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office of profit under the Government of India within the meaning of Art. 102(1)(a) of the Constitution. As such he was disqualified for being chosen as, and for being, a member of either House of Parliament. It is unnecessary to consider the further question whether he was a holder of an office of profit either under the Government of India or the Government of West Bengal by reason of being an auditor for the Life Insurance Corporation of India or a Director of the West Bengal Financial Corporation.

The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.

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VASUMATIBEN GAURISHANKAR BHATT

v.

NAVAIRAM MANCHHARAM VORA AND ORS.

(P. B. GAJENDRAGADKAR AND K. C. DAS GUPTA, JJ.)

Landlord and Tenant—Tenant in arrears of rent for about two years—Notice served by the landlord—A few days later the Act amended—Suit filed by the landlord for eviction—Pending the hearing of suit all arrears paid by tenant—Whether the tenant can be evicted on the ground of arrears of rent—Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 *(Bom. 57 of* 1947) *s.* 12.

The appellant was a tenant of the respondents occupying one room of a building belonging to them. She was in arrears of rent. The respondents served a notice on her claiming to recover arrears of rent for a period of two years and two months. A few days after the service of this notice the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which governs this case was amended. The respondents thereafter filed a suit for the eviction of the appellant on the ground that they required the premises for *bona fide* personal use and on the ground that the appellant was in arrears of rent for more than 6 months. The suit was resisted by the appellant on several grounds but pending the hearing of the suit and before the decree was passed she deposited the entire rent due from her.

The trial Judge upheld both the contentions of the respondent and decreed the eviction of the appellant. On appeal the District Judge rejected the contention of *bona fide* personal use put forward by the respondent but found that the appellant was in arrears of rent and dismissed the appeal. The revision filed by the present

appellant failed; the present appeal is by way of special leave granted by this Court.

It was contended on behalf of the appellant that the provisions of s. 12(1) and (2) were mandatory and that in construing s. 12(3)(a) it must be borne in mind that the object of the statute and particularly s. 12 was to give protection to the tenant. It was further contended that before s. 12(3)(a) was amended it was open to the tenant to pay the arrears at any time during the pendency of the suit or even during the pendency of the appeal. In order to avoid hardship to the tenant s. 12(3)(a) should be read as requiring the landlord to issue a fresh notice after the amended section came into force. It was also urged that s. 12(3)(a) suggests that the neglect or failure of the tenant to make the payment of arrears must be subsequent to the date on which the amendment came into force. Lastly it was argued that the right given to the tenant to deposit arrears was a vested right and therefore s. 12(3)(a) should not be construed in such a way as to take away this vested right.

Held : (i) S. 12(3)(a) refers to a notice served by the landlord as required by s. 12(2) and in s. 12(2) the legislature has made no amendment when it amended sub-s. (3). The notice served by the appellant in the present case satisfies the requirements of s. 12(2). If the notice has been served as required by s. 12(2) and the tenant is shown to have neglected to comply with the notice until the expiry of one month thereafter s. 12(2) is satisfied and s. 12(3)(a) comes into operation.

(ii) S. 12(3)(a) does not confer any right or vested right on tenant and even if such a right is conferred it would not alter the plain effect of the words of s. 12(3)(a). The plain meaning of s. 12(3)(a) is that if a notice is served on the tenant and he has not made the payment as required within the time specified in s. 12(3)(a) the court is bound to pass a decree of eviction against the tenant.

The appeal is dismissed.

Dayaram Kashiram Shimpi v. *Bansilal Raghunath Marwari*, (1952) 55 Bom. L.R. 30, *Laxminarayan Nandkishore Shravagi* v. *Keshardev Baijnath Narsaria*, (1956) 58 Bom. L.R. 1041 and *Kurban Hussen Sajauddin* v. *Ratikant Nilkant*, A.I.R. 1959 Bom. 401.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 293 of 1963.

Appeal by special leave from the judgment and order dated December 17, 1962 of the Gujarat High Court in Civil Revision Application No. 175 of 1960.

G. B. Pai, O. C. Mathur, J. B. Dadachanji and *Ravinder Narain*, for the appellant.

M. S. K. Sastri and *M. S. Narasimhan*, for respondents Nos. 1 and 2.

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August 14, 1963. The Judgment of the Court was delivered by

