

(1994) 05 GUJ CK 0007
In the Gujarat High Court

Bai Sakarbai Devraj

APPELLANT

Vs

Ibrahim Abdul Ganibhai Pankhida

RESPONDENT

Date of Decision : 06-05-1994

Acts Referred:

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

Citation : (1994) 2 GLR 1091

Hon'ble Judges : B.N. Kirpal, C.J;S.D. Dave, J

Bench : Division Bench

Judgement

S.D. Dave, J.—Amidst rival contentions and elaborate submissions, we find ourselves in a field which appears to be circumscribed. We perceive, we are in the arena of Interpretation of Statutes, and the question referred to us seems to have been decided by the Apex Court. The controversy is concluded, leaving nothing which can be recognised as Res Integra. The question to be answered by us is:

Whether the amendment brought in Section 12(3)(b) of the Bombay Rents Act, 1947 (Act LVII of 1947) by the Gujarat Act No. VII of 1985, deleting or omitting word "regularly" can be said to be retrospective or retroactive in operation? Or the same is prospective only?

2. The compactus of the Supreme Court Pronouncements, to which we propose to advert in course of sequence, will guide us to opine that the provisions contained in the Amending Act, including the deletion or omission of word "regularly" are only prospective and not retrospective or retroactive in operation.

3. A brief note of the Legislative History of the provisions contained u/s 12 of the Bombay Rents Act, 1947 would serve a useful purpose. Section 12 of the Bombay Rents Act, 1947 prior to its amendment by Bombay Act No. 61 of 1953 did not contain the two sub-clauses in Sub-section (3) of Section 12. Section 12(3) as it then stood would read as follows:

No decree for eviction shall be passed in any such suit, if, at the hearing of the suit, the tenant pays or tenders in Court the standard rent and permitted increases then due together with the costs of the suit.

4. Thereafter, Section 12 of the Act of 1947 came to be amended by the Bombay Act No. 61 of 1953. The amended Sections 12(3)(a) & 12(3)(b) and Sub-section (4) of Section 12 may be reproduced as under:

12(3)(a). 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 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-section (2), the Court may pass a decree for eviction in any such suit for recovery of possession.

(b) In any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before other date the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court.

(4) Pending the disposal of any such suit, the Court may out of any amount paid or tendered by the tenant pay to landlord such amount towards payment of rent or permitted increases due to him as the Court thinks fit.

5. Once again by the Amending Act No. 7 of 1985 Section 12(3)(b) has been amended. It would read as under:

12(3)(b) In any other case, no decree for eviction shall be passed in any such suit, if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter:

(i) continues to pay or tender in Court such rent and permitted increases till the suit is finally decided; and

(ii) pays costs of the suit as directed by the Court.

6. The statement of objects and reasons for bringing the Amending Act No. 7 of 1985 on the Statute Book would make a reference to two Supreme Court decisions, firstly in Ganpat Ladha v. Sasikant Visnu Sinde, (1978) XIX GLR 502 and secondly in Mranalini v. Bapalal Mohanlal (1978) 21 GLR 1090 and would further say that the hardship caused to the tenant on account of aforesaid decision of the Supreme Court could be removed if a tenant is permitted to pay or tender in Court the rent and permitted increased according to the directions of the Court. The objects and reasons therefore of the Amending Act No. 7 of 1985 would go to show that the Amendment under the Amending Act No. 7 of 1985 in Section 12(3)(b) of Bombay Rents Act, 1947 has been brought in with a view of

removal of the hardship caused to the tenant on account of aforesaid decisions.

