and that he signed the same without noticing its contents. Defendant is a well-educated person and must have read the contents of letter dated 14 December 1974 before signing the same and therefore cannot disown the contents thereon. More importantly, what is produced on record is the office copy of letter dated 14 December 1974 and original was received by Defendant and he has made an

endorsement to that effect on the office copy. It is thus proved that Defendant was well aware of the position that the rent in respect of the suit premises was to be paid to Plaintiff alone and not to any other person. Defendant however falsely took a defence that he continued paying rent to Abdul Gani Khan. In my view, conduct of the Defendant in seeking to question title of Plaintiff to the property and selectively recognizing title of Abdul Gani Khan is quite imprudent. Not only Plaintiff was made aware on 14 December 1974 itself that Plaintiff alone was the landlord but there is nothing on record to indicate that Abdul Gani Khan ever made any correspondence with Plaintiff asserting his ownership in respect of suit premises or demanded rent from him. Therefore, it was not for the Defendant to assume on his own that Abdul Gani Khan might be the real landlord in respect of the suit premises.

21 It is also a matter of fact that the Defendant failed to prove payment of rent to Abdul Gani Khan. Though much is sought to be said about denial of opportunity to examine Abdul Gani Khan before the Trial Court and non-grant of opportunity to lead additional evidence before the Appellate Court, in my view, Defendant has to blame himself for not leading evidence about alleged payment of rent to the Abdul Gani Khan. Firstly, why Defendant wanted to pay rent to Abdul Gani Khan is incomprehensible in the light of acknowledgement of letter dated 14 December 1974 by him. If the rent was indeed paid to Abdul Gani Khan, atleast one receipt of payment ought to have been produced and proved by Defendant. It was his responsibility to examine Abdul Gani Khan. The suit remained pending for three years and it is only at its fag end that Defendant apparently moved application at Exhibit-37 for issuance of suit summons to Abdul Gani Khan on 10 February 1987. It appears

that the deposition of Defendant was complete by 21 January 1987 and application was filed by him on 10 February 1987 for issuance of witness summons to Abdul Gani Khan. Witness summons was apparently sent to the witness, who did not appear before the Court. On 26 March 1987 an application was filed on behalf of the Defendant praying that the receipts filed by him of payments made to Municipal Corporation in Miscellaneous Application No.279 of 1985 be read in evidence in Regular Civil Suit No.73 of 1984. Another separate application production of those receipts was also made on 26 March 1987. Perusal of the application dated 26 March 1987 would show that the main purpose for filing the same was for production of receipts of payments made to Municipal Corporation in Regular Civil Suit No.73 of 1984. In that application a casual statement was made in the opening portion of the application as under:

‘सदरचा दावा आजरोजी प्रतिवादीचा साक्षीदार याची जबानी घेणेवर आहे. परंतू तो खाजगी व महत्वाचे कामानिमित्ताने बाहेरगावी गेला असल्यामूळे आजतरी त्याची या दाव्यात साक्ष घेता येणार नाही.’

22 The rest of the application is about payment of taxes made by Defendant in the Municipal Corporation and what is material is the prayer in the said application which reads thus:

‘साठी, विनंती की,
चौ. अर्ज 279/85 मध्ये प्रतिवादीने दाखल केलेल्या महानगरपालिकेच्या पावत्यांना निशाण्या देण्यात याव्यात व त्या प्रतिवादीच्या पुराव्याकामी वाचण्यात याव्या ही विनंती.’