GAJENDRAGADKAR J.—This appeal by special leave raises a short question about the construction and effect of s. 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (No. 57 of 1947) (hereinafter called 'the Act'). The appellant has been tenant of one room in a residential building known as Lalbang situated in Badekhan's Chakla in the City of Surat since October 18, 1935. Under the rent note, she is required to pay a monthly rent of Rs. 18. On October 12, 1949, respondents 1 and 2 purchased the said property. It appears that on November 21, 1950, they served a notice on the appellant to vacate the premises let out to her on the ground that she was in arrears of rent from July 1, 1950. On receiving the said notice, the appellant paid a part of the rent, but again fell into arrears, and so, the respondents served a second notice on her on February 7, 1951, claiming arrears from October 1, 1950. The appellant did not vacate the premises, nor did she pay all the arrears due from her. A third notice was accordingly served on her on March 27, 1953, in which the respondents claimed to recover arrears from January 1, 1951, that is to say, arrears for two years and two months. A few days after this notice was served, s. 12(3) of the Act was amended by the Bombay Amending Act No. 61 of 1953, and the amendment came into force on the 31st March, 1954. The respondents then filed the present suit against the appellant on April 12, 1954, in which they asked for a decree for eviction against the appellant on the ground that they wanted the premises let out to the appellant *bona fide* for their personal use, and that the appellant was in arrears for more than six months. This suit was resisted by the appellant on several grounds. Pending the hearing of the suit, the appellant paid by instalments in all Rs. 470 before the date of the decree, so that at the date when the decree was passed, no arrears were due from her.

The learned trial Judge upheld both the pleas made by the respondents and passed a decree for eviction against the appellant. He held that the respondents reasonably and *bona fide* required the property for their personal use and that the appellant was in arrears of rent for more than

six months. This decree was challenged by the appellant by an appeal preferred before the District Court at Surat. The learned District Judge held that the respondents had failed to prove that they needed the premises reasonably and *bona fide* for their personal use, but he accepted their case that the appellant was in arrears of rent for more than six months and that the suit fell within the scope of s. 12(3)(a) of the Act. That is how the decree passed by the trial Court was confirmed in appeal. The appellant then challenged the correctness of this decree by a revisional petition filed before the Gujarat High Court. This petition ultimately failed and the decree passed against her was confirmed. It is against this decision that the appellant has come to this Court: and on her behalf. Mr. Pai has contended that the High Court was in error in holding that the requirements of s. 12(3)(a) as amended justified the passing of the decree against the appellant.

It appears that section 12 of the Act has been amended from time to time. Before the Amending Act No. 61/1953 came into force, the said section read thus:

> "12(1)—A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.
>
> (2) No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the Standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.
>
> (3) No decree for eviction shall be passed in any suit if, at the hearing of the suit, the tenant pays or tenders in Court the standard rent or permitted increases then due together with the costs of the suit."

The explanation to this section dealt with cases where there was a dispute between the landlord and the tenant in regard to the amount of the standard rent. With that explanation

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we are not concerned in the present appeal.

It appears that the Bombay High Court interpreted the words "at the hearing of the suit" in s. 12(3) as including the hearing of the appeal arising from the suit, and so, it was held that under s. 12(3) of the Act, an appeal Court cannot confirm a decree for eviction if before the passing of the order in appeal, the tenant pays or tenders in Court the standard rent or permitted increases then due together with the costs of the suit and also appeal, *vide Dayaram Kashiram Shimpi* v. *Bansilal Raghunath Marwari*(1). After s. 12(3) was amended by the Amending Act 61 of 1953, the words "at the hearing of the suit" were construed by the Bombay High Court to mean that the application which the tenant can make offering to deposit the arrears due from him must be made before the Court of first instance and cannot be reserved to be made in the Court of appeal, *vide Laxminarayan Nandkishore Shravagi* v. *Keshardev Baijnath Narsaria*(2).

There is one more decision of the Bombay High Court to which reference must be made before dealing with the points raised for our decision in the present appeal. In *Kurban Hussen Sajuddin* v. *Ratikant Nilkant* and *Anr.*(3), it was held that the word "may" used in s. 12(3)(a) as amended really meant "must" and that in cases where the conditions of the said provision were satisfied, the Court had to pass a decree for the recovery of possession in favour of the landlord. It is in the light of these decisions that we have to consider the contention of the appellant that under s. 12(3)(a) as amended, it was not open to the Court to pass a decree for ejectment against her in the present proceedings.

On behalf of the appellant Mr. Pai has emphasised the fact that the provisions of s. 12, sub-ss. (1) and (2) are mandatory and there can be no doubt that they imposed severe restrictions on the landlord's right to sue the tenant in ejectment. He, therefore, contends that in construing the effect of s. 12(3)(a), we must bear in mind the fact that the legislature has enacted the present statute and particularly the provisions of s. 12 with a view to protect the interests of the tenant. He further contends that it

(1) (1952) 55 Bom. L.R. 30. (2) (1956) 58 Bom. L.R. 1041.
(3) A.I.R. 1959 Bom. 401.

cannot be disputed that before s. 12(3)(a) was amended, it was open to the tenant to pay the arrears at any time during the pendency of the suit, or even during the pendency of the appeal, and so, when the tenant failed or neglected to pay the arrears due from her immediately after receiving the notice of demand from the landlord, it is easy to imagine that she knew that her failure to pay the arrears of rent immediately on receiving the notice would not lead to her eviction and that she would have the option to deposit the amount as required by s. 12(3) either in the trial Court or in the Court of Appeal. That being so, he suggests that in order to avoid hardship to the tenant, s. 12(3)(a) should be read as requiring the landlord to issue a fresh notice after the amended section came into force. The notice given by the landlord prior to the date of the amendment did not convey to the tenant the knowledge that her failure to comply with it would necessarily lead to her ejectment, and so, the relevant provisions of this beneficent statute should be construed in a liberal way. That, in substance, is the first contention raised by Mr. Pai before us.

