

(1977) 12 GUJ CK 0011

In the Gujarat High Court

Case No : Civil Revision Application No. 506 of 1975

Bhikhalal Bhovan

APPELLANT

Vs

Sunni Vora Noormamad Abdul Karim and Others

RESPONDENT

Date of Decision : 07-12-1977

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(2)
Gujarat Education Cess Act, 1962 — Section 19(1)

Citation : AIR 1978 Guj 149 : (1978) GLR 248

Hon'ble Judges : B.J. Divan, C.J;N.H. Bhatt, J

Bench : Division Bench

Advocate : Suresh M. Shah, for the Appellant; J.R. Nanavati, for the Respondent

Judgement

Bhatt, J.—This is a tenant's revision application under S. 29(2) of the Bombay Rent Act, challenging the decree passed against him in the regular civil suit No. 313 of 197r of the court of the Civil Judge (J. D.) Jetpur, and confirmed in the appeal No. 17 of 1973 decided by the Assistant Judge of Rajkot District at Gondal. The tenant was ordered to be evicted from the rented premises. namely, a shop, under S. 12(3)(a) of the Bombay Rent Act on the ground that despite the service of a notice, ex. 18, dated 7-10-1971, served on him on 8-10-71, calling upon him to Pay the arrears of rent from 1-11-70 to 30-9-1971, he had failed to pay the same within one month of the receipt of the notice of demand.

2. This revision application has been referred to the Division Bench by the learned Single Judge of this court because it involved a question regarding the meaning of the term "month" occurring in S. 12(2) of the Rent Act. Under e said provision, no suit for possession could be instituted by a landlord against a tenant prior to the expiry of one month next after the notice In writing of the demand of the standard rent has been served upon the tenant. Relying upon the Judgment of another learned Single Judge of this court in the Civil Revn. Appln. No. 712 of 1972 decided on 3-2-4976, the petitioner tenant before this court had contended that the term month referred to in S. 12(2) would be a calendar

month and as the suit in question had come to be filed on 22-4-71 before the expiry of the next calendar month, namely Nov. 1971, the suit was premature and, therefore, liable to be dismissed. On behalf of the tenant, one another contention also was raised to the effect that the landlords' case fell under S. 12(3)(b) of the Bombay Rent Act, in so far as there was an invariable liability of the tenant to pay education cess by virtue of S. 19 of the Gujarat Education Cess Act, 1962, which cess is payable only annually and not monthly. In other words, the contention was that part of the rent being not payable by month, one of the four requisites of S. 12(3)(a) was lacking and consequently the case fell under the alternative situation provided for by S. 12(3)(b) of the Bombay Rent Act.

3. The view canvassed on behalf of the petitioner by Mr. Suresh M. Shah, the learned Advocate, to put in the words of the learned Single Judge who decided the Civil Revn. Appln. No. 712 of 1972 on 3-2-1976 is as incorporated below from the judgment of the learned Single Judge himself :

"The expression 'one month' used in sub-section (2) of S. 12 read with sub-section (1) of S. 12 in my opinion means a calendar month commencing from the first day of the month following the service of notice of demand upon the tenant. It does not mean an ordinary or usual month from the date of service of notice."

We are called upon to examine and decide this question, namely, what is meant by the term month occurring in S. 12(2) of the Bombay Rent Act.

4. In common parlance, the "month" is hardly understood as a calendar month according to the Gregorian calendar, but it by and large means "a space of time from a day in one month to the corresponding day in the next". This is the meaning of the term "month" given in the Concise Oxford Dictionary, 1964 Edition. The term "month" has been explained also in the Bombay General Clauses Act, 1904. The term "month" as defined in S. 2(30) of the Bombay General Clauses Act, means "a month reckoned according to the British Calendar." The term "reckoned" is equivalent of the term "calculated" or "counted." If the legislature wanted the month to mean only a compact unit of a calendar month, the normal definition would have been as a British Calendar month or a calendar month. The elaborate explanation given in the definition of the term "month" and particularly the reference to calculation clearly and pointedly suggest that what is intended to be referred to by the term is a space of time between the two dates of the two contiguous months.

5. The matter, however, does not rest on the meaning of the term "month" as understood generally. The terminology of sub-section (2) of S. 12 of the Bombay Rent Act clinches the question. Sub-section (2) of S. 12 is quoted below:

"12 (2). No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of nonpayment 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 S. 106 of the Transfer of Property Act.

1881"

The phrase "until the expiration of one month next after, notice in writing Is served" clearly indicates that the month is to be counted from the date of service of the notice on the tenant. The adjective "next" occurring therein is the superlative form of the term "nigh" which Is equivalent or synonym of the term "near". The term "next", therefore, means "nearest". "closest". "most contiguous". When a month Is to be counted immediately after the date of the service of notice, It means that no days are to be left out In between for counting of the month. As for example, let us take the facts of the case on hand. The notice ex. 18 was served on 8-10-77 on the tenant. What sub-section (2) of S. 12 requires is that the landlord must wait before Instituting a suit against a tenant on the ground of non-payment of the standard rent or permitted Increases due, till the expiry of one month to be reckoned immediately after the notice In writing of the demand has been served upon the tenant. Another connotation of the word "next" would mean "immediately". The phrase "next after" is equivalent to "Immediately after" and the term "next" does not allow any scope for the" intervention of any days In between.

