

(1979) 06 GUJ CK 0007
In the Gujarat High Court

Case No : Civil Revision Application No. 658 of 1979

Dahyabhai Manchharam Bhandari and Another	APPELLANT
Vs	
Ratilal Maganlal	RESPONDENT

Date of Decision : 18-06-1979

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13A

Citation : AIR 1980 Guj 86 : (1980) 21 GLR 557

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Advocate : S.N. Shelat, for the Appellant; V.P. Shah, for the Respondent

Judgement

1. Respondent tenant filed Civil Suit No. 665 of 1978 in the Court of Small Causes at Surat for a permanent injunction restraining the defendant-landlords from constructing upper floors on the premises which are in his possession. The premises in question consist only of the ground-floor structure. In the suit, the tenant made an application for an interim injunction restraining the landlords from constructing an additional structure on the premises in question. The learned trial Judge made the following order on that application:

"The defendants are permitted to put up construction of first floor and second floor above Chhapari in question, provided that they do not put any cement pillars in any wall of the Chhapari and provided that they allow 15" x 6" open to sky chowk between the factory premises and Chhapari.

The defendants shall not also disturb the roof of the Chhapari. The height of the new construction of the Chhapari shall not exceed 29'-6" from the ground level."

This order clearly shows that the interim prayer made in absolute terms by the tenant was rejected. The only relief which was granted to him was that the landlords were required to comply with certain terms and conditions if they started construction of an additional structure on the premises in question.

2. The tenant, therefore, appealed against that order to the District Court. The learned appellate Judge allowed the appeal and granted the application in full because, in his view, the remedy which the landlords have in a case of this type is to proceed u/s 13A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

3. It is that order which is challenged by the landlords in this civil revision application.

4. I have no doubt in my mind that if there is an absolute prohibition in the Bombay Rent Act to do what the landlords seek to do unless they make an application in that behalf to the Court, the interim application made by the tenant must be granted. However, if there is no absolute prohibition in that behalf, the dispute between the tenant and the landlords can be adjudicated upon even in the suit filed by the tenant. Bearing this approach in mind, I have scanned the provisions of Section 13 of the Bombay Rent Act. Now, cls. (hh), (hhh), (i) and (ii) of sub-section (1) of Section 13 are not applicable to the instant case. If they were applicable to the instant case, then the only remedy which the landlord had was to file a suit for possession on any of those grounds available to him. Since the landlords have no case for recovering possession of the premises in question u/s 13, they cannot file a suit for the purpose.

5. I now turn to Section 13A upon which the learned appellate Judge has placed reliance. It provides as under:

"Where the landlord proposes to make any improvement in, or construct any additional structure on any building which (or part of which) has been let to a tenant, and the tenant refuses to allow the landlord to make the improvement or construct such additional structure, if the Court, on an application made to it in this behalf by the landlord, is satisfied that such work will not cause undue hardship to the tenant, the Court may permit the landlord to do such work, and may make such other order as it thinks fit in the circumstances of the case."

The expression ".....and the tenant refuses to allow the landlord to make the improvement or construct such additional structure used in S. 13A clearly suggests that where there is no dispute between a landlord and a tenant in such behalf, the landlord can construct an additional structure without having resort to any legal proceedings u/s 13A. However, where there is a dispute between the tenant and the landlord, Sec. 13A provides for the landlord a remedy. He can apply to the Court for necessary permission u/s 13A. In the instant case, the tenant has been disputing the landlord's right to construct an additional structure and has filed the present suit to vindicate his stand. Now, if the tenant had not filed the present suit, indisputably the landlords would have been obliged to make an application to the Court u/s 13A. However, when the tenant has tried to forestall the situation and filed the substantive suit for a permanent injunction restraining the landlords from constructing an additional structure on the premises in question, is it necessary for the landlords to apply u/s 13A? In my

opinion, where a tenant has filed a suit, such as one as in this case, it is not necessary for the landlord to file or institute separate proceedings under Section 13A against his tenant. In the tenant's suit, it is open to the Court to adjudicate upon the substance of the matter and to find out whether an injunction should be granted or should not be granted or should be granted subject to conditions. Substance of the matter lies in the Court deciding whether "undue hardship" will be caused to the tenant within the meaning of that expression used in Section 13A. Once the Court comes to the conclusion either in an application made u/s 13A or in a suit filed by the tenant that no "undue hardship" will be caused to the tenant, it is open to the Court to make an appropriate order which does not come in the way of the landlord constructing an additional structure.

6. I take this view because Section 13A has enacted an enabling provision and not a mandatory provision. It is an enabling provision because if the landlord cannot have the dispute resolved in any other manner or proceedings already instituted by the tenant, he may resort to Section 13A. If it cannot be resolved in any such manner or proceedings, he may resort to the remedy provided by Section 13A. In this behalf, contrast between the language used in Section 12 and Section 13 on one hand and the language used in Section 13A may be usefully noted. Section 12(1) opens with the words: "A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay go. Section 12(2) opens with the words:

"No suit for recovery of possession shall be instituted Section 13(1) opens with the words: "Notwithstanding anything contained in this Act a landlord shall be entitled to recover possession of any premises if the Court is satisfied It cannot be gain said that a landlord cannot recover possession of the premises from his tenant except in the manner laid down by Section 12 or Section 13. On the other hand, Section 13A uses the expression if the Court, on an application made to it in this behalf by the landlord, is satisfied that such work will not cause undue hardship to the tenant ". There is, therefore, a conspicuous contrast between the provisions of Section 12 and Section 13 on one hand and the provisions of Section 13A. It fortifies my view that Section 13A enacts a purely enabling provision. to which compulsory resort is not necessary if the dispute between the landlord and tenant can be settled in the proceedings instituted by the tenant.

7. It has been found by the Courts below in this case that no "undue hardship" is likely to be caused to the tenant if the landlords construct an additional structure on the premises in question. The order passed by the learned trial Judge protects the tenant very well. He was guided by two well-founded considerations. Firstly, while constructing the additional structure on the premises in question, the roof of the tenant's premises should not be removed. This is a very good consideration because, if the roof is removed, the tenant cannot continue to reside in his premises and "undue hardship" will be caused to him. The second consideration which prevailed with the learned trial Judge relates to the burden which the suit premises shall have to bear on account of the additional structure

which the landlords may construct on them. The terms and conditions to which the learned trial Judge has subjected the landlords clearly show that the additional structure which the landlords may construct shall be such as the suit premises are able to bear without their foundations being adversely affected.

8. In my opinion, therefore, the learned appellate Judge was in error in taking the view that, in spite of the fact that the tenant has filed the present suit, it is necessary for the landlords to multiply proceedings and to make a separate application to the Court u/s 13A of the Bombay Rent Act. Since, in my opinion, no "undue hardship" is likely to be caused to the tenant on account of the conditions to which the landlords have been subjected by the learned trial Judge, the impugned order made by the learned appellate Judge deserves to be set aside and the order made by the learned trial Judge deserves to be restored,

9. In the result, the civil revision application is allowed, the impugned order made by the lower appellate Court is set aside and the order made by the learned trial Judge is restored. Rule is made absolute with no order as to costs.

10. Revision allowed.