

A YUSUFBHAI NOORMOHAMMED JODHPURWALA

v.

MOHAMMED SABIR IBRAHIM BYAVARWALA
(Special Leave Petition (Civil) No. 735 of 2014)

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NOVEMBER 7, 2014

**[DIPAK MISRA, ROHINTON FALI NARIMAN AND
UDAY UMESH LALIT, JJ.]**

C *Bombay Rents, Hotel and Lodging House Rates*
Control Act, 1947 – s. 12(3)(b) – Eviction suit, on the ground
of non-payment of arrears of rent as also others – Dismissal
of suit by trial court, however allowed by appellate bench – In
appeal, eviction decree in favour of landlord set aside by
D *High Court – On appeal, held: Even assuming that the*
respondent is a bonafide tenant the right conferred upon him
by the legislature can be availed of only twice and on two
occasions the tenant was found to be in arrears – High Court
erred in interpreting s. 12(3)(b) purposively holding that there
E *was substantial compliance of the Section since the tenant*
was ready and willing to pay rent, even though there was short-
fall in payment – S. 12(3)(b) being a mandatory provision
must be strictly complied with – Thus, order of High Court is
set aside, and that of appellate bench is restored.

F **Disposing of the Special Leave Petition, the Court**

HELD: The tenant was in arrears of rent prior to the
filing of the suit and continued to be so. On the date of
the first hearing of the suit, there was short-fall in the
payment of rent. Therefore, even assuming that the
G **respondent is a bonafide tenant the right that is conferred**
upon him by the legislature can be availed of only twice
and on both occasions the tenant was found to be in
arrears. The High Court was wrong in interpreting

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Section 12(3)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, purposively holding that so long as the High Court, in its discretion, feels that there is a readiness and willingness on the part of the tenant to pay rent, the High Court can in its discretion say that substantial compliance of Section 12(3)(b) is good enough for the tenant to escape eviction on the ground of non-payment of arrears of rent. Since s.12(3)(b) is construed to be a mandatory provision which must be strictly complied with. The order of High Court is set aside, and that of the appellate bench is restored. [Para 9][1209-E-H; 1210-A-B]

Vasant Ganesh Damle v. Shrikant Trimbak Datar 2002 (2) SCR 198 : (2002) 4 SCC 183; *Ganpat Ladha v. Sashikant Vishnu Shinde* 1978 (3) SCR 198 : (1978) 2 SCC 573 ; *Jamnadas Dharamdas v. Joseph Farreira* 1980 (3) SCR 1015 : (1980) 3 SCC 569 ; *Mranalini B. Shah v. Bapalal Mohanlal Shah* (1980) 4 SCC 251 – referred to.

CASE LAW REFERENCE

2002 (2) SCR 198	referred to.	Para 4	E
1978 (3) SCR 198	referred to.	Para 7	
1980 (3) SCR 1015	referred to.	Para 7	
(1980) 4 SCC 251	referred to.	Para 7	F

CIVILAPPELLATE JURISDICTION : SLP (Civil) No(s). 735 of 2014.

From the Judgment and Order dated 30-09-2013 of the High Court of Gujarat at Ahmedabad in Civil Revision Application No. 44 of 2013.

Mayur R. Shah, Ms. S. Ramamani, Advs. for the Petitioner.

A The Judgment of the Court was delivered by
ROHINTON FALI NARIMAN, J.

B 1. The present Special Leave Petition is a landlord's appeal against an order passed by the High Court of Gujarat on 30th September 2013 allowing Civil Revision Application No.44/2013 by the tenant.

