

CASE NO.:
Appeal (civil) 687 of 2001

PETITIONER:
Laxman Jiwaba Baherwade & Anr.

RESPONDENT:
Bapurao Dodappa Tandale

DATE OF JUDGMENT: 17/09/2002

BENCH:
S. N. VARIAVA & BRIJESH KUMAR.

JUDGMENT:
J U D G M E N T

S. N. VARIAVA, J.

This Appeal is against an Order dated 18th August, 2000.

Briefly stated the facts are as follows:

On 18th May, 1963 the Respondent let out the suit premises to the Appellants for a period of five months on a monthly rent of Rs. 108.34. A Rent Note was executed which, inter alia, provided that the Municipal taxes were to be paid by the Respondent. On the expiry of the period of five months the Appellants continued to remain in the premises.

Sometime in 1970 the Respondent constructed a floor above the suit premises. A part of the additional construction was let out to another tenant and the rest was occupied by the Respondent. On 10th December, 1977 the Respondent served a notice to the Appellants claiming arrears of rent amounting to Rs. 1,400/- at the rate of Rs. 175/- per month for the period from 1st January, 1977 to 31st August, 1977. In this Notice a sum of Rs. 940.13 was also claimed towards increase in Municipal taxes. The Appellants sent a reply dated 13th September, 1977. Along with the reply the Appellants paid Rs. 1,400/- by way of a Bank Draft. In regard to Rs. 940.13 the Appellants asked the Respondent to explain as to what would be their share in the increases which would be allocable to the premises in their occupation. The Respondent sent no reply to this notice.

The Respondent then filed Regular Civil Suit No. 1291 of 1977 seeking eviction of the Appellants on grounds of default, subletting and bonafide personal requirement. The trial Court held that none of the ground had been proved and dismissed the Suit on 17th March, 1983. The Respondent then filed an Appeal. The Appeal was dismissed on 10th December, 1987.

The Respondent then filed Writ Petition No. 4805 of 1988. This Writ Petition came to be allowed by the impugned Judgment dated 18th August, 2000. The High Court did not interfere with the findings of both the courts below on the grounds of sub-letting and bona-fide personal requirement. The only ground on which the Writ Petition was allowed is that there was default of payment of increase in the Municipal taxes. It is held that as a result of such default the Respondent landlord was entitled to a decree of eviction under Section 12 (3).

Before the submissions of the parties are considered the relevant provisions need to be set out. Sections 10, 11 and 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 read as follows:

"10. Increase in rent on account of payment of rates, etc.

(1) On and after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1986, where a landlord is required to pay to Government or to any local authority or statutory authority, in respect of any premises any fresh rate, cess, charges, tax, land assessment, ground rent of land or any other levy on lands and buildings, or increase in rate, cess, charges, tax, land assessment, ground rent of land or any other levy on lands and buildings, he shall, notwithstanding anything contained in any other provisions of this Act but save as otherwise expressly provided in any other law for the time being in force, be entitled to make an increase in the rent of such premises.

Provided that, the increase in rent shall not exceed the amount of any such rate, cess, charges, tax, land assessment, ground rent of land or any other levy on lands and buildings, as the case may be.

(2) Where the rent is inclusive of charges for electricity and water and the landlord is required to pay any increase in these charges in respect of any premises, he shall be entitled to make an increase in the rent of such premises by an amount not exceeding the additional amount payable by him in respect of such premises on account of such increase.

(3) The amount of the increase in rent recoverable from each tenant under sub-sections (1) and (2) shall bear the same proportion as the rent payable by him in respect of his premises bears to the total amount of any such rate, cess, charges, tax, land assessment, ground rent of land or any other levy on lands and buildings, or increase in electricity or water charges, as the case may be.

11. Court may fix standard rent and permitted increases in certain cases

(1) Subject to the provisions of Section IIA in any of the following cases the Court may, upon an application made to it for that purpose, or in any suit or proceedings, fix the standard rent at such amount as, having regard to the provisions of this Act and circumstances of the case, the Court deems just -

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

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

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

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

(d-1) without prejudice to the provisions of sub-section (1A) of section 4 and paragraph (iii-a) of sub-clause (b) of clause (10) of section 5, where the Court is satisfied that the rent in respect of premises referred to therein exceeds the limit of standard rent laid down in the said paragraph (iii-a); or

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

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

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

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

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

(6) An application under this section may be made

jointly by all or any of the tenants interested in respect of the premises situated in the same building.