23 Thus the application dated 26 March 1987 was not filed for requesting an adjournment for examination of Abdul Gani Khan as sought to be

suggested during the course of hearing of the Petition. The real purpose for filing the application dated 26 March 1987 was for marking of receipts issued by Municipal Corporation as exhibits. In fact the said application dated 26 March 1987 can also be construed to mean as if Defendant wanted to proceed with the suit without examination of Abdul Gani Khan. This inference can be raised since he stated in opening portion of application that the witness was not available for deposition and thereafter sought to produce the receipts and did not apply to court to adjourn the suit for examination of the said witness. On the contrary, he was apparently satisfied with production of municipal receipts and did not wish to examine the witness who failed to remain present despite issuance of process. It is thus conclusively proved that Defendant failed to make available Abdul Gani Khan for deposition before the Court nor requested for adjournment of proceedings for recording his evidence. In my view therefore, Defendant has to blame himself for non-examination of Abdul Gani Khan or non-production of any evidence relating to payment of rent to him. Defendant was careful enough to file on record 13 receipts of payment of Municipal Taxes to the Municipal Corporation. If he possessed any documentary evidence of payment of rent to Abdul Gani Kadar, he ought to have produced that evidence before the Court. The Appellate Court has therefore rightly not permitted Defendant to lead any additional evidence when he was negligent in not producing any evidence of payment of rent and in not examining Abdul Gani Khan before the Trial Court.

24 The evidence on record thus clearly proves default in payment of rent by the Defendant from 1 January 1975 as alleged by Plaintiff. What is paid by

Defendant is only Municipal Taxes, possibly in respect of the entire Municipal House. The total payments made by him are as under :

"06 January 1983	Rs.500/-,	05 February 1983	Rs. 40/-,
08 March 1983	Rs. 40/-,	20 April 1983	Rs. 40/-,
5 October 1983	Rs. 80/-,	20 December 1983	Rs. 80/-,
20 January 1984	Rs.200/-,	21 July 1984	Rs.120/-,
4 September 1984	Rs.120/-,	12 December 1984	Rs.120/-,
11 January 1985	Rs.240/-,	11 April 1985	Rs.120/- and
19 November 1985	Rs. ---."		

25 The Plaintiff was willing to give credit of Municipal Taxes paid by Defendant in the amount of arrears of rent. However, Defendant never intimated the said amounts to the Plaintiff. Defendant has admittedly received notice dated 3 September 1983 but did not communicate the amounts paid by him to Municipal Corporation to the Plaintiff. The receipts were filed by him at the fag end of the suit on 26 March 1987. Furthermore, the said receipts would indicate payment of Municipal Taxes only after 6 January 1983 whereas the default committed by the Defendant is in respect of the rent from 1 January 1975 onwards. The total amount of municipal taxes paid does not satisfy the arrears of rent. In my view therefore, clear case of default on the part of payment of rent on the part of Defendant was proved under section 12(3)(a) of the Bombay Rent Act.

26 It must be observed here that the even though the Defendant failed to pay arrears of rent after issuance of notice dated 3 September 1983 and in pursuance of further notice dated 19 November 1983, he clearly had an opportunity to deposit the arrears of rent in the Court and to continue to pay the same during pendency of the suit under section 12(3)(b) of the Bombay

Rent Act. Section 12 of the Bombay Rent Act, as it applied during the relevant period, read thus:

“12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and 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 degree 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 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.**

(emphasis added)

27 Thus if the Defendant was to deposit the amount of arrears of rent due after receipt of suit summons, he could have saved himself from the consequences of default previously committed by him. The Defendant however failed to avail this opportunity. Not only did he fail to deposit the arrears of rent then due but also did not deposit the rent during pendency of the suit. Therefore, even if it is assumed that there was any confusion about payment of rent prior to the institution of the suit, Defendant ought to have made the deposit, without prejudice to his rights, atleast after issuance of suit summons and ought to have paid the rent during pendency of the suit. Therefore, eviction of the Defendant from the suit premises was eminent on account of triple defaults committed by him viz. (i) before filing of the suit, (ii) after receipt of suit summons and (iii) during pendency of suit. Mr. Thorat has relied upon judgment of this Court in ***Datta Nagosa Solanki Vs. Madhukar Dattoba Adnaik***² in support of his contention that it is the duty of the Court to fix interim standard rent. The issue before this Court was entirely different. In that case application for fixation of standard rent was made within the prescribed period and the issue was whether mere filing of such application in absence of an order for fixation of interim rent entitled the tenant not to pay the rent. In the present case, the application for fixation of standard rent was not filed within the prescribed time and therefore the judgment has no application to the facts of the present case. From evidence on record, it is clear that the Defendant neither paid the rent nor had intention to pay the same either before receipt of notices, after such notices and during pendency of suit.

