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VASANT GANESH DAMLE
v.
SHRIKANT TRIMBAK DATAR AND ANR.

MARCH 5, 2002

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[R.P. SETHI AND K.G. BALAKRISHNAN, JJ.]

Rent Control and Eviction

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Bombay Rents, Hotel and Lodging House Rates Control Act, 1947—S. 12(3)—Eviction:—Default in payment of rent—Application for depositing the arrears of rent—Not made on the first day of hearing of suit—Held, tenant not entitled to avail protection under S. 12(3)—Eviction order upheld—Code of Civil Procedure, 1908—S. 107.

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Words and Phrases

Expression “such other date as the court may fix”—Meaning of in the context of S. 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

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Respondent-landlords filed a suit for eviction of appellant-tenant on the ground of default in payment of rent. The said suit was dismissed by the trial court. On appeal, the Appellate Court found that as the appellant-tenant had defaulted in payment of rent, he was liable to be evicted from the leased premises. Appellant-tenant’s writ petition before the High Court was dismissed. Hence the present appeal.

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On behalf of appellant-tenant it was contended that appellant was not liable to be evicted as he had deposited the arrears of rent in the court in terms of the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947; that even if the order of the trial court was not an order in terms of S. 12(3) of the Act, as the appeal was the continuation of a suit, the appellate court had the jurisdiction to pass the order in terms of S. 12(3) of the Act directing the tenant to deposit the arrears of rent and since the direction was complied with no decree of eviction could be passed.

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On behalf of respondent-landlords it was contended that the order of the trial court could not be termed to be an order within the meaning of S.

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12(3) of the Act and the order of the appellate court was passed without prejudice to the rights of the parties; that though the appeal was the continuation of the suit, the provisions of S. 12(3) being a concession conferred upon the tenant had to be availed of on the first day of hearing of the suit or on or before such other date as the court may fix which could not be stretched to authorize the tenant to avail the beneficial provision at any time according to his convenience and even at the appellate stage.

Dismissing the appeal, the Court

HELD: 1.1. The High Court was, justified in holding that the appellant cannot take advantage of Section 12(3) of the Act at the appellate stage which he had failed to avail before the trial court. The appellant was rightly held to be in arrears of rent for more than 6 months from the date of filing of the suit and had failed to apply before the trial court on the first day of hearing of the suit for depositing the arrears of rent. [204-B-C]

1.2. A perusal of the trial order clearly and unambiguously shows that the said order had not been passed in terms of sub-section (3) of section 12 of the Act. The aforesaid order was not passed at the request of the tenant but passed on the application of the respondents-plaintiffs who had prayed for payment of the rent. The said order was passed not on the first day of hearing or on or before any other date as fixed by the court. The amount mentioned in the order was the suit amount which did not include permitted increase or interest and costs as contemplated by the aforesaid provision. Despite the aforesaid order the appellant did not make the payment within time specified and defaulted the payment of future rent in terms thereof. The suit of the plaintiff could not, therefore, be dismissed on the basis of the trial court's order. [202-H; 203-A-B]

2. Appeal is considered to be an extension of the suit because under Section 107 of the Code of Civil Procedure, the appellate court has the same powers as are conferred by the Code on courts of original jurisdiction in respect of suits instituted therein. Such a power can be exercised by the appellate court "as nearly as may be" exercised by the trial court under the Code. However, in the instant case the appellant, by filing the application under Section 12(3) of the Act, had not made a prayer to the appellate court for passing any order which the trial court was intended to pass under the Code of Civil Procedure. His prayer was to invoke the benefit conferred upon a tenant under the Act. The beneficial provision under the Act unequivocally provides that it can be availed and that too on the first day of hearing of the

A suit or on or before such other date as the court may fix. The first date of hearing cannot be stretched to be any date beyond the date on which the issues are framed in the suit. [203-D; F-G]

B 2.2. It cannot be accepted that the words "such other date as the court may fix" would also include the date fixed by the appellate court in terms of Section 107 of the Code of Civil Procedure. Further, in the instant case by its order the appellate court had not extended the time and expressly permitted the appellant to deposit the arrears of rent allegedly payable by him without prejudice to the rights of the other party, i.e., the landlords. [204-A-B]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1838 of 2000.

