

PETITIONER:

LAXMIKANT REVCHAND BHOJWANI AND ANR.

Vs.

RESPONDENT:

PRATAPSING. MOHANSINGH PARDESHI DECEASED THROUGH HIS HEIRSAN

DATE OF JUDGMENT 18/09/1995

BENCH:

KULDIP SINGH (J)

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KULDIP SINGH (J)

AHMAD SAGHIR S. (J)

CITATION:

1995 SCC (6) 576 JT 1995 (7) 400

1995 SCALE (5) 481

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Kuldip Singh, J.

Special leave granted.

Shantabai, predecessor in interest of the respondents herein, instituted a suit under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (the Act) for possession of the suit premises against the appellants-tenants. The suit was decreed by the trial court. The appellate court reversed the judgment of the trial court and decreed the suit. The Aurangabad Bench of Bombay High Court set aside the judgment of the appellate court and restored that of the trial court. This appeal, by the tenants, is against the judgment of the High Court.

The suit premises was rented to the appellants for residential purposes at a monthly rent of Rs.70/-. The rent was, later on, increased to Rs.80/-. The landlady served a notice dated July 28, 1972 terminating the appellants tenancy on the grounds of default in payment of rent and bona fide requirement by her. It was mentioned in the notice that arrears of rent from April 1, 1971 were due from the tenants. As far as the bona fide requirement is concerned the trial court rejected the case of the landlady. On the issue of arrears of rent the trial court negatived the contention of the landlady that the tenants neglected to pay the rent for more than six months. The trial court, however, held that the case of the landlady was covered under Section 12(3)(b) of the Act and since the tenants failed to comply with the said provisions they were liable to be evicted. The appellate court came to the conclusion that the bona fide requirement was not proved by the landlady. On the issue of arrears it was held that the landlady, having failed to prove that the tenants neglected to pay rent for more than six months, neither the provisions of Section 12(3)(a) nor of Section 12(3)(b) of the Act were attracted and as such the appellate court allowed the appeal and set aside the

judgment of the trial court. During the pendency of the appeal the original landlady died and her legal heirs were brought on record.

The judgment of the appellate court was challenged by the respondents by way of petition under Article 227 of the Constitution of India. The High Court converted itself into an appellate court and reappreciated all the issues dealt with and decided by the two courts below. The High Court reversed the findings of the appellate court and held that the appellants neglected to make payment of the arrears of rent in terms of Section 12(3)(a) of the Act and as such were liable to be evicted.

We may at this stage notice the provisions of Section 12 of the Act which are reproduced hereunder:-

"Section 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 be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increase due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increase 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 increase, 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."

As mentioned above, the landlady served notice in terms of Section 12(2) of the Act on July 28, 1972. The notice was received by the appellants on August 1, 1972. The appellants sent a money order for Rs.400/- to the landlady on September 1, 1972. It is not disputed that the said amount covered the

arrears upto August 31, 1972. It is also on record that another money order for Rs.500/- was sent by the appellants on October 4, 1972 which covered the arrears upto October 31, 1972. The landlady refused to accept both the money orders.

As mentioned above, the notice under Section 12(2) of the Act was received by the appellants on August 1, 1972 and they sent the first money order on September 1, 1972. The High Court has rightly come to the conclusion that the money order, having been sent on September 1, 1972, was within "the period of one month after notice referred to in sub-Section 2". The High Court, however, fell into patent error in reaching the conclusion that the actual payment having not been received by the landlady within the said period there was neglect on the part of the tenants to make payment. The sine qua non for eviction of a tenant under Section 12(3)(a) is "the neglect to make payment" and not the actual making of the "payment". When a money order or a demand draft is sent to the landlord, during the specified period, it cannot be said that the tenant has "neglected to make payment". The expression "neglect" means "to fail to give due care, attention, or time to. To fail through thought lessness or carelessness. To ignore or disregard". We are of the view that in the facts of the present case it is not possible to hold that the appellants neglected to make payment within the specified period after the receipt of the notice.

Since the total arrears mentioned in the notice dated July 28, 1972 were paid by the appellants and there was no neglect on their part to make payment, neither the provisions of Section 12(3)(a) nor of Section 12(3)(b) are attracted in this case. The High Court fell into patent error in reversing the judgment of the appellate court.

Before parting with this judgment we would like to say that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India in the present case. The Act is a special legislation governing landlord-tenant relationship and disputes. The legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decision of the appellate authority. The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

We allow the appeal, set aside the judgment of the High Court and restore that of the appellate court. No costs.

The appellants are paying Rs.80/- per month as rent since 1980. It would be fair and just to increase the rent reasonably. After hearing learned counsel we direct the appellants to pay Rs.600/- as rent with effect from September 1, 1995.