

(1980) 05 GUJ CK 0004
In the Gujarat High Court

Abdul Karim Mahammadbhai Khalipha	APPELLANT
Vs	
Suleman Haji Ismailbhai	RESPONDENT

Date of Decision : 01-05-1980

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(3)(a) ,
12(3)(b), 12(3)(b)
Gujarat Education Cess Act, 1962 — Section 12

Citation : (1980) 2 GLR 415

Hon'ble Judges : D.H. Shukla, J

Bench : Single Bench

Judgement

D.H. Shukla, J.—Suleman Haji Ismailbhai, the respondent in the petition before me, is the owner of the suit premises, wherein the defendant, Abdul Karim Mahammadbhai Khalipha, who is the petitioner herein, is a tenant in the two rooms on the first floor of the building. The respondent filed a suit against the petitioner for the recovery of the demised premises on the ground that the petitioner was a tenant in arrears of rent for over six months. The learned Judge of the Court of Small Causes, Baroda, for the reasons stated in his judgment, came to the conclusion that the case before him was covered by Section 12(3)(b) of the Bombay Rent Act and not by Section 12(3)(a) of the same Act and consequently, he dismissed the suit of the respondent so far as the prayer for possession was concerned. With the rest of the order of the learned trial Judge, I am not concerned.

2. Being aggrieved by the order of the learned trial Judge by which the prayer for possession was dismissed, the respondent filed an appeal in the Court of the District Judge at Baroda being Reg. Civil Appeal No. 125/ 1977. The appeal was decided by the learned Joint District Judge, Baroda by his judgment and order dated 17th of April, 1978, whereby he allowed the appeal and passed an ejectment decree against the petitioner herein. The learned Appellate Judge directed the petitioner to deliver the vacant possession of the demised premises on or before 17-10-1978.

3. Being aggrieved by the said decision of the learned Appellate Judge, the petitioner the original tenant-defendant) has filed the present Revision Application.

4. The only dispute with which the learned Appellate Judge was concerned was as to whether the case of the plaintiff was governed by Section 12(3)(a) of the Bombay Rent Act or not. The learned trial Judge had taken into account the prayer clause of the plaint wherein the respondent-plaintiff had stated a sum of Rs. 461/-being the rent due upto 31-5-1972, inclusive of Rs. 9/-being the amount payable as the education cess. He further observed that the petitioner had to pay education case as a part of his liability to pay the rent. While disposing of issues Nos. 1, 2 and 3, learned trial Judge took the view that plaintiff had claimed education cess as per paragraph 2 of the plaint. The liability to pay education cess by the tenant is a part of the rent and in that case a part of the rent must be considered as payable annually. The learned trial Judge, therefore, held that the case of the respondent before him would be governed by Section 12(3)(b) of the Bombay Rent Act and not by Section 12(3)(a) thereof. The learned Appellate Judge negatived this conclusion of the learned trial Judge. The argument which was accepted by the learned Appellate Judge, briefly stated is as under: "The agreed rent between the parties is Rs. 14/-per month, when the dispute arose. The tenant was in arrears of rent for a period of more than six months, and, therefore, the landlord was obliged to serve the defendant-tenant with a notice demanding the rent and terminating the tenancy. The said notice is at Exh. 27." It is an undisputed position that the tenant had settled the account upto 3-5-72 by writing Ex. 25 and thereafter he further settled the accounts from 1-1-67 to 31-5-72 by a writing which is at Exh. 26. As per the document (Exh. 26), the tenant had to pay the amount of Rs. 459/-by way of arrears of rent till the end of the year 1972. Thereafter also the tenant did not pay the rent and again he was in arrears from 1-1-73 till 31-7-73 and was further liable to pay a sum of Rs. 98/-towards the arrears of rent. By the notice (Exh. 27), the landlord claimed Rs. 557/-from the tenant by way of arrears of rent. The notice was received by the tenant on 2-8-73, the acknowledgement slip is at Exh. 29, dated 2-8-73. The notice was neither replied nor complied with by the tenant nor did he file an application u/s 11(3) of the Bombay Rent Act for the fixation of the standard rent. The learned Appellate Judge held that the learned trial Judge had erred in interpreting paragraph 2 of the plaint. It is true in paragraph 2 of the plaint, the plaintiff-landlord mentioned about the education cess of Rs. 9/-as having been included in Rs. 461/-upto 31-5-72, but the learned trial Judge ignored a part payment of Rs. 100/-made by the tenant on 8-11-72. From the conduct of the landlord-plaintiff, according to the learned Appellate Judge, it must be interpreted that he had appropriated from the sum of Rs. 100/-paid to him the amount of Rs. 9/-being a sum for education cess. It was, therefore, that the learned Appellate Judge observed that the plaintiff-landlord did not make any demand for the recovery of the education cess in Exh. 27 nor in the plaint nor in his deposition. There was therefore no controversy so far as the question of

