

(1995) 02 GUJ CK 0012
In the Gujarat High Court

Case No : Revision Application No. 1099 of 1981

Ashokkumar Manilal

APPELLANT

Vs

Gandhi Vrajilal Gabrrulal Dessa

RESPONDENT

Date of Decision : 08-02-1995

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 12(2), 29(2), 4, 4(1)

Citation : AIR 1995 Guj 161 : (1995) 1 GLR 767

Hon'ble Judges : M.S. Parikh, J

Bench : Single Bench

Advocate : A.R. Majmudar, for the Appellant; D.M. Shah, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Parikh, J.—Petitioner herein is the original defendant and the tenant of the suit premises. The respondent herein is the original plaintiff and the landlord of the suit premises. They are referred to in this Judgment as the plaintiff and the defendant.

2. The plaintiff filed Regular Civil Suit No. 65 of 1977 in the Court of Civil Judge (SD) at Decsa for obtaining possession of the suit premises consisting of a shop situated at New Deesa on the ground that the defendant was a tenant in arrears of rent for a period of more than 6 months. It was the plaintiff's case that rent of Rs. 50 per month plus electric charges of Rs. 5 per month was payable by the defendant to the plaintiff and it fell due from Ashadh Sud 1 of S. Y. 2029. A total sum of Rs. 2450 by way of rent and Rs. 245 by way of electric charges. In all Rs. 2695 remained due and payable by the defendant to the plaintiff resulting into the plaintiff serving a demand notice dated 23rd May, 1977. The defendant did not tender the rent and therefore the plaintiff had to file the suit as aforesaid. The defence of the defendant was that the plaintiff was recovering rent at Rs. 60 per month from 1-8-1973 and from 1-12-1975 the plaintiff started recovering rent at the rate of Rs. 70 per month. According to him he had paid up the rent

and electricity burning charges and nothing was due from him. He contended that the rent could have been recovered according to Gregorian calendar and not Samvat calendar. He gave reply dated 4th June 1977 to the plaintiffs notice. The Id. Trial Judge upon hearing of the matter came to the conclusion that the plaintiff was collecting rent as alleged by the defendant holding that notice was neither legal nor valid and that plaintiff was not entitled to get the rent as claimed in the suit. The Id. Trial Judge dismissed the suit by judgment and decree dated 5th May, 1979 with no order as to costs. The plaintiff carried the matter in appeal in Regular Civil Appeal No. 30 of 1979 in the Court of Id. District Judge, Banaskantha at Palanpur who by his judgment and decree dated 26th June 1981 allowed the appeal and set aside the Trial Court's judgment and decree dismissing the suit and directed the defendant to vacate the suit premises and pay the arrears of rent in the sum of Rs. 2640 besides mesne profits at the rate of Rs. 50 per month plus Rs. 5 per month being electricity charges from the date of the suit till realisation. It is this last mentioned decision, which is the subject matter of this Revision Application by virtue of Section 29(2) of the Bombay Rents, Hotel And Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Rent Act").

3. Mr. A. R. Majmudar, Id. Advocate appearing on behalf of the defendant (petitioner herein) has, after going through the evidence, fairly submitted that the rent fell due from Samvat Year 2029 Ashad Sudh. He, however, canvassed the following points of law :

I. According to the submission of Mr. Majmudar, the suit notice is not valid u/s 12(2) of the Rent Act. In the first place, he relied upon the decision of this Court in the case of Bapulal Kalidas (Since deceased by his heirs) and Others Vs. Bai Kashiben, . There can be no dispute with regard to the proposition that a vague notice requiring the tenant to pay all the arrears of rent and permitted increases, without indicating the actual amount due on that account or the point of time from which the rent and permitted increases at a specified rate are, according to the landlord, in arrears, would afford no real opportunity to the tenant to avail of the facility or benefit of making payment of the arrears due by him before he issued in ejectment. There can also be no doubt with regard to the proposition that the demand of standard rent and permitted increases in a suit u/s 12(2) must be a precise demand, i.e. to say, one that sets out with certainty what according to the landlord is due by the tenant on that account that is to say, the demand must be for a sum specified or it must be made in such a manner that the amount actually claimed becomes definitely ascertainable by reference to some other intrinsic evidence in the notice itself, such as the point of time from which arrears at a specified rate are due or some such or other indication. In Bapulal's case (supra), the factual position was such as would fall in the aforesaid ratio settled by this Court in that case. In that case notice indicated monthly rent but it did not set out the date from which it was due or the amount that was due. The requisition in the notice was merely to pay up all the arrears of rent. In the present case, the suit notice indicates the date from which the

