

(1976) 10 GUJ CK 0003
In the Gujarat High Court

Bapulal Kalidas (Since deceased by his heirs) and Others

APPELLANT

Vs

Bai Kashiben

RESPONDENT

Date of Decision : 11-10-1976

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (1977) 18 GLR 77

Hon'ble Judges : P.D. Desai, J

Bench : Single Bench

Judgement

P.D. Desai, J.—The petitioner, since deceased, was the defendant (tenant) and the opponent" was the plaintiff (landlord) in a suit for; recovery of possession of the suit-premises and for arrears of rent. The relief relating to recovery of possession was founded on three grounds;" (L); that the suit premises were reasonably and bonaftide required-by; the opponent for occupation by herself; that the petitioner had unlawfully sub-let the suit premises; and (3) that the petitioner was a tenant in arrears of rent who had forfeited the protection of the Rent Act. The Trial Court as well as the Appellate Court found against the opponent so far as the first two grounds of eviction were concerned. However, by a concurrent decision, the two Courts have found that the case was covered by Section 12(3)(a). A decree of eviction accordingly came to be passed. Hence the present Revision Application.

2. At the hearing of the Revision Application, it was urged in the forefront that the notice u/s 12(2), which was a mandatory require ment was ineffective or invalid inasmuch as it did not make the demand of the standard rent as required by the said provision and that, therefore, no decree u/s 12(3)(a) could have been passed. I find that there is substance in this contention and that for that reason alone the decree of eviction in so far as it is based on the ground of non-payment of rent must be set aside.

3. The notice in question is at Ex. 37. It was issued on March 5, 1965 The notice, in so far as it is material, describes the leased premises and states that the

monthly rent was Rs. 23/- inclusive of water tax. It then proceeds to state that the petitioner was a statutory tenant and that he was in arrears of rent for a period of more than six month and that, therefore he was not entitled to be continued as a tenant. The requisition in the notice ultimately was to pay up all the arrears of rent on receipt of the notice and to hand over possession of the suit premises after 15 days expiring with the end of the month of tenancy.

4. The question which arises, having regard to the aforesaid terms of the notice is whether a notice u/s 12(2), which mere demands arrears of rent by stating that the tenant was in arrears for a period of more than six month and which does not specify either the amount of rent in arrears or indicate the precise point of time from which the rent is in arrears, is ineffective in law.

5. The Rpt Act as its preamble suggests, was enacted to amend and consolidate the law relating to the control of rents and repairs of certain nremises of rates of hotels and lodging houses and of eviction. It has been enacted for the benefit of tenants and to protect them from landlords who might exact exorbitant or unconscionable rent and evict them from the premises in their possession in these days of scarcity of housing accommodation. In order to achieve these objects, the Act imposes certain restrictions on the rights of landlord in the matter of charging rent and evicting tenants. Section 12 is one of the provisions which enacts such restrictions. We are con cerned in the present case with Sub-section (2) of Section 12 and it provides that no suit shall be instituted by a landlord against a tenant on the ground of non-payment of standard rent or permitted increases due until the exoiration one month next after the notice in writing of the demand of V standard reat and permitted increases has served upon the tenant "in the manner provided in Section 106 of the Transfer of Property Act, 1882.

6. It is apparent that the said sub-section has been enacted with a view to giving protection to a tenant in arrears by affording an opportunity to him to pay the rent or permitted increases due by him before he is sued in ejectment on the ground of non-payment of such rent or permitted increases. Such a provision, which is evidently enacted with the object of conferring a facility or benefit upon a tenant, must be construed strictly so as to enable him to have the fullest advantage of that facility or benefit and meticulous compliance with its terms must be insisted upon. A vague notice requiring the tenant to pay all 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 is sued in ejectment. In fact, such notice, while apparently complying with the requirement of law, might prove to be a trap to draw the tenant in by leaving the door open for a controversy to be raised later on that full amount of rent and permitted increases was not tendered within the prescribed time limit after the service of the notice. It is for this reason that the

requirement of construing the provision of Section 12(2) with strictness arises.

