

Deokumari and anr. Vs. Ramkhilawan Jagdeo Singh (Deceased) by His Heirs and Legal Representative and ors.

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Court : Mumbai

Decided On : Feb-22-1989

Reported in : 1989(1)BomCR583

Judge : Sharad Manohar, J.

Acts : Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Sections 5(3), 12(3), 14(2) and 15A; Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973

Appeal No. : Writ Petition Nos. 190 and 2540 of 1982

Appellant : Deokumari and anr.

Respondent : Ramkhilawan Jagdeo Singh (Deceased) by His Heirs and Legal Representative and ors.

Advocate for Def. : N.P. Gandhi, Adv. for respondent No. 1

Advocate for Pet/Ap. : S.G. Vakil and ;Ajitkumar C. Shah, Advs.

Judgement :

Sharad Manohar, J.

1. The only question that arises for decision in Writ Petition No. 190 of 1982 which is the main petition is whether the payments of monthly rent or monthly compensation made by the tenant satisfies the testes of reasonable punctuality laid down by the Supreme Court in the case of Mohan Laxman Hede 1988 Mh RCJ 313 : 1988(3) Bom.C.R. 260 or whether the petitioner is such a recalcitrant tenant that he cannot avail of the extended protection given to tenants in general by the said judgment.

2. The relevant facts, about which there is no dispute, are as follows :-

(a) The premises consist of a cattle shed divided into 25 adjacent portions. Each portion is called a 'Khila', that is to say a nail to which a buffalo is tethered. Each of the khilas is looked upon as an independent tenement, satisfying the definition of the word 'premises' as contemplated by the Bombay Rent Act. It is the petitioner's case that they are the tenants in respect of a much larger area consisting of many more khilas, out of which an area of 25 khilas was let out to one Shivaram. Present petitioner No. 1 is the widow of said Shivaram and present petitioner No. 2 is his daughter. Shivaram died on 16-5-1971 so that the petitioners become the tenants in respect of the 25 khilas to which 25 buffaloes were tethered. The agreed rent was Rs.128/- per month for these 25 khilas. But admittedly the petitioners had fallen in arrears of rent from 1st May 1971. A notice was, therefore, given by the respondent (who is the petitioners 'landlord'), under section 12(2) of the Bombay Rent Act, for payment of all arrears of rent. It is unnecessary to state the various persons to whom the notice was sent.

(b) The undisputed fact is that on 25-2-1976 the notice came to be served upon the present petitioners. There is some dispute on the question as to whether within one month from the date of the notice the application for fixation of standard rent, which will be presently referred to, was filed by the petitioners or not. But Mr. Rege, the learned Counsel for the petitioners, emphatically submitted that the application was made by the present petitioners for fixation of standard rent in respect of the suit premises (25 khilas) on 22-3-1976). Their contention was that the standard rent of the 25 khilas would not exceed Rs. 30/- per month. It appears that the Court which entertained that application passed an order on that

application on the very day, 25-2-1976, fixing interim rent payable by the tenant at the rate of Rs. 30/- per month. Time was given to the petitioners for payment of the arrears of rent on or before 14-4-1976. On 14-4-1976 the petitioners did deposit a sum of Rs. 1762/- in the Court. The amount was calculated in a very peculiar manner. The rent was not paid till the end of March 1976. The rent was calculated at the rate of Re 1/- per day and the entire rent at the rate of Rs. 30/- per month till 29th February, 1976 was calculated; to that a sum of Rs. 22/- was added for the rent of the 22 days and on this date, 22-2-1976, a sum of Rs. 1762/- was deposited by the petitioners in the Court. On 21-8-1976, the instant suit was filed by the landlord for recovery of possession of the suit premises on the ground of default in the payment of rent for the period exceeding 6 months.

(c) On 18-3-1977 written statement was filed by the petitioners in which Written Statement the above mentioned plea of rent being excessive was taken.

(d) The anomalous part of the conduct of the petitioner is that after having got the interim rent fixed at such a ridiculous figure of Rs. 30/- p.m. for tethering as many as 25 buffaloes, the petitioners did not care to deposit in the Court a single farthing for rent right till 1981 even though the law injuncts every tenant to go on depositing the rent agreed between the parties or interim fixed by the Court regularly in the Court if the tenant wants protection of the Rent Act. I may mention here at this stage itself, that ultimately the courts of competent jurisdiction have come to a final conclusion that the standard rent was not Rs. 30/- p.m., but Rs. 128/- p.m. Point, however, is that the interim rent was got fixed by the petitioners/tenants at the ridiculous rate of Rs. 30/- p.m. and the petitioners showed no inclination to deposit in the Court even the pittance of that amount for a full period of nearly 5 years. upon the application made by the respondent/landlord, therefore, the Court seized with the ejectment suit passed a peremptory order directing the petitioners to deposit the entire arrears of rent from 1st May, 1971 till the date of the order at the rate of Rs. 128/- p.m. As per the order, the amount was to be deposited within 4 days from the date of the order.