From the Judgment and Order dated 7.8.2001 of the Bombay High Court in W.P. No. 2228 of 2001.

D Uday Umesh Lalit for the Appellant.

Gopal Balwant Sathe for the Respondents.

The Judgment of the Court was delivered by

SETHI, J. Leave granted.

E The appellant-tenant was sought to be evicted from the leased premises on the ground of defaults in making the payment of the rent. The suit filed by the respondents-plaintiffs was dismissed by the trial court on the ground that the respondents-plaintiffs had failed to establish that they were the landlords of the appellant. The respondents-landlords preferred an appeal
F against the judgment and decree of the trial court which was allowed by reversing the findings of the trial court in so far as the relationship of landlord and tenant was concerned. The appellant was held to be the tenant of the respondents. The appellate court further found that as the appellant-tenant had defaulted in payment of rent, he was liable to be evicted from the leased
G premises. Aggrieved by the judgment of the appellate court, the appellant approached the High Court by way of a writ petition which was dismissed vide the order impugned in this appeal.

Mr. U.U. Lalit, learned Advocate appearing for the appellant fairly conceded before us that in view of the fact that the appellant himself prayed
H for deposit of rent to avail the benefit of Section 12(3) of the Act, the

appellate court rightly held that he was the tenant of the landlords. A

The learned counsel for the appellant, however, submitted that his client is not liable to be evicted as he has deposited the arrears of rent in the court in terms of the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Act"). He has specifically referred to the provisions of Section 12(3) of the Act which was substituted in the main statute vide Maharashtra Act No. XVIII of 1987. It is contended that when respondents-plaintiffs filed an application (Annexure P-7) claiming an amount of Rs. 3571.69 as arrears of rent, the trial court allowed the said application and directed the appellant herein to deposit the arrears of rent mentioned in the application within one month from the date of that order and further deposit the monthly rent of Rs. 92 regularly on or before 10th of next month in the court. According to the learned counsel, as the aforesaid order passed in terms of Section 12(3) of the Act was complied with by the appellant, the trial court was, therefore, not justified in passing the decree of eviction against the tenant. It is contended in alternative that even if the order of the trial court dated 3.9.1994 is assumed to be not an order in terms of Section 12(3) of the Act, the appellant specifically filed an application under Section 12(3) of the Act in the appellate court which was allowed permitting him to deposit the arrears of rent and permitted increases amounting to Rs. 20,304 in the court. The aforesaid directions were complied with by the appellant. It is contended that as the appeal is the continuation of a suit, the appellate court had the jurisdiction to pass the order dated 18.1.2001 in terms of Section 12(3) of the Act directing the tenant to deposit the arrears of rent and because the directions were complied with no decree of eviction could be passed against him. B
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Per contra Shri Gopal Balwant Sathe, learned Advocate appearing for the respondents submitted that the order of the trial court dated 3.9.1994 cannot be termed to be an order within the meaning of Section 12(3) of the Act and the order of the appellate court dated 18.1.2001 was passed without prejudice to the rights of the parties. According to him though the appeal is the continuation of the suit, the provisions of Section 12(3) being a concession conferred upon the tenant had to be availed of on the first day of hearing of the suit or on or before the such other date as the court may fix which could not be stretched to authorise the tenant to avail the beneficial provision at any time according to his convenience and even at the appellate stage. F
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Section 12(3) of the Act provides:

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A “Sec. 12(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
B and together with simple interest on the amount of arrears of such
standard rent and permitted increases at the rate of nine percent, 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:

C 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.”