standard rent was concerned, nor was there any dispute that such standard rent was in arrears for more than six months and that the tenant-defendant had neglected to pay that amount until the expiration of the period of one month after the statutory notice was served upon him. Mr. B.D. Desai did not controvert this position. The sole question which remained for decision was as to whether the rent payable by the tenant could be said to be payable by the month if it was the tenant's liability to pay the education cess. The learned Appellate Judge has pointed out that the learned trial Judge committed an error in not taking into consideration the amended provisions of Section 12 of the Gujarat Education Cess Act, 1962. That error was probably committed because the attention of the learned trial Judge was not drawn to the same amended provision. By virtue of the amendment, Section 12(1)(a)(i) of the Act was amended, the effect of it was that the education cess was not attracted, if the annual letting value of the premises let for residential purpose was less than Rs. 300/-. The amendment came into effect from 1-4-70. In other words, if the annual letting value of such premises did not exceed Rs. 300/-there was no liability for the payment of education cess in respect of such premises. As observed earlier, since the landlord had already appropriated the payment by the tenant of Rs. 100/- towards his claim for the education cess, there was no liability then left under the Education Cess Act for the tenant to discharge and hence at the time when the suit was filed, there was no question of liability to pay education cess on the part of the tenant. The term "rent" must be interpreted as the rent payable at the time when the suit is filed. The rent payable by the petitioner-tenant was payable by the month, excepting so far as the liability if any to pay the education cess. Since, however, there was no liability to pay education cess attracted so far as the demised premises was concerned, that question was out of place so far as the rent recoverable by the landlord, that is to say the present respondent was concerned, at the time of the filing of the suit. The learned Appellate Judge, under these circumstances, observed. "If the tenant is not liable to pay education cess, then it is very clear from the evidence that the entire rent of Rs. 14/-was payable by the month and the finding of the learned trial Judge that the first condition, as aforesaid, was not established, is absolutely incorrect and erroneous." In the view that he took, the learned Appellate Judge held that the case of the plaintiff-landlord was covered by Section 12(2)(a) of the Bombay Rent and not by Section 12(3)(b) thereof, and that there was ample evidence on record that the tenant-defendant had forfeited the protection of the provisions of the Bombay Rent Act to retain possession of the demised Mr. B.D. Desai, the learned Advocate for the petitioner, took me through the entire record of the case. However, he could make no dent in the reasoning of the learned Appellate Judge. It appears to me that the conclusion reached by the learned Appellate Judge is unassailable. The Revision Application is therefore dismissed and the order of the learned Appellate Judge is hereby confirmed.

5. Mr. B.D. Desai orally submits before me that the petitioner-tenant may be given time to hand over the peaceful vacant possession of the demised premises

to the respondent-landlord, since otherwise he and his family would be thrown on the streets. The petitioner-tenant, it seems, has over a long period made default in payment of rent to the landlord. Still, however, considering the hardship which would fall upon the members of his family, if he is not given time to vacate, I accede to the request of Mr. B.D. Desai and grant time to the petitioner-tenant till 31st of May, 1982 to hand over the peaceful vacant possession of the demised premises to the landlord subject to the petitioner-tenant paying all the arrears of rent upto-date on or before 30th June, 1980 and on his furnishing the usual undertaking to abide by the direction to hand over the vacant possession of the demised premises to the landlord on or before the prescribed time and further to regularly pay the amount of mesne profits till the time he hands over the vacant possession of the demised premises to the respondent-landlord, and it is further directed that such an undertaking shall be furnished not only by the petitioner-tenant but by all the adult members of his family. The undertaking aforesaid shall be given on or before 30th June, 1980.

In the result, the Revision Application is dismissed with costs.