

CASE NO.:
Appeal (civil) 5658-5659 of 1998

PETITIONER:
Ramji Purshottam (D) by Lrs. & Ors.

RESPONDENT:
Laxmanbhai D, Kurlawala (D) by Lrs. & Anr.

DATE OF JUDGMENT: 23/04/2004

BENCH:
R.C. LAHOTI & ASHOK BHAN.

JUDGMENT:
J U D G M E N T

R.C. Lahoti, J.

The suit premises are part of the property known as Eaglewadi, situated at New Mill Road, Kurla, Mumbai. It is a Chawl consisting of several rooms which are single-storeyed and numbered. Ramji Purshottam and Jagjivan Ram Purshottam, the two appellants before us, both of whom have expired during the pendency of the proceedings and are represented by their heirs, are brothers and in occupation of two rooms — Room No. 12 and Room No.13 respectively — in the Chawl. For the sake of convenience, we refer the two tenants before us as 'tenants' and the respondents as 'landlords' who are undisputedly the owner-landlords of the Chawl. The facts are common and lie in a narrow compass to the extent they are relevant for the purpose of highlighting the issues surviving for decision in these appeals.

The monthly rent of the tenants-appellants is Rs.6.37 paise each. They were in arrears of rent in respect of their respective premises for the period 1.6.1969 to 31.1.1970. They were served with demand-cum-quit notices dated 20th February, 1970. The mode of service was personal on the tenants as also by sending copies thereof under certificate of posting. In spite of the service of notice they did not pay or tender the rent in arrears. The service of notices in person had taken place on 20.2.1970 itself. Notices under certificate of posting were sent on 6.3.1970 and were delivered. As the two tenants failed to respond to the notices, proceedings for eviction were initiated against the appellants under Section 12 of the Bombay Rents Hotel and Lodging House Control Act, 1947, hereinafter the Act, for short. The tenants did not also pay or tender the rent in the court on the first day of hearing of the suit as required by Section 12(3)(b) of the Act. In the written statement filed by the tenants they disputed the receipt of any notice and also raised a dispute about water charges payable in respect of the premises.

On trial, the learned Judge of the Court of Small Causes vide the judgment dated 31.8.1983 directed the tenants to deliver vacant possession of the suit premises to the landlord-respondents after two months from the date of the decree. The material findings of fact arrived at by the Trial Court are : (i) that the tenants were duly served with the demand-cum-quit notice; (ii) that the tenants were in arrears of the rent for more than six months and they neither paid the rent nor raised a dispute as to the standard rent within the statutory period of one month from the receipt of the notice by them; and (iii) that they were liable to be evicted from the suit premises under Section 12(3)(a) of the Act. These findings have been upheld in appeal and also by the High Court where the judgments of the courts below were sought to be impugned in exercise of writ jurisdiction of the High

Court. The first two findings are pure of facts and they have achieved a finality. It may be stated that before this Court also in these appeals the learned counsel for the appellants has in all fairness not laid challenge to the said findings of fact. The only issue arising for decision is as to the liability of the appellants to be evicted from the suit premises, in the light of the law as amended during the pendency of the proceedings as will be noticed shortly hereinafter.

The two appellants were also alleged to have committed acts of waste and carried out permanent additions and alterations in the suit premises and, their eviction was claimed on those grounds also. The Trial Court has rendered a finding of 'not proved' on this issue and the landlord-respondents have not pursued that plea further.

Now, the facts relevant to the controversy which has emerged for decision before this Court.

Section 12 of the Act under which the proceedings for eviction were initiated in the year 1970 and as it stood at that time reads as under—

"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 perform 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 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."

The Bombay Municipal Corporation and Bombay Rent Hotel and Lodging House Rates Control (Amendment) Act, 1975 (Maharashtra Act LI of 1975) was assented to by the President of India on the 17th October, 1975. The assent was published in Maharashtra Government Gazette dated October 30, 1975. Vide Notification No. BMC 1074/65962-MC-1 published in Maharashtra Government Gazette dated November 13, 1975, the Amendment Act came into force on first day of November, 1975. Sections 10 and 21 which are relevant for our purpose are extracted and reproduced hereunder :

"10. After section 173BB of the principal Act*, the following section shall be inserted, namely:-

"173C. If, under the terms of the tenancy, the rent for any premises is inclusive of water taxes or water charges for supply of water by measurement and the person in actual occupation of the premises has, on behalf of the owner thereof, paid to the Commissioner any water taxes or water charges in respect of the premises, such person shall be entitled to recover from the owner the amount so paid and may deduct the amount from the rent which from time to time becomes due to the owner."

[*Principal Act means the Bombay Municipal Corporation Act]

21. In section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Bombay Rent Control Act"), at the end, after Explanation II, the following Explanation shall be added, namely:-

"Explanation III. \026 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".

