

DEVKARAN NENSHI TANNA (DEAD) BY LRS.

v.

MANHARLAL NENSHI AND ANR.

JULY 4, 1994

[K. RAMASWAMY AND G.N. RAY, JJ]

Bombay Rents, Hotel & Lodging House Rates Control Act, 1947—Section 11(1)(e)—Claim for arrears of rent—Tenant's application u/s 11 for determination of standard rent—Whether maintainable—Held, yes—No need for a pre-existing dispute to subsist before invoking jurisdiction of court u/s 11(1)(e).

Bombay Rents, Hotel & Lodging House Rates Control Act, 1947—Section 12(3)(a) & 11(1)(e)—Claim for arrears of rent—Tenant's application u/s 11 for determination of standard rent—Fixation of rent on compromise between parties—Suit for possession and for arrears—Defence u/s 12(3)(a)—Whether available to tenant—Held, yes, determination of standard rent being on basis of compromise.

The appellant landlord filed a claim for arrears of rent and the tenant filed an application u/s 11 of the Bombay Rents, Hotel & Lodging House Rates Control Act, for determination of the standard rent. On a compromise, the standard rent was fixed and the application was dismissed as not pressed. Later the landlord filed regular suit for possession and for arrears. The tenant made an application u/s 12(3)(a) r/w s 11(1)(e), pleading that there was a *bona fide* dispute as to standard rent. Before an adjudication was made, the tenant deposited the arrears subject to fixation of standard rent. Civil Court decreed the suit holding that the application would not lie u/s 12(3)(a) and the tenant was liable to eviction. In the revision, the High Court held that the standard rent fixed on earlier occasion was illegal and accordingly the defence u/s 12(3)(a) would be available to determine the standard rent. This appeal had been filed against the judgment of the High Court.

The appellant contended that fixation of standard rent by order of the court was on a consideration of the facts and circumstances of the case. It was an adjudication on application of mind by the court and that, therefore, the standard rent fixed having been allowed to become final the respondent committed default in the payment of the rent. It was alleged

- A** that unless there was a dispute in fact, existed as on date, the tenant was not entitled to make an application u/s 11 of the Act and it could not be used as a device to avoid decree of eviction. Having filed an application after fixation of the rent under a compromise and allowed it to be withdrawn, it was permissible for the respondent to plead that there was no default. Application for fixation of the standard rent would, therefore, be an abuse of the process of the court.

Dismissing the appeal, this Court

- C** **HELD : 1.1.** There is no need for a pre-existing dispute to subsist before invoking the jurisdiction of the court under section 11(1)(e) of the Bombay Rents, Hotel and Lodging House Rates Control Act. Filing an application for determination of the standard rent itself is a dispute entitling the tenant to take the benefit of Section 12(3)(a) of the Act.

[683-G]

- D** **1.2.** Once a standard rent has been determined by the Court, after applying its mind to all the facts and circumstances after adjudicating the dispute under Section 11(1)(e) or permitted increases, then unless that order is reversed or set aside by the appropriate appellate court or the revisional court or on appeal by this Court, parties are bound by the adjudication of the standard rent and to make payment thereafter. But in a case where adjudication was merely passed on a compromise between the parties, the tenant is not precluded to invoke the defence u/s 12(3)(a) of the act. [684-B]

- F** *Prithvichand Ramchand Sablok v. S.V. Sinde*, [1993] 3 SCR 271, relied on.

- G** **1.3.** The order of fixation of standard rent should disclose the application of court's mind to the facts. In this case, while adjudicating satisfaction was not reached by the court below. The respondent is not precluded to make an application when the notice was issued by the appellant demanded payment of the arrears of the standard rent. Thereby, it is not a case where the tenant had abused the process of the court and made any successive application despite the standard rent fixed by the court. Therefore, the defence u/s 12(3)(a) is available to the
- H** tenant. [685-C-D]

CIVIL APPELLATE JURISDICTION : Civil appeal No. 2946 of A
1977.

From the Judgment and Order dated 22/23.11.76 of the Gujarat High
Court in C.R.A. No. 1226 of 1972.

M.L. Verma, Ms. Amrita and Ravinder Narain for M/s. JBD & Co. B
for the Appellant.

T.U. Mehta and P.C. Kapur for the Respondents.