2. The brief facts necessary for the disposal of this SLP are as follows:

C Some time in 1971 the landlady had let out the first floor portion of the suit premises to the present respondent at the rate of Rs.70/- per month. The standard rent was fixed by a court order in the year 1971 itself at the contractual rent of Rs. 70/- per month. On 9th March 1987 the petitioner issued a legal notice to the respondent-tenant stating that the tenant was in arrears of rent for more than six months i.e. on and after 1st March 1986. Various other breaches were also pointed out by the said notice and a claim for bonafide requirement by the landlord and his family members was also made under Section 13(1)(g) of the Bombay Rent Act. The respondent tenant
D replied to the notice denying all the allegations by a letter dated 9th April 1987. This was followed by an eviction suit filed in 1987 under various grounds including arrears of rent under Section 12 (3)(a), under section 12 (3) (b), bonafide requirement, alteration in the suit premises, and causing
E nuisance to the landlord.
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3. The suit was tried by the Small Causes Court at Ahmedabad and dismissed. In appeal, the appellate bench held by a judgment dated 28th January 2013 that the ground of eviction under Section 12(3) (b) was made out. Section 12
G (3) (b) of the Bombay Rent Act reads as under:

"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

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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." A

The appellate bench held: B

"25. Point No.1

Shri B. K. Damani learned Advocate for the respondent argued that notice dated 09.03.1987 produced at Exh. 23 shows nothing regarding Municipal tax and no demand of tax was made by the land lord in the said notice. It is true that notice required under section 12 (2) of the Act produced at Exh. 23, no particular amount for tax is averred in the notice by the landlord. But the notice disclosed that rent was due and plaintiff had demanded rent at the rate of Rs. 70/- per month from 1.3.1986 till the date of issuance of the notice (date of issuance of the notice is 9.3.1987). Earlier we have held that suit notice is legal and valid. C D

26. It is not disputed by both the parties that amount of tax was to be borne by the tenant and not by the landlord. Therefore, when the suit filed on the ground of arrears of rent, then it attracts the provision of section 12 (3) (b) of the Act. E

27. Shri Dossani learned advocate for the respondent argued that suit attract by provision of section 12 (3) (b) of the Bombay Rent Act, 1947, Shri Dossani further argued that on receipt of the notice tenant-defendant-respondent did not file any application for fixation of standard rent as provided under section 11 (3) of the Bombay Rent Act and on the first date of hearing of the suit, all amounts of rent due should be deposited by the tenant in the court and first date of hearing should be treated as the date of framing of issues. It is true that suit F G

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A attracts provision of section 12 (3) (b) of the Act and in the present case on the receipt of notice [under section 12 (2) of the Act] tenant respondent did not file an application for fixation of standard rent of the suit premises. Therefore, tenant-defendants-respondent had to deposit the amount of rent due from him on the date of framing of issues. In the present case issues were framed vide Ex. 19 on 3.8.1994. that means rent from 1.3.1986 to 31.7.1994 ought to have been deposited by the respondent tenant in the court on or before 3.8.1994. The details regarding deposit of rent is produced by the respondent vide purshis exh. 143 in the suit and the said purshis was seen by the learned advocate for the appellant. As per that purshis exh. 143, rent from 29.9.1987 to 16.6.1994 was deposited on different dates in the court and total comes to Rs. 6860/- and considering the rent due from the defendant-tenant from 1.3.1986 to July, 1994, for 101 months, multiply by rent Rs. 70 per month comes to Rs. 7070/-. Means when issues were framed by the learned trial court, at the time rent due from the respondent-tenant was Rs. 7070/- and rent was deposited Rs. 6860/-. Though the learned trial judge came to the conclusion that all rent is deposited by the tenant. The learned trial court did not discuss about the rent due on date of 13/19 of issues.

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F As per section 12 (3) (b) of the Act to get protection from eviction decree, tenant has to deposit all rent due on the first date of hearing i.e., date of framing of issues or on or before such other date as the court may fix. So far concerned to the later part i.e., on or before such other date as the court may fix is not relevant to the case in hand. After depositing all rent due on the first date of hearing, tenant has to keep continue to pay or tender the rent in the court and permitted increase till the suit is

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decided. Formation of section 13 (1) (b) of the Act, makes A
compulsion on the tenant to deposit the entire rent due
from the tenant on or before the date of framing of issues
and that also makes compulsion upon the tenant to keep
continue to pay or tender the rent in the court till suit is
finally decided. Means tenant has to comply those two B
ingredients of that section and not one and purshis
produced by the tenant in the record of the suit exh. 143
disclosed that rent was due from the defendant on the
date when issues were framed.

