A

MRS. MANORAMA S. MASUREKAR

v.

MRS. DHANLAXMI G. SHAH AND ANR.

August 23, 1966

B

[K. N. WANCHOO, J. C. SHAH AND R. S. BACHAWAT, JJ.]

Bombay Rents, Hotel and Lodging House Rates Control Act (57 *of* 1947), *s.* 12(1) *and* (3)(*a*)—*Scope of.*

The tenant of a flat was in arrears of rent for more than six months. The landlord served a notice on the tenant demanding the rent. The tenant did not pay it within one month of the notice, but tendered it
C after the expiry of the month. The landlord refused to receive it and filed a suit for eviction under s. 12(3) (a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The tenant claimed the protection of s. 12(1) of the Act on the ground that she was ready and willing to pay the rent before the institution of the suit.

HELD : Under s. 12(3) (a), the landlord is vested with the right to recover possession of the premises if the rent is in arrears for six
D months or more, the tenant neglects to pay it until after the expiry of one month after notice demanding the rent and other conditions of sub-s. (3) (a) are saitisfied. This right cannot be defeated by showing that the tenant was ready and willing to pay the rent after the default but before the institution of the suit. In a case falling within sub-s. (3) (a), the tenant must be dealt with under its special provisions and he cannot claim any protection from eviction under the general provisions of sub-s. (1): and the court was bound to pass a decree for eviction. [137 E, F]
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Bhaiya Punjalal Bhagwanddin v. *Dave Bhagwat Prasad Prabhuprasad*, [1963] 3 S.C.R. 312, followed.

Mohanlal v. *Maheshwari Mills Ltd.* (1962) 3 Guj. L.R. 574 and *Ambala* v. *Babaldas*, (1962) 3 *Guj.* L.R. 625, overruled.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 469 of 1966.

F

Appeal by special leave from the judgment and decree dated November 25, 1965 of the Bombay High Court in Civil Revision Application No. 1579 of 1962.

S. G. Patwardhan and *M. V. Goswami*, for the appellant

S. T. Desai and *K. L. Hathi*, for respondent No. 1

G

The Judgment of the Court was delivered by

Bachawat, J. The question arising in this appeal by special leave is whether in a case falling under sub-s.(3)(a) of s. 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Act No. 57 of 1947), a tenant can claim protection from
H eviction by showing his readiness and willingness to pay the arrears of rent before the date of the institution of the suit. The appellant's husband was a tenant of a flat. The rent was in arrears

for a period of more than six months. On December 22, 1956, the landlord served a notice on the tenant demanding the rent. The tenant neglected to pay the rent within one month of the notice. On January 11, 1957, he died. On February 4, 1957, the appellant sent the arrears of rent to the landlord by money order, but the landlord refused to accept the payment. On February 5, 1957, the landlord instituted the present suit for eviction of the appellant. The trial Court decreed the suit. The appellant filed a revision application before the Bombay High Court, but this application was dismissed by the High Court.

It is to be noticed that the rent was in arrears for a period of more than six months. The tenant neglected to make payment of the arrears of rent within one month of the service of the notice by the landlord under sub-s. (2) of s.12. The rent was payable by the month, and there was no dispute regarding the amount of the rent. The case was, therefore, precisely covered by sub-s. (3)(a) of s. 12. Nevertheless, the appellant submitted that as she was ready and willing to pay the rent before the institution of the suit, she could claim protection under sub-s. (1) of s. 12. She submitted that the decided cases support this contention. In *Mohanlal* v. *Maheshwari Mills Ltd.*(1), P. N. Bhagwati, J. held that even in a case falling under sub-s. (3) (a), a tenant could, by paying or showing his readiness and willingness to pay the arrears of rent before the institution of the suit, claim protection from eviction under sub-s. (1). A similar opinion was expressed by a Divisional Bench of the Gujarat High Court in *Ambalal* v. *Babaldas*(2). The judgment under appeal dissented from the view expressed by the Gujarat High Court. The Bombay High Court held, and, in our opinion, rightly, that in a case falling under sub-s. (3)(a), the tenant could not claim protection from eviction by showing his readiness and willingness to pay the rent before the institution of the suit.

Sub-section (1) of s. 12 imposes a general restriction on the landlord's right to recover possession of the premises so long as the tenant pays or is ready and willing to pay the rent and observes and performs the other conditions of the tenancy. Sub-section (2) of s. 12 imposes the further restriction that no suit for recovery of possession on the ground of non-payment of rent shall be instituted by the landlord until the expiration of one month after a notice in writing demanding the rent. Sub-section (3)(a) provides for the consequences which will follow where the rent is payable by the month, there is no dispute regarding the amount of rent, the rent is in arrears for a period of six months or more, and the tenant neglects to make payment within one month of the service of the notice under sub-s (2). In such a case, the tenant

(1) (1962) 3 Gujarat Law Reporter, 574 at pp. 618 to 621.
(2) (1962) 3 Gujarat Law Reporter 625, 644.

A cannot claim any protection under sub-s. (1), and the Court is bound to pass a decree for eviction. At the material time, sub-s. (3) (a) of s. 12 read :

> "Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in
B arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-s (2), the Court may pass a decree for eviction in any such suit for recovery of possession."

The word "may" in this sub-section has the effect of "shall". In
C *Bhatya Punjalal Bhagwanddin* v. *Dave Bhagwatprasad Prabhuprasad*(1), this Court held that where the requirements of sub-s. (3)(a) were satisfied, the Court was bound to pass a decree for eviction. The section has now been suitably amended, and the word "shall" has been substituted for the word "may" by Maharashtra Act No. 14 of 1963.

D If the conditions of sub-s. (3)(a) are satisfied, the tenant cannot claim any protection from eviction under the Act. By tendering the arrears of rent after the expiry of one month from the service of the notice under sub-s. (2), he cannot claim the protection under sub-s. (1). It is immaterial whether the tender was made before or after the institution of the suit. In a case falling within sub-s. (3)(a), the tenant must be dealt with under the special
E provisions of sub-s. (3)(a), and he cannot claim any protection from eviction under the general provisions of sub-s. (1).

The landlord is vested with the right to recover possession of the premises if the rent is in arrears for a period of six months or more, "the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to
F in sub-s. (2)", and the other conditions of sub-s. (3)(a) are satisfied. This right cannot be defeated by showing that the tenant was ready and willing to pay the arrears of rent after the default, but before the institution of the suit. In effect, the appellant asks us to rewrite the section and to substitute in it the following condition : "the tenant neglects to make payment thereof until
G the date of the institution of the suit." It is not possible to rewrite the section in the manner suggested by the appellant.

The appellant's case fell precisely within sub-s. (3)(a) and she could not obtain immunity from eviction by tendering the rent before the institution of the suit.

The appeal is dismissed with costs.

H *V.P.S.* *Appeal dismissed.*

(1) [1963] 3 S.C.R. 312, 330-331.