² 2005 (4) MhLJ 520

28 Reliance by Mr. Joshi on judgment of this Court in *Laxman Vs. Dr. Vijay Bhojraj Khachne & Ors.*³ apparently covers all both the issues of (i) payment of part-rent and (ii) filing of application of fixation of standard rent after the prescribed period. Both the issues are answered as under:

16. The issue that arises for consideration is, whether the Court can pass a decree for eviction if the tenant deposits lesser amount than the agreed amount of rent/standard rent on the date of first hearing of the suit. In *Yusufbhai Noormohammed Jodhpurwala* (supra) the Apex Court has held in para-7 and 9 of the judgment as under:

“7. The law on Section 12 (3) (b) is well settled by a series of judgments of this Court. In *Ganpat Ladha v. Sashikant Vishnu Shinde*, (1978) 2 SCC 573, this Court overruled a judgment in *Kalidas Bhavan Bhagwandas'* case in which a Division Bench of the Bombay High Court thought that it was open under Section 12(3)(b) to exercise a discretion in favour of the tenant. In para 11 of the said judgment, it was stated:

“11. It is clear to us that the Act interferes with the landlord's right to property and freedom of contract only for the limited purpose of protecting tenants from misuse of the landlord's power to evict them, in these days of scarcity of accommodation, by asserting his superior rights in property or trying to exploit his position by extracting too high rents from helpless tenants. The object was not to deprive the landlord altogether of his rights in property which have also to be respected. Another object was to make possible eviction of tenants who fail to carry out their obligation to pay rent to the landlord despite opportunities given by law in that behalf. Thus Section 12(3) (a) of the Act makes it obligatory for the Court to pass a decree when its conditions are satisfied as was pointed out by one of us (Bhagwati, J.) in *Ratilal Balabhai Nazar v. Ranchhodbhai Shankerbhai Patel* [AIR 1968 Guj 172 : (1968) 9 GLR 48]. **If there is statutory default or neglect on the part of the tenant, whatever may be its cause, the landlord acquires a right under Section 12(3) (a) to get a decree for eviction. But where the conditions of Section 12(3)(a) are not satisfied, there is a further opportunity given to the tenant to protect himself against eviction. He can comply with the conditions set out in Section 12(3)(b) and defeat the landlord's claim for eviction. If, however, he does not fulfill those conditions, he cannot claim the protection of Section 12(3)(b) and in that event, there being no other protection available to him, a decree for eviction would have to go against him.** It is difficult to see how by any judicial valour discretion

³ (2023) 2 Bom CR 825

exercisable in favour, of the tenant can be found in Section 12(3)(b) even where the conditions laid down by it are satisfied to be strictly confined within the limits prescribed for their operation. We think that Chagla, C.J., was doing nothing less than legislating in Kalidas Bhavan case in converting the provisions of Section 12(3)(b) into a sort of discretionary jurisdiction of the Court to relieve tenants from hardship. The decisions of this Court referred to above, in any case, make the position quite clear. Section 12(3)(b) does not create any discretionary jurisdiction in the Court. It provides protection to the tenant on certain conditions and these conditions have to be strictly observed by the tenant who seeks the benefit of the section. If the statutory provisions do not go far enough to relieve the hardship of the tenant the remedy lies with the legislature. It is not in the hands of courts.”

This statement of the law was followed in *Jamnadas Dharamdas v. Joseph Farreira* (1980) 3 SCC 569 at para 12 and *Mranalini B. Shah v. Bapalal Mohanlal Shah* (1980) 4 SCC 251 at para 12.