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) No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases 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 together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine per cent per annum; and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the Court.

Provided that, the relief provided under this sub-section shall not be available to a tenant to whom relief against forfeiture was given in any two suits previously instituted by the landlord against such tenant."

Thus under Section 10 the tenant is bound to pay to the landlord the increase in rate, cess, charges, tax, land assessment, ground rent or any other levy. The amount of increase, the tenant is bound to pay, has to be in the same proportion as the rent payable by him bears to the total amount of such rate, cess, charges, tax, land assessment, ground rent or any other levy. Section 11 gives the Court the power to fix the standard rent and/or the amount of the permitted increases. It has to be noted that under Section 11(1) the Court may fix the standard rent either upon an application made to it for that purpose or in any suit or proceeding. Thus the dispute regarding standard rent need not necessarily be by way of an application. However, under sub-clauses (2) and (3) of Section 11 if there is any dispute between the landlord and the tenant regarding the amount of permitted increases, it can be decided by the Court only on an application made by the tenant who has received a notice from his landlord. Thus in a Suit for ejectment it would not be open for the tenant to raise a dispute regarding the permitted increases. If on receipt of a notice the tenant has either not paid the amount of the permitted increase and not raised a dispute by filing an application then, by virtue of Sections 12(2) and (3), the landlord would be entitled to a decree for eviction.

In the case of Harbanslal v. Prabhudas reported in AIR 1976 SC 2005, it has been held that in order to avoid operation of Section

12(3)(a) the dispute in regard to the standard rent or permitted increase must be raised, at the latest, before the expiry of one month from date of service of notice. It has been held that it is not enough to raise a dispute for the first time in the written statement.

In this case the Appellants did not, within one month of receipt of notice, file any application raising a dispute regarding the permitted increase. They only sent the reply dated 13th September, 1977. The High Court would thus have been right in coming to the conclusion that this amounted to default in payment of permitted increase and that the landlord was entitled to a decree for eviction except that the High Court has overlooked a vital aspect. The vital aspect being that in pursuance of the notice dated 10th September, 1977 the Appellants paid to the Respondent arrears of rent amounting to Rs. 1,400/- at the rate of Rs. 175/- per month for the period from 1st January, 1977 to 31st August, 1977. Thereafter the Appellants have been depositing rent at the rate of Rs. 175/- per month in Court. Both the trial Court as well as the first Appellate Court held that the Respondent-landlord has not shown whether the sum of Rs. 940.13, claimed by him, was in respect of the entire premises or it was proportionate share of increase payable by the Appellants. The High Court did not enquire whether the sum of Rs. 940.13 claimed by the Respondent was the share payable by the Appellants or it was the increase in respect of the entire premises. The trial Court has, on an application by the Appellants, fixed standard rent at Rs. 108.34. Thus the Appellants have in fact paid and deposited more than the amount of standard rent. If the extra amount, which has been paid and/or deposited in Court, is sufficient to cover the increases payable by the Appellants then in fact payment has been made even of the permitted increase. Then there is no ground for ejection available. In our view, it was necessary to ascertain what actually was the permitted increase which was payable by Appellants under Section 10. It is only then that it can be ascertained whether the amounts already paid and/or deposited by the Appellants are sufficient to cover the increase payable by the Appellants. If the amounts are sufficient then the decree passed by the High Court cannot be sustained. On the other hand, if the amounts are not sufficient then a ground for eviction would have been made out.

We, therefore, remand the matter back to the first Appellant Court, who may, if necessary, allow the parties to lead evidence, oral or documentary, on this aspect only. The Court will ascertain whether the additional amounts paid/deposited by the Appellants (over and above the sum of Rs. 108.34 per month fixed by the trial Court as standard rent), are sufficient to cover the increase payable by the Appellants. If the amount is found sufficient then the Suit of the Respondent will be dismissed without any further or other enquiry. If the amount is found to be insufficient then the Suit must be decreed without any further or other enquiry.

The Appeal stands disposed of accordingly. There will be no order as to costs.