The following Order of the Court was delivered : C

This appeal by special leave arises from the judgment of the Gujarat
High Court in Civil Revision Application No. 1226/72, dated November
22/23, 1975. The facts for the purpose of disposal of his appeal lie in a short
compass.

The appellant landlord laid a claim for arrears of rent and the
respondent shot back by filing an application under s.11 of the Bombay
Rents, Hotel & Lodging H./R. Control Act, for short 'the Act', for deter-
mination of the standard rent. On a compromise the standard rent was
fixed at Rs. 211 per month and the application was dismissed as not
pressed. Later the appellant filed regular suit for possession and for arrears
which was decreed and on appeal it was confirmed. The Defence of the
respondent was that there was *bona fide* dispute as to standard rent and
an application under s.12(3)(a) read with s. 11(1)(c) would lie and so he
made the application and even before an adjudication was made, he
deposited the arrears subject to fixation of standard rent so as to avoid
decree of eviction. So there was no default. Civil Court held that the
application would not lie under s.12(3)(a) and the tenant was liable to
eviction. Thus though the respondent was unsuccessful in two courts.
below, in the revision, the High Court allowed the revision and held that
the standard rent fixed on earlier occasion at Rs. 211 per mensem was
illegal and accordingly the defence under s.12(3)(c) would be available to
determine the standard rent and accordingly dismissed the suit. D
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The contention of Sri Verma, learned senior counsel for the appel-
lant is that fixation of the standard rent by order of the Court dated June
30, 1964 was on a consideration of the facts and circumstances of the case. H

- A It is an adjudication on application of mind by the court and that, therefore, the standard rent fixed at Rs. 211 per mensem having been allowed to become final and allowed the application dismissed as withdrawn, the respondent committed default in the payment of the rent. On receipt of the notice demanding payment of the rent, the respondent admittedly filed
- B an application under s.11 of the Act for fixation of the standard rent without any dispute existing between the parties regarding the standard rent as on that date before making the application. Unless there is a dispute in fact, exist as on date, the tenant is not entitled to make an application under s.11 of the Act and it cannot be used as a device to avoid decree of eviction. Having filed an application, after fixation of the rent under a
- C compromise and allowed it to be withdrawn, it is not permissible for the respondent to plead that there was no default. Application for fixation of the standard rent would, therefore, be an abuse of the process of the court.

- D There is no dispute that the rent payable is monthly. Section 12(3)(a) of the Act contemplates the existence of a dispute and payment of rent by the month. If there are arrears for a period of 6 months or more, then only the landlord gets a right to issue the notice. If there is no dispute as regard the payment of the rent by the month and the arrears thereof for six months and more, s.12(3)(a) has no application. The tenant cannot invoke the aid
- E of explanation (1) to section 12 of the Act unless there is a dispute as regards standard rent or permissible increases.

- F The order passed by the Civil Court on June 30, 1964 is only on a compromise between the parties, the parties cannot contract out of the statute and agree for any standard rent. It is the duty of the court to adjudicate the rent agreed by the parties whether it be the standard rent as prescribed under the Act. The Court had not done that. As soon as a notice was issued by the appellant calling upon the respondent to pay the arrears of the rent, an application was filed under s.11 of the Act for
- G determination of the standard rent. Along with the application, by way of a petition, the respondent deposited all the arrears as an abundant caution. Though the Act gives right to the tenant to await the adjudication of the standard rent and to deposit the same thereafter; as an *abundans cautela* the tenant had deposited the amount claimed by the landlord and filed the application. The question arises whether the tenant-respondent is entitled
- H to file an application for fixation of the standard rent under s.11(1) of the

Act. Section 11(1) of the Act reads thus:

"In any of the following cases the Court may upon an application made to it for that purpose, or in any suit or proceeding, fix the standard rent at such amount, as having regard to the provisions of this Act and the circumstances of the case, the court deems just....."