(e) The petitioners decided not to pay any heeds even to this order. The suit reached for hearing on 21-4-1981. Finding that the tenant had not paid the rent,

even as per the directions of the Court, the Court had no option but to pass a decree of eviction against the petitioners.

Mr. Vakil, the learned Counsel for the respondent, invited my attention to the observations made by the learned trial Judge in this behalf, in para 35 of his judgment. The observations run as follows :

'The defendants Nos 1 to 4 are directed to deposit in Court at the rate of Rs. 128/- p.m. from 1-5-71 to 31-3-81 within four days and continue to so deposit till the final disposal of this suit. Credit is given to the defendant for this order of all the amounts deposited in R.A.N.'. This order was passed on 9th March, 1981. It appears that defendants Nos. 2 and 4 did not comply with this order and hence on page 37 of the notes of evidence, I was obliged to pass the following order on 16th March, 1981.

The witness admits that defendants Nos 3 and 4 have not complied with the order passed by this Court on 9-3-81 directing the defendants to deposit at the rate of Rs. 128/- from 1-5-71 to 31-3-81 within four days. Defendants Nos. 3 and 4 are sternly warned that their defences will be struck out and they shall not be allowed to prosecute this cause further if they fail to comply with this order'.

Even today, I inquired with the Ld. Advocate for the contesting defendants whether the the order amount at the rent of Rs. 128/- p.m. from 1-5-71 to 31-3-81 was paid.'

The learned judge has further observed that according to the learned advocate for the defendant the arrears were to be deposited only at the rate of Rs. 30/- p.m. But astonishingly enough, even at that rate the amount was not paid immediately or within 4 days from the date of the order dated 9-3-1981. The trial Court, therefore, had no option but to pass a decree for eviction of the petitioners on 21-4-1981.

It may be mentioned here that it would have been open for the learned Judge to strike off the defences of the petitioners on account of his stubbornness in the matter of non-payment of rent. But the learned Judge gave to him a long rope and refrained from striking off their defences. They were allowed to defend the suit and

it was only after the completion of all the procedural requirements that the above mentioned eviction decree was passed against the petitioners.

(f) Appeal was filed by the petitioners to the Appellate Bench of the Court. Even the Appeal Court has noticed that the recalcitrance of the petitioners/tenants was un-paralleled. The Appellate Bench, therefore, had no other option but to dismiss the appeal.

In the meantime, on 7-5-1981, the petitioners deposited a sum of Rs. 1830/- in the Court, calculating the arrears at the rate of Rs. 30/- p.m. It is thus, clear that even after the decree the petitioners were refusing to see elementary fairness and justice.

(g) Against the appellate decree, the present writ petition was filed by the petitioners and rule in the same was issued by this Court on 30-1-1982.

3. As pointed out by Mr. Vakil, even during the pendency of this petition the rent or compensation, whatever we may call it, was not deposited by the petitioners/tenants in the Court, as per the direction of this Court. The certified copy of the entire payment sheet is placed before me by Mr. Vakil. From the payment-sheet, it is clear that on 01-05-1981 a sum of Rs. 1830/- was deposited by the petitioner. Thereafter, rent is deposited at the rate of Rs. 30/- per month (not at the rate of Rs. 128/- p.m.) till 16-01-1982. On 16-01-1982 a sum of Rs. 30/- is paid which is probably the rent payable for the month of December 1981.

Rule was issued by this Court in this petition on 30th January, 1982. At the time of the grant of the Rule, a condition was put that the rent should be paid for the period beginning from January 1982 at the rate of Rs. 128/- p.m. No direction was given by this Court for depositing the arrears of rent, to be calculated at the rate of Rs. 128/- p.m. This direction of this Court has been complied with by the petitioners from 17-2-1982 till 19-10-1982. On 19-10-1982, probably, the rent for the month of October, is not paid at all. The next payment of Rs. 128/- is on 20-12-1982. If this accounts for the payment of rent for October 1982, it follows that the rent for the month of November 1982 is not paid at all.