6. No doubt, there is the judgment of the learned Single Judge of this court referred to above, supporting the submissions made on behalf of the petitioner tenant, but we find that the learned Single Judge has not put forward any reasons in support of that view of his, which with profound respect we say is not correct, The learned single Judge has assumed we say so with respect because there is no elaboration at all that a month as occurring in S. 12M of the Rent Act means a calendar month, commencing from the first day of the month following the service of the notice of demand upon the tenant. Even the learned Single Judge In his judgment accepts the position that "ordinary" or "usual" would mean a month calculated from a specified date. There is nothing in the context or In the text of S. 12(2) of the Rent Act which would suggest such an unusual connotation. As observed by us above, both the general tenor of the term as well as the clear meaning that could be derived from the interpretation of the term occurring In S. 12(2) clearly point to only one conclusion, namely, that the month referred to there Is a span of time between two dates of two Contiguous months and not a calendar month. We, therefore, find ourselves unable to agree with the view of the learned Single Judge.

7. This brings us to the second question regarding the case falling under S. 12(3) (b) of the Bombay Rent Act. it was very vehemently contended by Mr. Shah for the petitioner-tenant that under S. 19 (1) of the Gujarat Education Cass Act, IM2. it Is ultimately the liability of the tenant to be accountable for the amount of education cess, which admittedly is payable annually. Reliance In this connection was placed upon the judgment of the Division Bench of this court. It is the case of Dayalal Gangaram Vs. Bhimani Bhupatrai Chunilal and Another, . In that case, the following observation have been made (at pi 74 of AIR) :-

"The settled legal position Is to treat the rent In the context of such rent control

measure not only as a merely realisable contractual rent but In the more comprehensive sense so that all such permitted Increases and the standard rent which Is made lawfully recoverable under such control measure form part of the term "rent"s and that is the context in which S. 12(3)(a) has used the term "rent" In the first condition required to be fulfilled."

It has been further observed as followed

"Even in the absence of a contract between the landlord and tenant as regards payment of education cess, the education cess would form part of the rent payable by the tenant to the landlord so as to enable the court to decide under S. 12(3)(a) that the said was not payable by the month &act therefore, in the facts of the, present case & 12(3)(a) would not be attracted and the case would fall Into any other ease under S. 12(3)(b)."

However, it is very clear from the text of Section It (2), second proviso, that the landlord would not be entitled to recover education peas in respect of any tenement, the tax on which by the terms of tenancy, such owner had agreed to pay for its occupier. In other words, there may be cases in which there may be a contract to the contrary, making the landlord himself liable for the education cess, without his being able to recover the same from the occupier of the premises.

8. Mr. Shah, the learned advocate appearing for the petitioner-tenant however, urged that this being an exceptional situation, it was required to be both pleaded and proved by the landlord, because in his submission the initial onus to plead and prove the four requisites of S. 12(3)(a) lay on the landlord and it was for the landlord to eliminate the presumptive statutory liability of the. tenant to Pay education cess by specific Pleading and by specific proof if the pleading was controverted. We, however, do not agree. What is essential in such cases is that the landlord, who goes to a court of law with a prayer only for rent claiming it to be payable every month, impliedly makes a statement that the only liability of the tenant is to pay. the rent as demanded by the landlord. The fact that he does not demand any education cess in his notice preceding the suit and in his plaint would be prima facie evidence of the lack of tenant"s liability to pay the education cess to his landlord, who is entitled to recover it only when he happens to pay the same to the local authority. If such an implied assertion of the landlord arising out of the non-mention of such a claim is controverted by the tenant, It is for him to raise the question so as to give a proper opportunity to the landlord to meet that case.

9. Relying upon the background of this case, Mr. Shah, however, urged that these very landlords had served the tenant with the notice ex. 22 on 10-7-70 demanding arrears of rent and in that notice a specific demand for education cess was put forward. It is the common case that that notice ex. 22 was not required to be carried to its logical culmination because the dispute was then settled. The present suit is based on the notice ex. 18 dated 7-10-71 in which

the only demand made is of the rent as such due from 1-1-70 to 30-9-71. There is no mention of the education cess. Mr. Shah, however, urged that from the notice, ex. 22, an admission of the landlords should be deduced to the effect that there was no such contract exonerating the tenant from the liability to pay the landlord the amount of education cess as and when paid by the landlord. We do not know, and Mr. Shah was fair enough to concede before us that there was nothing on record to show, why the notice ex. 22 did not come to be pursued any further. We, therefore, in the facts of this case, are not in a position to hold that from ex. 22 the liability of the tenant to pay of the education cess was, as a matter of fact, really, there. This sort of deduction from a casual demand in the earlier notice, ex. 22, cannot necessarily be made. If the tenant wanted to deny the plaintiffs implied pleadings to the effect that the rent was payable by month, he should have put up this special defence specifically and in that case some evidence could have been led by the plaintiffs to meet that defence. To us, it appears clear that at the revisional stage such a contention could not be allowed to be advanced for the first time. It is common case that this plea is raised for the first time before the High Court. If entertained, it would necessitate further examination of some facts in the light of what may be alleged by the plaintiffs as a part of their pleadings liable to be amended or elaborated. The other side cannot be allowed to be taken by surprise in the manner in which an attempt has been made by the tenant here before us. We therefore, have not permitted Mr. Shah to raise this question on certain assumptions, because, in our view, this contention is necessarily and inextricably involved with some questions of facts, which could have been pleaded by the other side.

10. In above view of the matter, we find little merit in this revision application, which is hereby rejected with no order as to costs. Rule is accordingly discharged.

11. Revision application dismissed.