7. The question appears to have arisen for the consideration of this Court for the first time in *Malganbhai Rasulbhai v. Pushpavadan Manilal Desai & Ors.* 1986 (27) GLR 1024. The question posed for the consideration and decision of the learned single Judge therein was as to whether the above said amendment brought in Section 12(3)(b) of the Bombay Rents Act, 1947 which omits or takes away the word "regularly" can be said to be retrospective in operation or would it be only prospective. The learned single Judge was of the opinion that the amendment is retrospective. The main reason assigned by the learned single Judge appears to be that the amendment forms part of the procedural law only. This decision rendered by the learned single Judge in year 1986 came to be followed in other pronouncements of this Court. The consistent view taken by different pronouncements rendered by the learned single Judges of this Court would take the view that the amendment is retrospective in operation. A recent reported decision in *Fatmabai Ismail & Anr. v. Mayabai Hirji* 1993 (2) XXXIV (2) GLR 1192 has taken a similar view. Indeed this decision places reliance upon the earlier decision in case of *Malganbhai* (supra). But in Civil Revision Application No. 1707 of 1979 decided on 29th October, 1991 the learned single Judge of this High Court placing reliance upon two Supreme Court decisions has taken the view that the above said amendment cannot be said to be retrospective in operation. The view taken by the learned single Judge based upon two Supreme Court decisions is that the amendment would be prospective only in nature. Because of the said two divergent views expressed by this Court it was felt by more than one learned single Judge hearing some Civil Revision Applications, in which substantially same or the same question was involved, that, looking to the divergent views expressed by some decisions on one hand and the other one on the other hand, a reference to the Bench appears to be necessitous. It is in view of this background that these matters have been referred to us for answering the question as referred to above.

8. The Learned Counsel Mr. Mehul Shah representing the cause of the tenants in these matters has urged that, looking to the provisions of the unamended Act and further looking to the provisions contained in Gujarat Act No. 7 of 1985, it is clear that the amended provisions are retrospective in operation. According to the Learned Counsel the amended provisions are mere curative or explanatory in nature and, therefore, they must be construed as retrospective in operation. Mr. Shah the Learned Counsel would also further submit that the Bombay Rents Act, 1947, can be said to be a beneficial legislation and that, a further benefit is being sought to be accorded to the tenant by the Amending Act No. 7 of 1985 and that, therefore, the controversy if any requires to be resolved in favour of the tenants. Mr. Mehul Shah the Learned Counsel would further urge that the provisions contained u/s 12(3)(b) of the Bombay Rents Act, 1947 as they stood before the amendment were not conferring any rights whatsoever on the landlords. Even if they are construed as conferring some rights then also such rights can be regarded as procedural rights only, and can never be termed as the substantive

rights. Arguing in the same line, the Learned Counsel would further urge that even if these alleged rights are to be construed as substantive in nature, then also, unless some benefits are shown to have been accrued to the landlords, finally and conclusively the amendment can be given a retrospective effect. Supporting the cause of the tenants Miss Bela Yagnik the Learned Counsel would, in addition, submit that the amendment in question is merely clarificatory in nature and that even before the amendment no rights in favour of landlords ever existed and that what the unamended provisions had spoken of was in respect of some procedural formalities to be performed by the tenant in respect of the payment of the rent. The Learned Counsel, therefore, would submit that we shall have to construe the amended provisions only as retrospective in operation. Any how the Learned Counsel Mr. G.D. Bhatt who would represent the cause of the landlords would urge that, in fact, under the unamended provisions of Section 12(3)(b) of the Bombay Rents Act, 1947 also the landlords had certain rights in as much as, if a tenant failed to pay the rent as per the requirements of Section 12(3)(b) of the Bombay Rents Act, 1947, the landlord have a right of a decree of eviction against the defendant-tenant. Mr. S.N. Shelat, the Learned Counsel who also supports the cause of the landlords has buttressed the submissions made y Mr. Bhatt by urging that, ultimately the Courts are required to see and enforce the rights of the parties as they stood on the date of the filing of the suit and not the date on which there is the ultimate decision in respect of a dispute which was initiated some years back.