Thereafter, we find that on 20-4-1983 a sum of Rs. 128/- is paid. The rent for the month of November 1982 still remained unpaid.

The next payment is on 8-6-1983. This means that the rent for the month of April 1983 is additionally in arrears.

On 22-6-1983 another payment of Rs. 128/- is made. This might account for the payment of rent for May 1983. But the rent for November 1982 did remain un-paid on that date.

Thereafter, we find that a sum of Rs. 128/- is paid in July 1983. But in August 1983 no amount is paid.

An amount of Rs. 128/- is paid on 22-11-1983, meaning thereby, the amount for October 1983 is not paid.

On 16-8-1984 we find that a lumpsum payment of Rs. 256/- is made and on 18-8-1984 a further lumpsum payment of Rs. 1152/- is made. Thereafter we find that on 12-11-1984 another lumpsum payment of Rs. 256/- is made.

Then we find that for the month of June 1985 the payment is not made and a lumpsum payment is made on 5-7-1985. Thereafter, we find from October 1985 till July 1986 no amount is paid at all for the full period of 8 months. On 2-7-1986 a lumpsum payment of Rs. 1024/- is made.

Once again from 17-7-1986 till 6-3-1987 nothing is paid and on 6-3-1987 a sum of Rs. 640/- and on 29-04-1987 another sum of Rs. 640/- is paid. Thereafter, for a further period of 6 months nothing is paid and on 12-10-1987 Rs. 640/- is paid.

Thereafter, no payment is made till 8-4-1988 on which date a sum of Rs. 768/- is paid.

Mr. Vakil has thereafter pointed out that in view of these defaults on the part of the petitioners, he had moved this Court on 7-12-1987 for appropriate orders for dismissal of the petition on the ground of non-compliance with the conditions for stay. Mr. Vakil states that on that date Mr. Tiwari appeared for the petitioners. He is the self-same Advocate who appeared for them in the trial Court. He specifically

made a statement that all the arrears were paid as per the direction of this Court. This Court, therefore, gave two week's time for verification of the position regarding payment of the arrears as per the direction of the Court.

It was only thereafter that on 12-10-1987 a sum of Rs. 640/- has been deposited by the petitioners in the Court. The grievance of Mr. Vakil is that no previous notice of such payment was given to him or to his client. His contention is that this lumpsum amount could not have been accepted by the office of this Court unless permission to that effect was given by the Court to the tenant for depositing the monies after commission of the delay. Mr. Vakil's grievance is that the statement made on behalf of the petitioners on 7-10-1987 to the effect that all arrears were paid by the petitioners was quite an incorrect statement and it was with the view of such statement that the stay was allowed to be continued. Even thereafter, we find that no rent is paid every month. After the payment dated 12-10-1987, the next payment, we find, is made on 8-4-1988, of a sum of Rs. 768/-. Mr. Rege, the learned Counsel for the petitioners, pointed out that on 2-3-1983 a whacking amount of Rs. 25,54/- was deposited by the petitioners in the Court. But the significant part of this payment is that it is not deposited as per the directions of any Court as such. This means that the tenant and his legal Adviser were all the time aware that the duty of the tenant was to deposit the rent of the rate of Rs. 128/- p.m., and not at the rate of mere Rs. 30/- per month. No justification has been advanced before me as to why this rent was not paid at that rate on the earlier occasion; as to why the learned Advocate for the petitioners, Mr. Tiwari, insisted even before the trial Court that come what may, the tenant would not comply with the order or direction of the Court and would not deposit the amount as per order or direction of the Court. Even rent at the rate of Rs. 30/- p.m. has not been paid. Even the direction given by this Court to pay rent at the rate of Rs. 128/- p.m. regularly has not been complied with and the amount has fallen in arrears not for one month or two months, but has fallen in arrears, some times for 6 months and some times for 8 months and more.

This ,then is the conduct of the petitioners/tenants throughout the entire litigation. They contend that the rent was only Rs. 30/- p.m. but it is an admitted fact before me that the rent has been fixed by the Court the standard rent proceedings at the

rate of Rs. 128/- p.m.