rent fell due. It has been indicated that the rent fell due from S. Y. 2029 Ashad Sudi although in the latter portion of the notice the calculation of outstanding amount of rent is worked out from S. Y. 2029 to Jeth Sud. There is an error committed either in the typing or in the setting out of the working and this is apparent on the face of the notice. However, the working is for the rent of 48 months, that is to say 4 years and it could not be shown that the rent was not due for that period even if the amount was worked out from S. Y. 2029 Ashad Sudi. The defendant has also been given option in the matter of termination of tenancy and sufficient time has been given to the defendant since admittedly the suit has been filed much after the expiry of one month from the date of receipt of the notice. The counterfoil of the rent receipt given by the defendant to the plaintiff is placed on record, and upon appreciation of evidence the appellate court came to the conclusion, and in my opinion, rightly that the rent fell due from S.Y. 2029 Ashad Sudi. It is, thus, clear that the suit notice sets out with certainty the particulars about the rent due and it was never the defence of the defendant that he was misled by the error in the suit notice as stated above. The defence of the defendant was that he had paid up all the rent that fell due and that defence was not accepted upon appreciation of evidence by the appellate court. The demand in the notice has been made in such a manner that the amount actually claimed would be definitely ascertainable so that the defendant could have made the tender of rent demanded. It is in this connection that Mr. D. M. Shah, Id. Advocate, appearing for the plaintiff has made reference to a decision of this Court in the case of Bachubhai Ismailbhai Vs. Ismail Haji Ibrahimbhai Malek, . In that case, the rate of rent was set out in the notice. The total amount of arrears was stated to be Rs. 1500 and the date upto which the rent fell due was also stated in the notice. The contention was that the actual period for which the rent was due was not mentioned in the notice and that the plaintiff did not take care to mention the date from which the tenant was in arrears. Under such circumstances, this Court (M. R. Calla, J.) held that the notice could not be said to be vague. It is settled principle of law that a notice in a rent case is to be construed liberally. Reference in this connection may be made to a decision of the Bombay High Court in the case of Lalshankar Mulji Joshi Vs. Kantilal Mohanlal Parikh and Another, , where a Id. single Judge of the Bomaby High Court was required to deal with a similar situation as has arisen for consideration by this Court. Following an unreported decision of the Hon''ble Supreme Court in Raghunath Ravji Dandekar v. Anant Narayan Apte, (1966) Civil Appeal No. 387 of 1964, decided on April 5, 1966 (Supreme Court), it has been held that a liberal construction should be put upon a notice to quit in order that it should not be defeated by inaccuracies either in the description of the premises or the name of the tenant or the date of the expiry of the notice and the sufficiency of the notice should be worked out bearing in mind that the notice issued is not to a stranger but to a tenant presumably conversant with all the facts and circumstances and the mistakes. Following observations need be excerpted :

"The Supreme Court in *Raghunath Ravji Dandekar v. Anant Narayan Apte*, while considering the validity of a notice, which demanded Rs. 7,000, when actually, according to the Courts below only Rs. 6900, were due, observed that they were not able to understand how the notice to quit under the Transfer of Property Act will be bad because of a mistake or oversight in demanding more than was due u/s 12(2) of the Rent Act. Their Lordships held that all that Section 12(2) of the Rent Act required is the notice by the lessor for payment of arrears of rent. Their Lordships further observed that it was true that such a notice shall contain the figure of the amount due as arrears of rent, but according to their Lordships, if there was a mistake in the amount specified in the notice, that did not, in their opinion, make the notice u/s 12(2) bad or because of that mistake the notice to quit under the Transfer of Property Act bad. It appears to me that simply because by mistake or oversight the landlord had demanded the rent for the month for which it was not due, that would certainly not make the notice invalid. The view taken by the learned Assistant Judge is therefore not correct."