..... The tenant has not deposited all rent due on C
the date of framing of issues. We are not aggrieved with
the learned trial court that rent was deposited by the
tenant. We further observed that the learned trial court
did not discuss about the point that entire rent was not D
deposited on the date of framing of issues. When the
issues were framed, on that date, full rent was not
deposited by the tenant. Therefore, defendant-tenant
cannot be protected under section 12 (3)(b) of the Act
and plaintiff-landlord become entitled for eviction decree E
of the suit premises on that ground and suit filed by the
plaintiff attracts provision of section 12 (3) (b) of the Act.
When any party proves the case as required under the
provisions of law, then court has no alternative but to pass
a necessary order in that regard. Therefore, we give F
answer of point no.1 that learned trial court has erred in
deciding issues of arrears of rent and we answer point
no. 1 in the affirmative. In view of answer given on point
no. 1, we feel that suit filed by the respondent–plaintiff
for eviction on the ground of section 12 (3) (b) of the G
Bombay Rent Act, 1947 is proved by the plaintiff and
therefore, on that ground decree of eviction of the suit
premises is required to be passed.”

A 4. In a Civil Revision filed by the tenant, the High Court by the impugned judgment has reversed the judgment of the First Appellate Court. The High Court noticed this Court's judgment in **Vasant Ganesh Damle v. Shrikant Trimbak Datar**, (2002) 4 SCC 183; and then went on to hold:

B *"It is true that requirement of payment of rent then due on the first date of hearing is held to be mandatory....."*

C *It is further true that the court does not have discretionary powers under section 12(3)(b)."*

5. Despite the aforesaid finding, the High Court went on to hold:

D *"From reading of above provision, it would be seen that sub-section (1) of Section 12 provides for a condition which comes as a condition precedent. It provides that landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or he is ready and willing to pay the amount and observes other conditions of the tenancy. Therefore, so long as there is a readiness and willingness on part of tenant for payment of rent, a kind of embargo is contemplated to operate on the right of landlord to recover possession. Sub-Sections subsequently occurring are in the nature of sub-conditions and requirements on the basis of which decree for eviction may be sought for by the landlord and may be resisted by the tenant....."*

E *"A purposive interpretation has to be given to Section 12(3) (b) and it has to be held that merely because there was a short-fall of Rs.270/- in payment of rent on the date of first hearing, when all other conditions necessary to be satisfied were satisfied, that the decree for eviction could not have been passed*

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holding that there was a non-compliance of conditions under section 12(3)(b). Applying the doctrine of object-oriented construction and principle of purposive interpretation, the non-compliance of Section 12(3) (b) in its conditions cannot be viewed de hors the elementary conditions in Section 12(1) that the tenant was ready and willing to pay rent. A pedantic approach in applying law should be eschewed because quite often than not, such an approach counteracts the very object with which the provision is enacted in the statute and defeats the purpose it seeks to achieve.

Once on facts when it is found that the tenant was ready and willing to pay the rent, merely because he paid Rs.270/- less out of the rent payable Rs.7070/- on the date of first hearing, it would not be prudent, nor proper, not legal to hold that the tenant had not fulfilled the requirements under Section 12(3) (b) of the Act. The protective condition contemplated under Section 12(1) of tenant's readiness and willingness would come into play and it would disentitle the landlord at the threshold to seek decree of eviction. The reasoning supplied and view taken by the lower appellate court holding the applicant liable to be evicted under Section 12(3) (b) was erroneous and not acceptable in law."

6. Learned counsel for the Petitioner landlord argued that the High Court judgment is contrary to the law declared by this Court on Section 12(3)(b) of the Act. No one appeared for the Respondent despite service of notice on the Respondent.

