

# Dispute Resolution Hotline

October 10, 2009

## LANDLORD V TENANT - THE DEBATE CONTINUES

There were days when Courts in India had to consistently deal with issues where protection of tenants was of pivotal importance and the need of the hour. At that time, Landlords were a strong lobby to reckon with and the tenants were left at their mercy, exploited and always threatened with eviction. This caused the Legislature to intervene and the enact law to protect the tenants.

Things have changed in the last decade or so, especially with the increase in property rents and the buying power of individuals. While the rentals started hitting dizzy heights, tenants occupying prime properties since years, continued paying mere pennies for occupying these virtual gold mines, under protection from enactments that were brought into force for an altogether different need.

The Courts have always tried to strike a balance looking into reasonableness, hardship caused and market conditions to resolve dispute in this never-ending tussle between landlords and tenants.

In a recent case of *State of Maharashtra ("Tenant/Appellant") v Super Max International Private Limited & Others ("Respondents")*,<sup>1</sup> a three-judge bench of the Supreme Court of India ("Court") upheld the decision of the high court which granted a stay on the decree of ejectment but directed the tenant seeking appeal against the said decree to deposit a hefty amount of rent in court on a monthly basis, which was far in excess of the rent that was being paid by the tenant. In its decision, the Court expressed *inter alia* the need to once again take a look in the judiciary's attitude towards the relationship between the landlord and the tenant and to provide for a more balanced and objective approach.

## BRIEF FACTS

The Appellant-Tenant was occupying the suit premises being an area admeasuring approximately 9,000 sq ft.

comprising of the 6<sup>th</sup> floor in a building situated in the heart of Mumbai city, near CST Railway Station. For occupying an area this huge in prime locality of Mumbai city, the Tenant was paying a monthly rent of Rs. 5,236.58 and an additional Rs. 515.35 per month as water charges, since 1966. The suit premises were used for housing the office of the Registrar Co-Operative Societies, a Governmental Body.

The landlord Respondent had an eviction suit before the Court of Small Causes, Mumbai. In the said suit, a decree of ejectment was passed against the Tenant on June 30, 2003, on the ground of (i) default in payment of taxes and water charges as stipulated under section 13(3)(a) and (ii) reasonable and bona fide need of the landlords for their own use and occupation in terms of Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947<sup>2</sup> ("Bombay Rent Act").

Challenging the said orders of ejectment, the Appellant-Tenant moved the Bombay High Court. After hearing the parties, the Bombay High Court, by an order dated October 14, 2008, stayed the execution of the decree, subject to the condition that the Appellant deposit a sum of Rs. 540,000 every month commencing from the date of decree passed by the trial court. The order clarified that the deposits would be ad-hoc and subject to further orders and directed that the amounts so deposited be invested in a nationalized bank.

The Appellant found the order to be too onerous whilst the Respondents found the court to have been too liberal and contended that the monthly deposits were far less than the current market rate.

This matter was placed before a three judge bench of the Supreme Court on account of a statement being made at the threshold that two prior division bench decisions<sup>3</sup> of the Supreme Court had taken conflicting views.

## CONTENTIONS

The Appellant, *inter alia*, contended as under:

(i) Since the term 'tenant' as defined under the Bombay Rent Act<sup>4</sup> included within its purview a person that remained in possession of the premises after the determination of the lease with or without the assent of the landlord, the Appellant, falling within the term 'tenant' as defined under the Bombay Rent Act was entitled to the privileges under the said act.

(ii) The Appellant was required to only pay standard rent under the provisions of the Bombay Rent Act. The term 'standard rent' for premises rented after September 1, 1940 was the rent at which the premises were first let. The Bombay Rent Act expressly barred any increment in the rent amounts save and except under the circumstances expressly provided therein.

(iii) The Supreme Court has, in its previous judgments<sup>5</sup>, recognized the rights of the heirs of tenant having suffered a decree of eviction, to step into the shoes of the tenant and resist eviction, granting them protection under the Bombay

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Rent Act. The Tenant being subject to such a decree should also be entitled to the protections against increase in rent under the Bombay Rent Act.

(iv) Consequently, the amounts that the High Court directed the appellants to pay, being in excess of the standard rent, was contrary to law and unsustainable.

**JUDGMENT**

- In determining the issue of 'standard rent' as submitted by the Appellants, the Court referred to a three-Judge bench decision of the Supreme Court<sup>6</sup> where it was held that the provisions of the Bombay Rent Act relating to the determination and fixation of standard rent can no longer be considered reasonable and the same needed to be seriously examined by the Court.