4. In my opinion, so far as the suit notice | is concerned, both on the ratio set out by this Court as well as pursuant to the observations brought down from the decision of the Apex Court by the Bombay High Court, the suit notice cannot be held to be vague or not in accordance with the provisions contained in Section 12(2) of the Rent Act.

5. (Omitted -- Ed.)

II. The second point submitted for consideration by this Court by Mr. A. R. Majmudar is that the Rent Court would not have jurisdiction to hear the suit as the suit premises belongs to a local authority, namely the local Municipality. On this submission, he placed reliance upon the provisions contained in Section 4 of the Rent Act which contain the exemptions from the special jurisdiction created under the Rent Act. Section 4(1) reads as under :

"4(1) "This Act shall apply to any premises belonging to the Government or local authority or apply as against the Government to any tenancy or other like relationship created by grant from the Government in respect of premises taken on lease or requisitioned by the Government, but it shall apply in respect of premises let to the Government or a local authority."

Mr. Majmudar made a reference to an exception created from the exemption set out in the aforesaid provision by the Amending Act of 1953. Accordingly Sub-section 4(a) & (b) introduced by the said Amending Act reads as under :

(4) "(a) The expression "premises belonging to the Government or a local authority" in Sub-section (1) shall, notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a court, not include a building erected on any land held by any person from the Government or a local authority under an agreement, lease or other grant, although having regard to the provisions of such agreement, lease or grant the building so erected may belong or continue to belong to the Government or the local authority, as the

case may be and

"(b) Notwithstanding anything contained in Section 15 such person shall be entitled to create a tenancy in respect of such building or a part thereof (whether before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959 (Bom. Order III of 1959))."

6. Mr. Majmudar, then placed reliance upon three decisions of the Hon"ble Supreme Court, in the cases of (1) Kanji Manji Vs. The Trustees of The Port of Bombay, : (2) Maneklal and Sons Vs. Trustees of Port of Bombay and Others, : and (3) Nagji Vallabhji and Company Vs. Meghji Vijpar and Company and Another, . In the first decision, the case arose from a suit tried in the Bombay City Civil Court which obviously was not the Rent Court. The defendant raised a plea of jurisdiction alleging that the suit had to be filed in the Rent Court by virtue of the exception carved out in respect of the exemption noted above. The material was placed on record for the purpose of adjudicating the facts regarding jurisdiction of the court. Upon consideration of the terms of lease granted by Municipality which were placed on record, it was held that the suit as laid for vacant possession of the site in the city Civil Court was competent. The following observations from Para 15 of the citation may be reproduced;

"Where under a lease of land with buildings on it, granted by the Bombay Port Trust Authorities, the lessee is entitled to remove the buildings on the site within one month after eviction, the circumstance that the lessee cannot evict his subtenants on account of the protection granted to them under the Rent Control Act, so as to remove the buildings in exercise of the right conferred on him, is unfortunate but does not serve to entitle him to defeat the rights of the Port Trust Authorities. They are only claiming vacant possession of the site, and under the agreement, if the leasee does not remove the building within one month, then they would be entitled to take possession of the land with the buildings, whatever might be the rights of the subtenants."