7. The law on Section 12 (3) (b) is well settled by a series of judgments of this Court. In **Ganpat Ladha v. Sashikant Vishnu Shinde**, (1978) 2 SCC 573, this Court overruled a judgment in **Kalidas Bhavan Bhagwandas'** case in which a Division Bench of the Bombay High Court thought that it was open under Section 12(3)(b) to exercise a discretion in favour of the tenant. In para 11 of the said judgment, it was stated:

A *"11. It is clear to us that the Act interferes with the*
 landlord's right to property and freedom of contract only
 for the limited purpose of protecting tenants from
 misuse of the landlord's power to evict them, in these
B *days of scarcity of accommodation, by asserting his*
 superior rights in property or trying to exploit his position
 by extracting too high rents from helpless tenants. The
 object was not to deprive the landlord altogether of his
 rights in property which have also to be respected.
 Another object was to make possible eviction of tenants
C *who fail to carry out their obligation to pay rent to the*
 landlord despite opportunities given by law in that behalf.
 Thus Section 12(3)(a) of the Act makes it obligatory for
 the Court to pass a decree when its conditions are
 satisfied as was pointed out by one of us (Bhagwati, J.)
D *in Ratalal Balabhai Nazar v. Ranchhodbhai*
 Shankerbhai Patel [AIR 1968 Guj 172 : (1968) 9 Guj
 LR 48] . If there is statutory default or neglect on the
 part of the tenant, whatever may be its cause, the
 landlord acquires a right under Section 12(3)(a) to get
E *a decree for eviction. But where the conditions of*
 Section 12(3)(a) are not satisfied, there is a further
 opportunity given to the tenant to protect himself against
 eviction. He can comply with the conditions set out in
 Section 12(3)(b) and defeat the landlord's claim for
F *eviction. If, however, he does not fulfil those conditions,*
 he cannot claim the protection of Section 12(3)(b) and
 in that event, there being no other protection available
 to him, a decree for eviction would have to go against
 him. It is difficult to see how by any judicial valour
G *discretion exercisable in favour, of the tenant can be*
 found in Section 12(3)(b) even where the conditions laid
 down by it are satisfied to be strictly confined within the
 limits prescribed for their operation. We think that
 Chagla, C.J., was doing nothing less than legislating in

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Kalidas Bhavan case in converting the provisions of Section 12(3)(b) into a sort of discretionary jurisdiction of the Court to relieve tenants from hardship. The decisions of this Court referred to above, in any case, make the position quite clear. Section 12(3)(b) does not create any discretionary jurisdiction in the Court. It provides protection to the tenant on certain conditions and these conditions have to be strictly observed by the tenant who seeks the benefit of the section. If the statutory provisions do not go far enough to relieve the hardship of the tenant the remedy lies with the legislature. It is not in the hands of courts."

This statement of the law was followed in Jamnadas Dharamdas v. Joseph Ferreira (1980) 3 SCC 569 at para 12 and Mranalini B. Shah v. Bapalal Mohanlal Shah (1980) 4 SCC 251 at para 12.

8. In the judgment cited by the impugned judgment, namely **Vasant Ganesh Damle** (supra), this Court categorically held that the right conferred upon a bonafide tenant can be availed of only twice under the Act and not thereafter.

9. On facts, it is clear that the tenant was in arrears of rent prior to the filing of the suit and continued to be so. On the date of the first hearing of the suit, that is the date on which issues were struck, namely 3rd August 1994, the rent that was paid admittedly fell short by Rs.270/-. It is clear therefore that assuming that the respondent is a bonafide tenant the right that is conferred upon him by the legislature can be availed of only twice and on both occasions the tenant was found to be in arrears. The High Court was wrong in interpreting Section 12(3)(b) purposively holding that so long as the High Court, in its discretion, feels that there is a readiness and willingness on the part of the tenant to pay rent, the High Court can in its discretion say that substantial compliance of Section 12(3)(b) is good enough for the tenant to escape eviction on the ground

- A of non payment of arrears of rent. Having regard to the judgments of this Court and the fact that Section 12(3)(b) has been construed to be a mandatory provision which must be strictly complied with, the judgment under appeal has to be set aside, and the order of the appellate bench of Small Causes
- B restored.

10. The Special Leave Petition is disposed of with no order as to costs.

Nidhi Jain

SLP disposed of.