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

It is difficult to accept the contention of Mr. Verma that there must be a pre-existing dispute as on the date of filing an application and thereon alone the tenant is entitled to make an application under s.11. The dispute may arise in diverse forms. One such is as follows as an illustration, we can definitely say that when the landlord issued a notice to the tenant calling upon the tenant to pay the arrears of rent as contemplated under s.12(3)(a) of the Act, it is open to the tenant to cause a reply issued denying his liability to pay the rent as demanded and plead therein that the standard rent is much less than the rent demanded by the landlord and that, therefore, he is not liable to make payment of the rent demanded by the landlord. In that event, he is entitled to make an application to the Court under s.11(1)(a) which squarely becomes applicable for determination of the standard rent. This situation of a dispute having arisen is not contested by the counsel. May be the court ultimately in a given case, may not agree with the tenant of the claim made for determination of the standard rent and agree with the claim of the landlord of the rent demanded by the landlord to be the standard rent. But that does not mean that there exists no dispute as regards the standard rent claimed ⁱⁿ between the parties. Accordingly, we are of the considered view that there is no need for a pre-existing dispute to subsist before invoking the jurisdiction of the court under s.11(1)(e) of the Act. Filing an application for determination of the standard rent itself is a dispute entitling the tenant to take the benefit of s.12(3)(a). Therefore, the tenant was right in making an application under s.11(1)(e) of the Act.

The question then is whether the tenant can make successive applications for fixation of the standard rent. It is true, as rightly contended by Sri

A Verma, that once a standard rent has been determined by the court, after applying its mind to all the facts and circumstances after adjudicating the dispute, under s.11(1)(e) or permitted increases, then unless that order is reversed or set aside by the appropriate appellate court or the revisional court or on appeal by this court, parties are bound by the adjudication of the standard rent and to make payment thereafter. But in a case where
B adjudication was merely passed on a compromise between the parties, the question emerges whether the tenant is precluded to invoke the defence under s.12(3)(a) of the Act. This point is squarely covered by the judgment of this court in *Prithvichand Ramchand Sablok v. S.V. Shinde*, [1993] 3 SCR 271 at 277. Therein this court stated that :

C ".....a decree passed on the basis of a compromise by and between the parties is essentially a contract between the parties which derives sanctity by the court super adding its seal to the contract. But all the same the consent terms retain all the elements of a
D contract to which the court's imprimatur is affixed to give it the sanctity of an executable court order. We must, however point out that the court will not add its seal to the compromise terms unless their terms are consistent with the relevant law. But, if the law vests exclusive jurisdiction in the court to adjudicate on any matter, e.g. fixation of standard rent, the court will not add its seal to the
E consent terms by which the parties have determined the standard rent unless it has applied its mind to the question and has satisfied itself that the rent proposed by consent is just and reasonable. In such a case it is the independent satisfaction of the court which changes the character of the document from a mere contract to a court's adjudication which will estop the tenant from contending
F otherwise in any subsequent proceedings and operate as *res judicata*. If the standard rent is fixed solely on the basis of agreement between the parties, such a decree *in invitum* will not preclude the tenant from contending in any subsequent proceeding that the rent is excessive and require the court to fix the standard
G rent."

In the order dated June 30, 1964 the court passed the following order:

H "parties compromise read and recorded. As per consent terms of parties, the standard rent is fixed at Rs. 211.00 (Two hundred eleven) per month.

No order for cost."

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This is clearly an indicative of the fact that the court did not apply its mind to the factum whether the terms agreed by the parties are just and reasonable and whether it would be the standard rent consistent with the provision of the Act. Sri Dholkia the learned senior counsel for respondent is right in his contention that the order should disclose the application of court's mind to the facts and then to the determination of the standard rent on the basis of the terms, other evidence or records and the consent of the parties is consistent with the Act and should record its satisfaction. It is settled law that the Act is a welfare legislation and parties cannot contract out of the statute and the seal of approval of the court does not super add its sanctity, nor receive its legality or validity or sanctity without due adjudication. In this case, as seen such adjudication and a satisfaction was not reached by the court below. The respondent is not precluded to make an application when the notice was issued by the appellant demanding payment of the arrears of the standard rent. Thereby, it is not a case where the tenant has abused the process of the court and made any successive application despite the standard rent fixed by the court at Rs. 211 by order dated 30.6.1964. The High Court, therefore, was right in holding that the defence under s.12(3)(a) is available to the tenant and rightly allowed the revision and set aside the decree of the lower courts and dismissed the suit.

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It is further contended by Sri Verma that the respondent had committed successive defaults and that, therefore, s.12(3)(b) also applied and since it was not decided, matter requires remand for further adjudication. We do not consider that the submission is well founded. Therefore, we do not accede to this contention.

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The appeal is accordingly dismissed, but without costs.

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Appeal dismissed.