It is not disputed that the Chawl has a water tap installed within its precincts through which the water supply by the Bombay Municipal Corporation is made available to the tenants. The tenants do not pay any water charges other than the rent to the landlords. In other words, the facility for use of water is available to the tenants by virtue of tenancy and the charges for supply of water are included in the rent. The water taxes or water charges for supply of water by the Municipal Corporation are payable by the landlords to the Municipal Corporation. With effect from coming into force of the Amendment Act a statutory right was conferred on the tenants whereunder the tenants could pay water taxes or water charges to the Municipal Corporation and the tenants became entitled to recover the amount of charges so paid from the owner or to deduct from the rent or, in the alternative, to the extent of the amount so paid by the tenant to the landlord the same was deemed to be the payment of rent by the tenant to the landlord.

The tenants residing in the Chawl had formed a Tenants' Association led by Raghubir Singh Thakur, one of the tenants who was also sought to be evicted by filing a suit against him and who contested the landlords' case upto the stage of appeal. Thereafter, he has given up the contest and vacated the room in his occupation. It seems that the Tenants' Association had paid the amount of water charges. The exact details of payment are not clearly available from the records. However, during the course of hearing before this Court an affidavit sworn in by Vilas Prajapati S/o Late Ramji Puroshttam Dass has been filed containing the details of payments made by the Tenants' Association, consisting of 26 tenants as members, to the Bombay Municipal Corporation which are set out as under :

In September 1969	Rs. 608.00
On 15.11.71	Rs.1,060.00
On 30.6.75	Rs.4,297.77
On 30.6.75	Rs. 304.41
On 30.6.75	Rs.2,542.40

	Rs.8,813.16

When the litigation was initiated in the Trial Court in the year 1970 the plea of adjustment was not available to the tenants which became available to be raised for the first time under Amendment Act No. LI of 1975 on its coming into force on 1.11.1975. Accordingly, the plea was not raised in the written-statement. However, the Tenants' Association had filed suits for recovery of the water charges paid by them to the Municipal Corporation and the suits were decreed against the landlords. The landlords did not dispute the right of the Tenants' Association to have the water charges paid by them to the Municipal Corporation being adjusted against the rent due and payable to them and they have willingly allowed such adjustment. The plea of adjustment in the light of the provisions introduced by Act No. LI of 1975 was pressed before the Appellate Court by bringing to its notice the decrees passed in the summary suits filed by the Tenants' Association against the landlords and the same was dealt with and disposed of by the Appellate Court in the following manner :

"They (tenants) filed summary suit against the respondents to recover the water charges which were paid by them for and on behalf of the landlords. That suit was

compromised and water charges were adjusted in the rental amount that was due and payable by the appellants to the respondents for the year 1969. It will thus be seen that the payment of water charges and the recovery thereof would be a matter which would have no bearing on the demand of arrears of rent by the respondents on the appellants. In any case the appellants have been recovering these water charges by instituting appropriate proceedings against the respondents. Besides the respondents have been making suitable adjustments towards water charges from time to time in consultation with the tenants' association in this property. That being the position there was absolutely no justification for the appellants' for withholding the payment of arrears of rent which were justly due to the respondents. If there was any dispute about the water charges the appellants ought to have paid those charges and thereafter deducted that amount from the arrears demanded vide the impugned notice. No steps in that regard were taken by the appellants but instead payment of arrears of rent was un-necessarily withheld."

The learned counsel for the tenant-appellants submitted that the benefit of the amended provisions of law which were brought in force and became available for the benefit of the tenants during the pendency of the cases before the Trial Court should not have been denied to the tenants. And, if only the payments made by the Tenants' Association to the Municipal Corporation and available in remission of rent (by way of adjustment) would have been taken into account by the Trial Court, then the appellants would not have been held defaulters and there would have been no occasion to pass the decree of eviction. On the other hand, the learned counsel for the landlord-respondents submitted that the substantive rights of the parties would stand crystallized on the date of institution of the suits and once the tenants were proved to be defaulters on the date of the suit, they had incurred liability for eviction and that right having accrued to the landlord-respondents could not have been taken away by Amending Act No. LI of 1975; more so when the amendment has not been given a retrospective operation. From the submissions so made, two questions arise for consideration: firstly, whether the amendments introduced by Act No. LI of 1975 are applicable to the pending eviction proceedings; and if yes, then secondly, whether the appellants can be held to be defaulters in the light of the payment of water charges made by them on behalf of landlords to Municipal Corporation.