9. In support of their respective contention the reliance has been placed on numerous authorities with a view to convince us that what all the Learned Counsels are urging requires to be accepted. We have made it clear earlier that, in our opinion the controversy stands resolved and that too in view of certain Supreme Court pronouncements. Viewing the matter from this angle we do not find it necessary to refer to the numerous authorities cited at the bar before us with a view to canvass the rival propositions. It is indeed true that in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha*, , it has been said as under:

...A section may be prospective in some parts and retrospective in other parts. While it is the ordinary rule that substantive rights should not be held to be taken away except by express provision or clear implication, many Acts though prospective in form, have been given retrospective operation, if the intention of the legislature is apparent. This is more so, when Acts are passed to protect the public against some evil or abuse.

10. In *Sree Bank Ltd. Vs. Sarkar Dutt Roy and Co.*, , while examining the question of Interpretation of Statutes and retrospective operation of enactments and rules of construction. Supreme Court has said that when a Statute is passed with the object of protecting the public against some evil or, abuse, it would be available to operate retrospectively even if by such operation it will deprive some person or persons of vested right. Heavy reliance came to be placed upon these

observations of the Supreme Court by the Learned Counsels representing the cause of the tenants by urging that, looking to the benevolent object of the Rent Legislation, namely, protecting wide section of the public - namely the tenants - from some evil or abuse to be perpetuated by the landlords, we would take a view that the amended provisions would operate retrospectively. The Learned Counsels retrospectively. The Learned Counsels representing the cause of the landlords on the otherhand would draw our attention to the say of the Supreme Court in *Rafiquennessa Vs. Lal Bahadur Chetri (Dead) through his Representatives and Others*, , to the effect that where vested rights are affected by any statutory provision, the said provision should normally be construed to be prospective in operation and not retrospective. It is clear to us that this pronouncement of the Supreme Court is being heavily relied upon before us with a view to urge that the unamended provisions of Section 12(3)(b) of the Bombay Rents Act, 1947 would vest valuable rights in favour of the landlords in as much as in case of a failure to pay or deposit the rent regularly by the tenants, the landlords would be entitled to a decree of eviction and that the amended provision takes out the said right. In *Keshavlal Jethalal Shah v. Mohanlal Bhagwandas & Anr.* (1968) 9 GLR 868 , even in case of a procedural amendment, the Supreme Court has refused to accord retrospective operation on the same. The question before the Supreme Court was in respect of the provisions contained u/s 29(2) of the Bombay Rents Act, 1949, vis-a-vis the provisions contained u/s 115 of the Code of Civil Procedure. Section 29(2) of the Bombay Rents Act, 1947 amended subsequently and though was touching the procedure, was not said to have been given retrospective effect. Note also requires to be taken of the principle laid down by the Supreme Court in *Lakshmi Narayan Guin and Others Vs. Niranjana Modak*, , wherein it is stated that a change in law pending appeal is to be taken into account, as a subsequent event demonstrating a change in law.

11. The say of the Supreme Court in *Mithilesh Kumar and Another Vs. Prem Behari Khare*, , has been pressed in service with a very great vehemence by the Learned Counsels representing the cause of the tenants. What all the Supreme Court has said can be made clear by making an extract. The extract would be as under:

...But laws made justly and for the benefit of individuals and the community as a whole may relate to a time antecedent to their commencement. The presumption against retrospectivity may in such cases be rebutted by necessary implications from the language employed in the statute. It cannot be said to be an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed. The question is whether on a proper construction the legislature may be said to have so expressed its intention.

12. In *Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others*, , the Supreme Court has permitted a Court of Law even to depart from a normal rule that plain words should be interpreted according to their plain meaning to achieve the

purpose of promoting the object and the purpose of an enactment.