4. There is further no dispute that even this rent of Rs. 128/- is a (sic) pittance compared to the amount of income that the petitioners used to get from this premises. 25 Buffaloes are tethered in this premises. Plea is that the payment of Rs. 5/- p.m. per buffalo is not within the reach & means of the petitioner. No payment of rent is made over at the rate asserted by the tenant himself for months and months together. Question is whether such a tenant can be said to be qualifying himself for the description of a tenant who is ready and willing to pay the the rent in respect of the suit premises The test laid down by the above mentioned judgment of the Supreme Court, reported in 1988 Mh RCJ 313 Mohan Laxman Hede v. Noor Mohamed Adam Shaikh, is of reasonable punctuality in payment of rent.

I am unable to find my way to help the petitioners/tenants in any manner whatsoever. Recalcitrance is the only word that can be used in the case of these petitioners. One thing that they aimed at is to defeat all the rights of the landlord. Probably, this has been done on the advice received by their lawyers. The kind of statement made by their lawyers in the trial Court, referred to above, gives quite some basis for these observations. Even the kind of statement made by the same advocate in this Court on 7-12-1987 shows that the advice that the petitioners have been receiving is not of a responsible Counsel. Whatever that might be, fact remains that these petitioners are recalcitrant tenants, giving no indication whatsoever of their readiness and willingness to pay rent. They have been in arrears from May 1971. Even the pittance of Rs. 30/- p.m. they would not pay for the full period of 6 years. They cannot qualify for the protection extended by the judgment of the Supreme Court.

5. Mr. Rege, the learned Counsel for the petitioner, came out with a somewhat novel argument. His plea was that as per section 15-A of the amended Rent Act, the present respondent had ceased to be the petitioner's landlord.

In my opinion, the proposition needs just to be stated to be rejected. The entire exercise is based upon the word 'landlord' used in section 15-A of the Rent Act. That sub-section provides that as from 1st day of February, 1973, the person who

was till that date a mere licensee shall be deemed to have become the tenant of the landlord in respect of the premises or part thereof in his occupation.

The plea is that the word 'landlord' connotes the title paramount, that is to say, the owner of the premises.

From where the learned Counsel gets his information is a mystery. The word 'landlord' is defined by section 5(3) of the Act to include even a licensor who has given a licence in respect of the premises in question to the licensee who is deemed to have become the tenant by virtue of section 15-A of the Act. What section 15-A means is that just as a lawful sub-tenant is deemed to be a tenant of the original tenant, a licensee shall also be deemed to be a sub-tenant of the original tenant. The plea that the licensee becomes direct tenant of the owner of the premises is a fallacy. The sub-tenant becomes the direct tenant of the owner under section 14 of the Rent Act, upon the sub-tenancy being terminated finally. A mere glance at section 14 of the Rent Act is sufficient to expose the fallacy of the argument. Under section 14(2) which is the newly added sub-section, it is only when the interest of the tenant/licensor is determined by any reason that the licensee, who by section 15-A is deemed to be a tenant, becomes the deemed tenant of the landlord. No such thing has happened in the present case. The interest of the respondent who is the tenant of the owner of these sheds continues. The suit filed by the owner against the tenant has been dismissed. To dwell upon the mere word 'landlord' used by section 15-A ignoring the scheme of the Act, the definition of the word 'landlord' given by the Act and, particularly, the provision of section 14(1) and (2) of the Act amounts to clutching at any straw to save from the doom. Nothing beyond that.

6. The petition, therefore, fails.

The Rule earlier issued is discharged with costs.

7. So far as Writ Petition No. 2540 of 1982 is concerned, in view of the dismissal of the companion Writ Petition No. 190 of 1982, Mr. Vakil does not press with this petition.

The Rule in that petition is discharged with no order as to costs.

8. Mr. Rege asks for time to vacate the suit premises. The Receiver is already appointed. Mr. Rege wants direction to be given to the Receiver not to take possession from the petitioners for a period of 2 months. He is agreeable to deposit a sum of Rs. 2000/- in this Court as costs payable to the respondent as also the monthly amount of Rs. 128/-. This is a reasonable request.

The petitioners are directed to deposit a sum of Rs. 2000/- on or before 7th March, 1989, on which deposit the Receiver shall allow the petitioners to remain in possession of the suit premises till 30th April, 1989.

If the amount of Rs. 2000/- is not deposited on or before the above mentioned date, the Receiver shall immediately take possession from the petitioners and shall hand over the same to the respondent.

Subject to the order of stay being obtained by the petitioners from Supreme Court, the Receiver shall take possession of the suit premises from the petitioner on 1st May, 1989 and shall hand over the same to the respondent.

The costs of the Receiver shall be paid by the petitioners.

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