It may be kept in mind that but for the provisions of the Act, the appellant-
tenant had no right to resist the claim of the landlords for his eviction after
D termination of the tenancy. The Rent Control Act is a social welfare legislation
meant to protect and safeguard the interests of the tenant which does not
confer unfettered powers on the tenant to remain in the possession of the
leased premises without the compliance of directions of the court or the
provisions of the statute. The Act is intended to protect the bonafide tenants
in possession. It has put restrictions on the right of the landlord to seek
E eviction of the tenant only on the grounds specified under the relevant statute.
There is no dispute that under the Act the landlord is entitled to seek eviction
of the tenant on the ground of defaults in the payment of rent. The statute
further provides that despite default, a tenant can approach the court in any
F suit for possession on the ground of arrears of rent and submit on the first
day of hearing of the suit or on or before such other date as the court may
fix to tender the standard rent and permitted increases together with interest
and costs. If such a prayer is made, the court, dealing with the suit has been
conferred the powers to pass appropriate orders in terms of Section 12(3) and
in that event the suit of eviction against the tenant on the ground of default
in payment of rent shall be dismissed. Non payment of rent, as per contract
G and statutory provisions, entitles the landlord to seek possession. The right
conferred upon a bonafide tenant can be availed of only twice and not
thereafter.

A perusal of the trial order dated 3.9.1994 clearly and unambiguously
shows that the said order had not been passed in terms of Sub-Section (3) of
H Section 12 of the Act. The aforesaid order was not passed at the request of

the tenant but passed on the application of the respondents-plaintiffs who had prayed for the payment of the suit amount rent. The said order was passed not on the first day of hearing or on or before any other date as fixed by the court. The amount mentioned in the order was the suit amount which did not include permitted increases or interest and costs as contemplated by the aforesaid provision. It has been pointed out that despite the aforesaid order the appellant did not make the payment within time specified and defaulted the payment of future rent in terms thereof. The suit of the plaintiff could not, therefore, be dismissed on the basis of the trial court's order dated 3.9.1994.

The order of the appellate court dated 18.1.2001 was passed in Civil Appeal No. 87/97 and the amount determined therein deposited in the court after 22nd February, 2001.

The appeal is considered to be an extension of the suit because under Section 107 of the Code of Civil Procedure, the appellate court has the same powers as are conferred by the Code on courts of original jurisdiction in respect of suits instituted therein. Such a power can be exercised by the appellate court "as nearly as may be" exercised by the trial court under the Code. If the powers conferred upon the trial court are under a specified statute and not under the Code, it has to be ascertained as to whether such a power was intended to be exercised by the appellate court as well. Such a position can be ascertained by having a reference to the specified law by keeping in mind the legislative intention of conferment of power on the appellate court either expressly or by necessary implication.

In the instant case the appellant, by filing the application under Section 12(3) of the Act, had not made a prayer to the appellate court for passing any order which the trial court was intended to pass under the Code of Civil Procedure. His prayer was to invoke the benefit conferred upon a tenant under the Act. The beneficial provision under the Act unequivocally provides that it can be availed of in the suit and that too on the first day of hearing of the suit or on or before such other date as the court may fix. The first date of hearing cannot be stretched to be any date beyond the date when the issues are framed in the suit. The object is to protect the bonafide tenants from being evicted on the grounds of default by affording them further opportunity to make the payment of the arrears of rent atleast at two times during the subsistence of tenancy. The provision is not intended to confer a right without circumspection to be availed of by the tenant at any time according to his convenience.

- A It is contended that the words "such other date as the court may fix" would also include the date fixed by the appellate court in terms of Section 107 of the Code of Civil Procedure. We do not agree with such a submission. However, in the instant case vide its order dated 18.1.2001 the appellate court had not extended the time and expressly permitted the appellant to deposit the arrears of rent allegedly payable by him without prejudice to the rights of the other party, i.e., the landlords. The High Court was, therefore, justified in holding that the appellant cannot take advantage of Section 12(3) of the Act at the appellate stage which he had failed to avail of before the trial court. The appellant was rightly held to be in arrears of rent for more than 6 months from the date of filing of the suit and had failed to apply before the trial court on the first day of suit for depositing the arrears of rent.
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There is no merit in this appeal which is accordingly dismissed. There will be no order as to costs.

S.V.K.

Appeal dismissed.