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17. Thus in *Yusufbhai Noormohammed Jodhpurwala* (supra) the total arrears of rent at the rate of 70/- per month was Rs. 7,070/- and the amount of rent deposited in the court was Rs. 6,860/-. The deposited rent was short by Rs. 270/-. The Supreme Court has held that the High Court in that case erred in interpreting the provisions of Section 12 (3)(b) purposively on the basis of readiness and willingness on the part of the tenant to pay rent and such interpretation was erroneous. The Apex Court has held that the provisions of Section 12 (3)(b) are mandatory in nature and must be strictly complied with. Thus, from the judgment of the Apex Court in *Yusufbhai Noormohammed Jodhpurwala* (supra) it is clear that what is required under the provisions of Section 12 (3) of the Act is to deposit ‘whole rent’ and not part of it. **Mere readiness and willingness on the part of the tenant to deposit rent by making part deposit would not satisfy the requirements of Section 12(3) of the act.**

18. In *Balaji Pratapji Pandya* (supra) this Court was dealing with a situation where the provisions of Section 15 (3) of the Maharashtra Rent Act requires deposit of amount of arrears along with interest at the rate of 15%, whereas the tenant had deposited such arrears with interest at the rate of 9%. This Court held in para 17 of the judgment as under:

“17. In the present case also, the condition enumerated in section 15(3) of the Maharashtra Rent Act are not strictly complied with. The deposit of the amount of arrears of rent is not with per annum interest @ 15% so also it is not within 90 days from the service of suit summons. Provisions of section 15(3) of the Maharashtra Rent Act are mandatory. The protection under

section 15(3) of the Maharashtra Rent Act is available to tenant only if the tenant scrupulously adheres to the provisions of section 15(3) of the Rent Act. The Court has no jurisdiction to extend the time prescribed in the said section. The tenant herein has failed to deposit the rent within 90 days from the date of service of notice so also has failed to deposit the said amount with interest @ 15% per annum. The amount deposited after lapse of 90 days from the date of service of summons is also not with interest @ 15% per annum but is deposited only with interest @ 9% per annum. Both the ingredients of section 15(3) are not complied.”

19. Thus, even failure to deposit amount of interest at the rate provided for in the Act can lead to a decree of eviction.

20. In *Manorama S. Masurekar* (supra) the Supreme Court was dealing with a case where the tenant had admittedly not paid the rent within one month from service of notice, but had expressed readiness and willingness to pay the rent before institution of the suit. The Supreme Court held in para-6 of its judgment as under:

“6. The landlord is vested with the right to recover possession of the premises if the rent is in arrears for a period of six months or more, “the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-s. (2)”, and the other conditions of sub-s. (3)(a) are satisfied. This right cannot be defeated by showing that the tenant was ready and willing to pay the arrears of rent after the default, but before the institution of the suit. In effect, the appellant asks us to rewrite the section and to substitute in it the following condition: “the tenant neglects to make payment thereof until the date of the institution of the suit.” It is not possible to rewrite the section in the manner suggested by the appellant.”

21. Thus mere expression of readiness or willingness to pay the rent will not extend the benefit of section 12 (3) of the Act.

22. Considering the sound exposition of law on the subject of deposit of ‘whole rent’ along with interest in the above judgments, I am of the view that the tenant in the present case is not entitled to protection of Section 12 (3) of the Act on deposit of rent at the rate of Rs. 40/- per month.

23. The next issue is about filing of application for fixation of standard rent. Mr. Surve has referred to provision of Explanation-1 appearing in Section 12 of the Rent Act to submit that since the tenant immediately filed application for fixation of standard rent, he is saved from the consequences of an eviction decree. Explanation (I) reads thus:

“Explanation [I].— In any case where there is a dispute as to the amount of standard rent of 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.”