7. Another thing which is required to be borne in mind is that such notice relates to a money claim which will be usually made the basis of a two-fold relief in the suit which might be eventually filed; first, the relief as to eviction and, secondly, the relief as to a money decree. Such a notice must, therefore, in the very nature of things, be precise in the claim that it makes. Unless the demand is clear and categorical, the very purpose of serving notice would be frustrated.

8. It is true that notices of this nature, though not strictly accurate or consistent in the statements embodied in them, may still be good and effective in law. For example, it is well-settled that a notice u/s 12(2) is not invalid simply because by mistake or oversight the landlord has demanded the rent for the month for which it was not due or because an amount in excess of what was due by way of rent and permitted increases is claimed on account of some misapprehension. It is also well-settled that the test of sufficiency of a notice which seeks to confer some benefit upon a tenant is not what it would mean to a stranger ignorant of all the facts and circumstances touching the holding to which it purports to refer, but what it would mean to the tenant presumably conversant with the relevant facts and circumstances, and further that such notice is to be construed, not with a desire to find fault in it which would render it defectively but to be construed liberally. However, these principles are of no assistance where notice u/s 12(2) is vague in material particulars so as not to amount to a "demand" at all and by a liberal construction of such notice, the tenant could not be deprived of an opportunity to have the fullest benefit of the statutory protection.

9. It would thus appear that the demand of standard rent and per matted increases in a notice u/s 12(2) must be a precise demand, that is to say, one that sets out with certainty what according to the landlord is due by the tenant on that account. In other words; the demand must be for a sum specified or it must be made in such a-manner that the amount actually claimed becomes definitely as certainable 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. Unless this requirement is satisfied, there would really be no "demand" within the meaning of sec". 12(2) and the notice which does not comply with the said requirement would be no notice at all Within the meaning of the said provision.

10. Mr. S.B. Majmudar, however, contended that it was well-settled that a Jietice u/s 12(2) need not do anything mere than claim the arrears of standard rent and permitted increases and that such notice has no set formula for the non-compliance of which it, could be invalidated. In support of this submission he relied upon same decisions. My attention was invited first to the decision of the Supreme Court in Vasumati Gaurishanker Bhatt v. Naviram Manchharam Vora 4 G.L.R. 969. In that case, a notice u/s 12(2) was issued by the landlord prior to the amendment of Section 12(3) by Act No. LXI of 1953 and the suit for eviction/ was instituted after the said amendment. The argument which was advanced on

behalf of the tenant was that 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 ejection, and so, a fresh notice was required to be issued after the amendment came into force so as to accord with the beneficial provisions of the Act. This argument was negated by the Supreme Court on the ground that though Section 12(3) was amended, Section 12(2) was not simultaneously amended and since the notice in that case satisfied the conditions of Section 12(2) which 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, no fresh notice was required, to be issued. I am unable to see how this decision can be of any assistance on the point which arises for my determination.

11. Another decision on which reliance was placed is in *Lalbahai Vitthal Das v. Laxmidas Vitthal Das* 4 G.L.R. 567. It was held in that case that when a notice u/s 12(2) is given for the payment of arrears of rent not at the rate of contractual rent but at a rate higher than standard rent, the notice itself does not become invalid. It was further observed that it is the fact of the notice which is important u/s 12(2) and not the correctness of the contents of the notice. This decision again is of no assistance. As earlier pointed out, it may be that an amount in excess of what is due as and by way of rent might be claimed and still the notice may be valid. This is so because it would give to the tenant an opportunity of disputing in reply to the notice itself, that the amount claimed was in excess. He will not be kept in dark about what, according to the landlord, was due by him towards rent and permitted increases. The terms of Section 12(2) must, therefore, be held satisfied in such a case, but not in a case where the amount which is claimed as and by way of rent and permitted increases is neither specified nor is it capable of being ascertained otherwise.