We are unable to accept this argument. What s. 12(3)(a) requires is that in cases where there is no dispute between the landlord and the tenant regarding the amount of standard rent or permitted increases, if the landlord is able to show that the tenant is in arrears for a period of six months or more and the said arrears continued in spite of the fact that a notice was served on him before the institution of the suit and no payment was made within a month thereafter, the landlord is entitled to get a decree for ejectment against the tenant. It is true that s. 12(3)(a) refers to a notice, but in terms, it refers to a notice served by the landlord as required by s. 12(2), and in s. 12(2) the legislature has made no amendment when it amended sub-section (3). If we turn to s. 12(2), it would be noticed that the notice given by the respondents to the appellant in the present case satisfies the requirements of the said sub-section. The respondents told the appellant by their notice that arrears were due from her, and there is no doubt that the arrears were not paid up by the appellant until the expiration of one month next after the notice in writing was served on her in that behalf.

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Section 12(2) never required the landlord to state to the tenant what the consequences would be if the tenant neglected to pay the arrears demanded from him/her by the notice. Therefore, if the notice served by the respondents on the appellant prior to the institution of the present suit is in order and it is shown that the arears have not been paid as required, then s. 12(2) has been complied with, and it is on that footing that the case between the parties has to be tried under s. 12(3)(a).

Mr. Pai then contends that s. 12(3)(a) seems to suggest that the neglect or failure of the tenant to make the payment of arrears must be subsequent to the date on which the Amending Act came into force. He relies on the fact that s. 12(3)(a) refers to the case where the tenant "neglects to make payment" of the rent. The section does not say "has neglected to make payment", says Mr. Pai. In our opinion, there is no substance in this argument. The use of the word "neglect" in the present tense has to be construed in the light of the fact that the clause refers to the tenant neglecting to make payment of the rent until the expiration of one month next after receipt of the notice, and that clearly would have made the use of the past tense inappropriate. The position, therefore, is that if notice has been served as required by s. 12(2) and the tenant is shown to have neglected to comply with the notice until the expiration of one month thereafter, s. 12(2) is satisfied and s. 12(3)(a) comes into operation.

Mr. Pai also argued that the right given to the tenant to pay the arrears at the hearing of the suit was a vested right, and so, in construing s. 12(3)(a) we should not adopt the construction which would defeat that vested right. It is not easy to accept the contention that the provisions of s. 12(3)(a) really confer any vested right as such on the tenant. What s. 12(3)(a) provided was that a decree shall not be passed in favour of the landlord in case the tenant pays or tenders in Court the standard rent at the hearing of the suit. This provision cannot *prima facie* be said to confer any right or vested right on the tenant. But even if the tenant had a vested right to pay the money in court at the hearing of the suit, we do not see how that consideration can alter the plain effect of the words used in s. 12(3)(a). The suit was filed after the amended

section came into force, and clearly the amended provision applies to the suit and governs the decision of the dispute between the parties. If that is so, the plain meaning of s. 12(3)(a) is that if a notice is served on the tenant and he has not made the payment as required within the time specified in s. 12(3)(a), the Court is bound to pass a decree for eviction against the tenant. That is the view taken by the Gujarat High Court and we are satisfied that that view clearly gives effect to the provisions of s. 12(3)(a) as amended in 1953. We must accordingly hold that there is no substance in the appeal. The appeal, therefore, fails and is dismissed with costs.

Appeal dismissed

LACHMAN UTAMCHAND KIRPALANI

v.

MEENA *alias* MOTA

(B. P. SINHA, C.J., S. K DAS, K. SUBBA RAO, RAGHUBAR DAYAL AND N. RAJAGOPALA AYYANGAR, JJ.)

Husband and wife—Judicial separation—Desertion without just-cause—Offer to return to matrimonial home must be shown to be bona fide—Petition for judicial separation—Burden of proof—Hindu Marriage Act, 1955 (25 *of* 1955), *s.* 10(1)(*a*).

Where an application is made under s. 10(1)(a) of the Hindu Marriage Act, 1955, for a decree for judicial separation on the ground of desertion, the legal burden is upon the petitioning spouse to establish by convincing evidence beyond any reasonable doubt that the respondent intentionally forsook and abandoned him or her without reasonable cause. The petitioner must also prove that there was desertion throughout the statutory period and there was no *bona fide* attempt on the respondent's part to return to the matrimonial home and that the petitioner did not by his or her action by word or conduct provide a just cause to the other spouse to desist from making any attempt at reconciliation or resuming cohabitation; but where, however, on the facts it is clear that the conduct of the deserted spouse has had no such effect on the mind of the deserting spouse there is no rule of law that desertion terminates by reason of the conduct of the deserted spouse.