- The Court distinguished the decisions referred to by the Appellant with respect to heritability stating that those decisions were binding precedents for the respective issues decided in those cases. Interestingly, the Court noted that the said decisions were rendered during the period between 1976 to 1986, when the Courts were overly protective of the tenant, for that was the apparent thrust of the Rent Act and the need of the hour at that time.

- The Court made reference to other its recent decisions<sup>7</sup> wherein the Supreme Court has noted the shift in the Court's approach in considering the relationship between a landlord and a tenant and emphasized the doctrine of '*temporal reasonableness*' discussed in *Satyawati Sharma*<sup>8</sup> which states that the rationality of legislation that existed at the time of its enactment may lapse with time and therefore become arbitrary and violative of the doctrine of equality, consequently requiring the Courts to strike down such legislation in subsequent litigation.

- The Court stated that in an appeal or a revision, where the stay order is either not granted or is inoperative due to failure on the part of the tenant in complying with the conditions attached to the stay order, the tenant lose the protection of any provisions under the Bombay Rent Act and the only remedy for the tenant in the unlikely event that the appeal/revision is allowed, would be by way of restitution.

- Further, whilst agreeing with their decision in *Atma Ram Properties*,<sup>9</sup> the Court held that in the event a final order is passed against the tenant, the tenant is liable to pay *mesne* profits or compensation for use of the premises at the market rate and not the contractual rate with effect from the date when the decree of ejectment was first passed.

- The Court further stated that in the event such a tenant were to succeed in the appeal/revision and the eviction decree were to be set aside, then in that event *status quo ante* would be restored and the tenant would be entitled to get back all the amounts paid by him in excess of the contractual rent.

- For this reason, the amount fixed by the court over and above the contractual rent should not, ordinarily, be paid to the landlord during the pendency of the appeal/revision and should be paid to either side only upon the final disposal of the matter.

Consequently, the Supreme Court upheld the validity of the interim order passed by the High Court thereby confirming the authority of an appellate court to stay the execution of the decree of eviction and issue direction to pay rent higher than the contractual rent. The Supreme Court however directed the courts to exercise restraint while issuing directions for deposit of rent which should not be excessive, fanciful or punitive. The amount of Rs. 540,000 that was arrived at by the High Court with reference to the Stamp Duty Ready Reckoner was found to be reasonable.

**ANALYSIS**

This judgment clearly empowers the court to require a tenant to deposit amounts which may be higher than the contractual rent pending final disposition of a matter relating to eviction, thus protecting the interest of the landlord to a significant extent. Thus, a tenant can no longer sit on property by paying only contractual rent and is now put to terms.

Further, the judgment reiterates the position of the court regarding the date that a person ceases to be a tenant pursuant to the final determination of an eviction proceeding, removing any ambiguity as to whether such a person would then be entitled to the protection that the various legislations tend to provide to tenants.

Significantly, the Court has provided that where in an appeal/revision, stay of execution of decree has not been granted or a conditional stay order becomes inoperative for failure on the part of a tenant to satisfy the underlying conditions, such tenant would have no protection save and except the remedy of restitution, in the event that the revision is allowed in later proceedings.

In keeping with modern times, the Supreme Court has ensured that legislation is interpreted in a manner fitting with the present times. Even though in the case at hand the Supreme Court has not dealt with the 'reasonableness' of the Maharashtra Rent Control Act, 1999, the observations made therein seem to suggest that the legislation needs to be updated given the current market conditions.

- **Simone Reis, Sahil Kanuga & Shafaq Uraizee-Sapre**

1 2009(11)SCALE794

2 Although the Bombay Rent Act has been replaced by the provisions of the Maharashtra Rent Control Act, 1999, this suit was originally filed in 1986 and is therefore governed by the provisions of the Bombay Rent Act. The crux of the matters discussed and pertaining to the Bombay Rent Act have been retained under the Maharashtra Rent Control Act, 1999.

3 *Atma Ram Properties (P) Limited vs. Federal Motors (P) Limited*, (2005) 1 SCC 705 and *Niyas Ahmad Khan vs. Mahmood Rahmat Ullah Khan* (2008) 7 SC 539. The Supreme Court clarified that there was, in fact, no conflict in the aforementioned decisions.

4 Section 5(11)

5 *Damadilal & Ors. Vs. Parashram & Ors.* (1976) 4 SCC 855; *Gian Devi Anand vs. Jeevan Kumar* (1985) 2 SCC 683

6 Malpe Vishwanath Acharya & Ors. vs State of Maharashtra & Anr. (1998) 2 SCC 1

7 Satyawati Sharma vs. Union of India & Anr (2008) 5 SCC 287; Joginder Pal vs. Naval Kishore Behal (2002) 5 SCC 397

8 Ibid

9 Supra n.3

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