12. The third decision on which reliance was placed was the decision of the Bombay High Court in *Lalshankar Mulji Joshi v. Kantilal Mohanlal* 74 Bombay Law Reporter 241, where the principle laid down is that a notice u/s 12(2) is not invalid simply because by mistake or oversight the landlord has demanded the rent for the month for which it was not due and that a liberal construction should be put upon the notice. There is no dispute about the principle laid down in the said decision. The question, however, is one of applicability of the principle to the facts of a given case. In the present case, there is no question of liberal construction of the notice. The question is one of non-compliance with the mandatory requirements of the provision of Section 12(2) itself inasmuch as the notice is not in accordance with the requirements of the said section which, as earlier stated, makes it obligatory on the landlord to specify the amount due or to furnish inherent evidence in the notice itself by reference to which the sum due can be ascertained with certainty.

13. It may be mentioned that in the decision of the Bombay High Court in *Lalshankar Mulji's* case (*supra*), reference has been made to an unreported

decision of the Supreme Court in *Raghunath Ravji Dandekar v. Anant Narayan Apte*, Civil Appeal No. 387 of 1964 decided on April 5, 1966. A copy of the said judgment is not available and, therefore, I am unable to set out its contents in my own-1 words. However, the Bombay High Court has made a reference to the contents of the said judgment. Accordingly, it appears that in that case a sum of Rs. 7000/- was demanded by way of arrears of rent when actually only Rs. 6900/- were due. The question which arose in the context of those facts was whether the notice to quit under the Transfer of Property Act was bad because of a mistake or oversight in demanding more than what was due u/s 12(2) of the Rent Act. The Supreme Court held that all that Section 12(2) of the Act required was the notice by the lessor for payment of arrears of rent. It was true that such a notice shall contain the figure of the amount due as arrears of rent, but if there was a mistake in the amount specified in the notice, that did not make the notice u/s 12(2) bad or because of that mistake the notice to quit under the Transfer of Property Act bad. The said decision of the Supreme Court, as summarized by the Bombay High Court, would clearly indicate that in the opinion of the Supreme Court, a notice u/s 12(2) is required to state the figure of the amount due as arrears of rent. This decision completely supports the view which I have taken in this matter.

14. Mr. S.B. Majmudar contended that the notice in the present case complies even with the aforesaid strict requirement inasmuch as it states that on a particular date, namely, the date of the issuance of the notice, rent at the stated rate was in arrears for a period of more than six months and makes a demand for the same. I am unable to agree. Such a recital in the notice does not comply with the requirements of Section 12(2). To say that rent at a specified rate is in arrears for a period of more than six months is not to quantify the amount due nor does it amount to furnishing inherent evidence by the means of which the amount claimed as arrears can be ascertained with precision and definiteness. What the opponent could have done, in the least, was to have stated as to from which date precisely the rent was in arrears and at what rate. If that much was stated, no grievance could possibly have been made, for, the tenant would be in a position to know the rent due by him according to the landlord and he could have availed of the benefit of tendering such rent within the prescribed time limit or raised a dispute as to standard rent.

15. The aforesaid discussion would show that the notice u/s 12(2) served upon the petitioner in the present case is ineffective in law and that the condition precedent to the filing of the suit having thus not been satisfied, no decree u/s 12(3)(a) could have been passed. Accordingly, the Revision Application succeeds to the extent that the decree of eviction on the ground of non-payment of rent will have to be set aside.

It may be mentioned that a futile attempt was made to support the decree of eviction on the two grounds on which the said relief was rejected concurrently by the two Courts below, namely, the ground of bonafide and reasonable

requirement of the suit premises by the opponent and unlawful sub-letting. The findings on both these grounds are essentially findings of fact and no infirmity which would enable me to interfere with those findings in exercise of my revisional jurisdiction has been shown to exist. Under the circumstances, it is not open to urge that the decree of eviction should be confirmed in the grounds decided against the opponents by both the Courts below.

16. In the result, the Revision Application succeeds and is allowed to the extent indicated above. Rule made absolute accordingly, with no order as to costs.