13. As noticed above, the objects and reasons appended to the Amendment Act No. 7 of 1985 have made a reference to the Supreme Court pronouncement in *Ganpat Ladha v. Sashikant Vishnu Shinde* (1978) 21 GLR 502. This pronouncement of the Supreme Court would say that Section 12(3)(b) of the Bombay Rents Act, 1947 does not create any discretionary jurisdiction on Court and that the conditions mentioned in the said section must be strictly observed for seeking its benefits. The other decision referred to in the object clause is again a Supreme Court decision in *Mranalini B. Shah & Am. v. Bapalal Mohanlal Shah* (1978) 21 GLR 1090, which says that the expression "regularly" is mandatory and not "directory" and that the payments to be monthly must be paid "regularly" and that the payments made at interval of 2, 3 or 4 months cannot be considered to be regularly. It is also pointed out that there is no discretion vested in the Court not to pass a decree in ejectment if the provisions of Section 12(3)(b) are not complied with. These are the two decisions which had persuaded the Legislature to intervene and to delete the expression "regularly". Heavy reliance has been placed on these two decisions by the Learned Counsels representing the cause of the landlords to urge before us that any payment which cannot be said to be "regularly" within the expression "regularly" would not save the defendant-tenant from facing a decree of eviction. In *Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai* (1964) 5 GLR 55 the Supreme Court has stated that to bring his claim within Section 12(3)(b) of the Act of 1947 the tenant should fulfil his obligations.

14. We would have drawn some inspiration from the above said authorities, cited at the bar by the Learned Counsels for the purpose of supporting their rival contentions. Any how, we feel the question is conclusively decided by certain decisions of the Apex Court. In view of this we do not find it necessary to examine the above said case law with a view to elucidate as to whether a particular contention raised by the Counsel representing the cause either of the landlord or the tenant appears to be correct or derives some basic support.

15. The dissenting view expressed by the learned single Judge (Y.B. Bhatt, J.) in Civil Revision Application No. 1707 of 1979 decided on 29th October, 1991 appears to have been based upon the two Supreme Court decisions referred to in para-13.1 therein, namely, *Arjun Khiamal Makhijani Vs. Jamnadas C. Tuliani and Others*, and *Raju Kakara Shetty Vs. Ramesh Prataprao Shirole and Another*, . Incidentally it may be noticed that this decision has become final and conclusive as the SLP (Civil) No. 1809 of 1992 taken out against the said decision came to be dismissed by the Supreme Court vide order dated 19th February, 1992. The learned single Judge as noticed above has preferred to place reliance upon the Supreme Court pronouncement in *Arjun Khiamal Makhijani* (supra). A definite opinion has been expressed by the Supreme Court by saying that "In our opinion the tenants are not entitled to the benefit of the amended Sub-section (3) of Section 12 of the Act, in as much as on a plain reading of the sub-sec, it is not

possible to give it a retrospective operation". The other decision on which the learned single Judge has placed reliance is in case of Raju Kakara Shetty Vs. Ramesh Prataprao Shirole and Another, . There was indeed a concession coming from Dr. Chitale the Learned Counsel for the appellant saying that in view of the decision of the Supreme Court in case of Arjun Khiamal Makhijani v. Jamnadas C. Tuliani & Ors. (supra) Section 12(3) cannot be said to be retrospective in nature. The Supreme Court has endorsed the earlier view expressed in case of Arjun Khiamal Makhijani (supra) that the provisions contained under Sec, 12(3) of the Bombay Act after the amendments were prospective in nature only. In Sulochana Damodar (Smt) Vs. Ratnaprabha V. Tople (Smt), the Supreme Court has said that, they were concerned with the unamended provisions of the Bombay Rent Act as applicable to the State of Maharashtra, though Sub-section (3) has been substituted in its entirety by the Maharashtra Act No. 18 of 1987. Lastly, the unreported decision of the Supreme Court in Civil Appeal No. 341 of 1979 (decided on 20th January, 1994) repealing the contention that the amended provisions should be given retrospective operation, has been pressed in service. The Supreme Court pronouncement would emphasize the view by making a reference to the earlier decision in case of Arjun Khiamal Makhijani (supra) by saying that, no doubt Section 12(3) (b) of the Bombay Rents Act, 1947 has come to be amended omitting the word "regularly" but this section is not in its plain terms made retrospective in its operation. As this brief pronouncement of the Supreme Court decides the issue putting the controversy at rest, we prefer to reproduce the same as under:

The factual finding rendered by the High Court in this case is, the appellant-tenant was paying the rent irregularly. We cannot under Article 136 interfere with the factual finding. However, what is argued before us is that by reason of an amendment made in 1985, the word "regularly" has been omitted from Section 12(3)(b) of the Bombay Rent Act. Therefore, even if there is some irregular payment, when pending the Civil appeal, law has been amended, the tenant must be relieved of the rigour of the original section. No doubt, the amendment is not retrospective, however, having regard to the intentment, it should be made retrospective. In support of this, Fatmabai & Anr. v. Mayabai Hirji 1993 (2) GLR 1192 is cited. The other decisions cited are Lakshmi Narayan Guin and Others Vs. Niranjan Modak, , Ram Sarup Vs. Munshi and Others, , Prabhu Vs. State of U.P., . Accordingly it is urged that this provision must be given retrospective operation. In opposition to this it is submitted where an amendment takes place in the year 1985 long after the judgment of the High Court merely because the Civil appeal is pending under Article 136, the benefit of the amended law cannot be claimed. This is clear from the ratio laid down in Arjun Khiamal Makhijani Vs. Jamnadas C. Tuliani and Others, .

No doubt Section 12(3)(b) has come to be amended omitting the word "regularly". The section is not in its plain term made retrospective in its operation. Lakshmi Narayan Guin and Others Vs. Niranjan Modak, will have no application to the facts of the case because that merely referred to a situation of

pendency of appeal in the first instance. It is well settled law, an appeal is a continuation of the original proceedings. Hence, even the law as amended will have to be taken note of by the appellate Court. Therefore, that is in applicable. In the two other decisions *Ram Sarup Vs. Munshi and Others*, and in *Commissioner of Income Tax, M.P. Bhandra v. Mis. Straw Products Ltd.* 1166 SC 1113 , the retro-sportive operation was clearly spelt while changing the law. Therefore, they are also in applicable. The decision in Gujarat Law Report was a case relating to the pendency of the proceedings in the Courts below; that again is not the case In contradistinction to this, the ruling which is applicable is *Arjun Khiamal Makhijani Vs. Jamnadas C. Tuliani and Others*, concerning the very same Section 12(3)(a) and (b) as applicable to Maharashtra Region, this Court unequivocally said it cannot have retrospective operation. At page 624 in para 14 of 7969 (4) SCC which is stated:

Lastly, it was urged by the Learned Counsel for the tenants that after Clauses (a) and (b) of Sub-section (3) of Section 12 were substituted by the consolidated Sub-section (3) of the Amendment Act 19 of 1987, the tenants, should have been given the benefit of the deposit of arrears of rent on the first day of hearing in pursuance of the order of the trial Court dated November 14, 1967, and of the deposits of future rent thereafter and at all events they were entitled to make the necessary deposit after the commencement of the Amendment Act 18 of 1987. In our opinion, the tenants are not entitled to the benefits of the amended Sub-section (3) of Section 12 of the Act inasmuch as on a plain reading of the sub-section it is not possible to give it a retrospective operation.

16. As indicated by us earlier the SLP filed against the orders of the learned single Judge (Y.B. Bhatt, J.) in Civil Revision Application No. 1707 of 1979 dated 29th October, 1991 has come to be dismissed. Thus the pronouncements of the Supreme Court referred to above do take a view that the amended provisions, including the omission or the deletion of word "regularly" cannot be said to be retrospective in operation. We are bound by what has befallen from the Apex Court. This concluded position therefore would guide us to say in the instant cases that, the amended provisions, including the deletion/omission of the expression "regularly" cannot be said to be retrospective in nature but are merely prospective in operation. We opine accordingly.

17. The Civil Revision Applications which have been placed before us for the decision of the said question, only now be placed before the appropriate Court for the hearing and decision of the same, according to law and merits.