24. Thus to claim benefit of Explanation-1, the tenant has to file application for fixation of standard rent within one month on receipt of notice. In the present case, the notice has been received by the tenant on 01.01.1991, whereas the application for fixation of standard rent came to be filed by him only on 30.04.1991. Thus, the tenant is not entitled to the protection under sub section (1) of Section 12. Mr. Yawalkar in this regard has rightly relied upon the judgment of this Court in *Gokuldas Jamnadas* (supra) in which it is held in para-9 as under:

“9. The ratio of the above two judgments holds the field. In the instant case, no application was made for fixation of standard rent within period of one month from service of the notice under Section 12(2) of the Act. In this case also the amount of rent due was not tendered in full by the tenant within the notice period. The application made by the tenant for fixation of interim rent during the pendency of the civil suit for possession was not maintainable in law as such, an application could be made by the tenant only if an application for fixation for standard rent was made within period of one month from the date of notice of demand. In any event, for purpose of applicability of Section 12(3)(a) of the Act, it is sufficient to prove that the tenant was in arrears of rent for six months or more and the tenant had defaulted in making payment of the said amount and that the dispute about the standard rent was not raised within one month from the date of service of notice. Even in a case where application for fixation of standard rent was made in time, the tenant could escape liability from being evicted only if the tenant complied with the orders which may be passed by the Court under Section 11(3) of the Act within the contemplation of later part of Section 11(3) of the Act.”

25. Thus, the case of the tenant fails on both the counts of non-deposit of whole rent with interest on the first date of hearing of the suit as well as non-filing of application for fixation of standard rent within one month from date of receipt of notice under Section 12 (2) of the Act. The District Court has rightly decreed the suit of the landlord.

(emphasis supplied)

29. In the present case as well, Defendant has failed to deposit 'whole rent'. Payment of municipal taxes by him was not sufficient to save him from consequences of eviction. Similarly non-filing of application for fixation of standard rent within the prescribed period coupled with non-deposit of arrears and of rent during pendency of suit left no choice for the Court but to pass decree of eviction.

30 Mr. Thorat has relied upon the judgment of this court in *Dinesh Singh Bhim Singh vs. Vinod Shobhraj Gajaria*⁴. The issue before this court was entirely different. In the present case, Defendant is found to have not taken enough efforts for examination of the witness Abdul Gani Khan and his non-examination is not attributable only to non-reflection of his name in the witness list. It appears from the record that the Court had permitted Defendant to examine Abdul Gani Khan, however, the witness did not appear before the Court. Therefore, the judgment in *Dinesh Singh Bhim Singh* (supra) would have no application to the facts of the present case.

31 Mr. Thorat has also relied upon judgment of the Apex court in *Ibrahim Abdulrahim Shaikh (Dead) by LRs. vs. Krishnamorari Sripatlal Agarwal (Dead) by LRs*⁵, in support of his contention that Rent Control Act is a welfare legislation. However, at the same time mere characterization of Bombay Rent Act as welfare legislation would not mean that the Defendant is justified in not paying rent to Plaintiff despite receipt of intimation of his status as landlord in December 1974 and in showing unnecessary zeal and interest in establishing right of other heirs of Hafijabai qua the suit property.

⁴ Writ Petition No.11185 of 2022 decided on 25 January 2023.

⁵ (1995) 1 SCC 265

32 So far as the application filed by the Defendant for fixation of standard rent is concerned, the same was clearly filed after the period of one month as provided in Explanation (i) to Section 12 and filing of the said application did not save Defendant of consequences under section 12(2)(a) and (b) of the Bombay Rent Act. So far as merits of that Application are concerned, it is seen that once the Defendant was found to be in arrears of rent and was liable to be evicted, no purpose would have been served in deciding the application for fixation of standard rent.

33 In my view therefore, no case is made out by the Defendant for interference in the concurrent findings recorded by the Trial and Appellate Courts. Writ Petition must fail. The Writ Petition is accordingly **dismissed** without any orders as to costs. Rule is discharged.

(SANDEEP V. MARNE, J.)

34 After the judgment is pronounced, the learned counsel for the Petitioners seeks continuation of the interim order for a period of eight weeks. The request is opposed by the learned counsel for the Respondents. Considering the fact that interim relief has been in operation for a considerable period of time, the same is extended by a period of eight weeks from today.

(SANDEEP V. MARNE, J.)

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