Whether Act No. LI of 1975 insofar as it amends Section 12 of Act No. 57 of 1947 can be said to be retrospective in operation is the first question. A perusal of Section 12 shows that sub-Section (1) speaks of the landlord's entitlement to the recovery of possession of premises from the tenant. Sub-Section (2) speaks of the institution of suit. The fulfillment of conditions prescribed by sub-Section (2) is a condition precedent to enable a landlord to institute a suit for recovery of possession. On the date of passing of the decree for recovery of possession the Court shall have to record findings by reference to Section 3(a) of the Act that the tenant has been in arrears for a period of six months prior to the institution of the suit, that a period of

one month has expired from the date of the service of notice in writing demanding the rent in arrears from the tenant and that the tenant neglected to make payment of such arrears for the abovesaid period of one month. It has always been open for the tenant to show that though he was alleged to be in arrears but that was not so. On the date of the institution of the suit the tenant did not have a right to claim adjustment of the amount of water charges paid by him against the amount of rent in arrears. However, he could have paid such water charges to protect himself against discontinuance of water supply, an essential service. Section 21 of Act No. LI of 1975 introduced Explanation III in Section 12 of Act No. 57 of 1957 which is declaratory in nature and creates a fiction for holding the tenant deemed to have paid the rent to the extent of payment of water charges and creating a statutory right in the tenant to make adjustment of the amount of water charges paid to the Municipal Corporation from out of the amount of rent due by him to the landlord. So long as the amount of water charges paid by the tenant has not been actually returned or reimbursed by the landlord to the tenant, the tenant would be justified in treating the amount of water charges paid by him to the Municipal Corporation as the amount of rent paid by him to the landlord. In other words, to the extent of water charges paid by tenant he cannot be deemed to be in arrears outstanding against him.

Strictly speaking, in the present case, the application of the amendment brought in by the statute to the pending proceedings does not have the effect of retrospectivity. The rent is alleged to have fallen in arrears for the period 1.6.1969 to 31.1.1970. Some payment of water charges is said to have been made referable to the same period. Thus, both the events are referable to a period anterior to the coming into force of Act No. LI of 1975. The law coming into force during the pendency of the proceedings is being applied on the date of judgment to the pre-existing facts for the purpose of giving benefit to the tenant in the pending proceedings. This is not retro-activity.

Justice G.P. Singh states in Principles of Statutory Interpretation (Ninth Edition, 2004, at page 462) — "the fact that a prospective benefit under a statutory provision is in certain cases to be measured by or depends on antecedent facts does not necessarily make the provision retrospective. The rule against retrospective construction is not always applicable to a statute merely because a part of the requisites for its action is drawn from time antecedent to its passing." In *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subhash Chandra Yograj Sinha* [1961] AIR 1961 SC 1596 the Constitution Bench held that the Bombay Act No. 57 of 1947 is a piece of legislation passed to protect the tenants against the evil of eviction. And the benefit of the provisions of the Act ought to be extended to the tenants against whom the proceedings are pending on the date of coming into force of the legislation.

In the present appeal, once the provisions of Act No. LI of 1975 became applicable the tenants became entitled to take benefit of the amended provisions. However, it shall have to be borne in mind that the cause of action on which the landlord's action was founded was referable to the period from 1.7.1969 to 31.1.1970 for which the tenants were alleged to be in arrears. The tenants could have shown, and the Court could have entered into the question, if the tenants had made any such payment on account of water charges as would have exonerated them of their liability to make the payment of the rent claimed in the plaint as arrears by claiming adjustment so as to hold that on the date of the institution of the suit they were not in arrears for a period of six months or more and that such arrears did not continue to remain so for the period of one month after the date of service of the notice.

The position of law stands clarified as above. However, still the

question remains how the law has to be applied to the facts and that cannot be done without ascertaining the precise facts. It appears that the tenant-appellants before us have not themselves paid any water charges due and payable by those two alone to the Municipal Corporation. It also appears that all the tenants contributed towards the payment of water charges which were collected by the Tenants' Association and then paid. Of course they would be entitled to adjustment proportionate with their share in the contribution. Answers to a few questions are not clear: (i) what was the exact amount of water charges paid, (ii) when, (iii) to which period they are relatable, and (iv) what was the exact or deemed share of the tenant-appellants before us in the contribution. These are the questions purely of fact for the determination whereof the cases shall have to be remanded to the Court of facts.

The appeals are allowed. The judgments and decrees of the Appellate Court as upheld by the High Court are set aside. The cases of the two tenants, i.e. Ramji Purshottam and Jagjivan Ram Purshottam (both now represented by their legal representatives) shall stand restored on the file of the Appellate Court. The Appellate Court shall, on the basis of the material available on record and by eliciting such further relevant facts as it may deem necessary, proceed to hear and decide the cases afresh consistently with the law as explained hereinabove. The Appellate Court would examine, after ascertaining the relevant facts with particulars as to payment of water charges and giving effect to the provisions as amended by Act No. LI of 1975 whether a ground for eviction under Section 12(2) was available to landlords on the date of the suits. If so, decree for eviction shall follow. If not, the suits shall stand dismissed. So also, if the tenants had collected the amount of water charges paid by them in cash from the landlord, the question of adjustment would not arise.

The costs shall abide the result.

The parties through their respective counsel are directed to appear before the Trial Court on 21st June, 2004. The records received here shall be returned forthwith.