7. In Maneklal & Sons"case AIR 1985 SC 832 (second decision), the Trustees of Port of Bombay being the owners of the property in question leased a plot of land to one Mustafa Husein for the purpose of erecting a godown. The said Mustafa Husein being the lessee erected such godown and granted lease thereof to the petitioners Maneklal and Sons. The Trustees of the Port of Bombay filed suit for eviction after terminating the tenancy of the head tenant and obtained a decree for possession on admission against the heirs of Mustafa Husein. In execution the petitioner obstructed and in the application for removal of obstruction the petitioners contended that they were the lessees of Mustafa Husein and therefore they were entitled to the protection under the Rent Act, Thus, the question of jurisdiction was quite live before the first Court which heard the objection upon the facts which were set out before the first court. The question was therefore whether the petitioners were entitled to the protection u/s 4 Sub-section 4(1)(a) of the Rent Act. On facts it was found that there was no evidence adduced before the Trial Court or throughout as to whether a building lease was granted by the

trustees, Port of Bombay to the head tenant. Referring to the first mentioned decision, it was held that the protection of Rent Act was not available to the first tenant inasmuch as it was a monthly tenancy granted by the local authority and not a building lease and therefore the exception carved out in the exemption was not applicable. In *Nagji Vallabhji and Company Vs. Meghji Vijpar and Company and Another*, the suit was filed in the Bombay City Civil Court to recover the possession of the premises let out to the defendants who in their written statement raised a contention that they were not liable to be evicted as they were entitled to protection under the provisions of the Rent Act. The Bombay City Civil Court decreed the suit. On appeal, the Id. single Judge of the Bombay High Court remanded the matter for recording findings on 2 questions : (1) who were the lessees of the defendants whose monthly tenancy commenced in the year 1957 and (2) whether that tenancy was legally and validly terminated. Upon the findings having been recorded the appeal came up for hearing before the Id. single Judge of the Bombay High Court who held that the notice was valid and that the provisions of the Rent Act did not apply to the premises in question. It was contended before the Apex Court that although the building in which the suit premises are located belonged to the Bombay Port Trust, a local authority, the suit premises were excluded from the scope of exemption u/s 4(1) of the Rent Act and that a sublessee would be entitled to the protection by virtue of the exception created by Section 4(4)(a) inasmuch as the property was leased out to the lessee under a building lease. This argument was not accepted by the Supreme Court and it was held that the premises in question were not entitled to the benefit of the provisions of the Rent Act.

8. It can be seen from all the aforesaid decisions of the Hon''ble Supreme Court that there was a dispute of jurisdiction raised before the lower Court and facts concerning such dispute were brought on record. It can also be seen that the question of jurisdiction as is raisable from the aforesaid provisions of Section 4 of the Rent Act, in my opinion, would necessarily be a mixed question of fact and law. In the present case, the plaintiff went before the Trial Court with a positive case that he had let out portion of his shop to the defendant and the defendant did not raise any dispute of jurisdiction. He did not come out with the case that either the land on which the shop is situate or the shop itself belongs ot the local authority. In fact, Mr. D. M. Shah, Id. Advocate for the defendant has submitted that the shop in the form of cabin was constructed by the plaintiff himself. As a matter of fact, in his evidence Exh. 44 the defendant stated at the outset that he had taken on lease the plaintiff's shop in the year 1972. Thus, on the facts of this case, an entirely a fresh question of jurisdiction, which, in my opinion, is essentially a mixed question of fact and law cannot be permitted to be raised in this Revision Application u/s 29(2) of the Rent Act. The question raised by Mr. Majmudar cannot be said to be a question of law simpliciter. In that view of the matter, this question is not entertainable.

9. It is not in dispute that the decree for eviction has been passed by the Appellate Court noticing gross irregularity in depositing the arrears of rent and

mesne profits displayed by the defendants all throughout. This is further evident from the affidavit which has been filed by the plaintiff and not resisted by the defendant in these proceedings. The particulars of the deposits set out in this affidavit clearly go to indicate that the defendant has not regularly deposited the arrears of rent and mesne profits. In fact, no extension has been sought on this question.

10. The result is that the petitioner cannot succeed in this revision application.

11. (Omitted Ed.)

12. The defendant is granted time upto 28th February, 2000, A. D. on condition that the defendant files usual undertaking in this Court within a period of 6 weeks from today and on condition that he abides by the terms and conditions of such undertaking.

13. Subject to this direction. Rule is discharged with no order as to costs. It is made clear that by praying for time the right of the petitioner to approach the higher forum shall not be treated as having been waived.