

(2000) 03 GUJ CK 0012
In the Gujarat High Court

Case No : Civil Revision Application No. 1336 of 1982

Dahyalal Govindji

APPELLANT

Vs

Vrajlal Madhavji Rathod

RESPONDENT

Date of Decision : 08-03-2000

Acts Referred:

Citation : (2000) 3 GLR 353

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : Nagin N. Gandhi, for the Appellant; S.M. Mazgaonkar, for the Respondent

Judgement

P.B. Majmudar, J.—The petitioner herein is the original defendant against whom the respondent - landlord had filed the suit being Regular Civil Suit No.490/77 in the court of Civil Judge (Junior Division), Bhavnagar. The case of the plaintiff in the said suit was that, he is the owner of the suit premises which is a residential premises situated in Vadva locality in Bhavnagar city and the defendant is the tenant of the part of the premises of that house comprising one room on the ground floor. That the defendant had taken the suit property at the rate of Rs.13.50 ps per month. The defendant was to pay Rs.1.50 ps towards drainage charges per month and was also to pay other taxes. According to the plaintiff, the defendant has not paid the rent from 1.1.1967 to 31.7.1977, that is, for 121 months and that the aforesaid amount comes to Rs.1633.50 ps and that Rs.181.80 ps is due for 121 months towards drainage charges at the rate of Rs.1.50 ps. It is also a case of the plaintiff that, the defendant has to use rented premises for dwelling purpose, but he is running a lodge and accordingly there is a change of user - additional ground for which eviction decree was sought for, was that the tenant is burning small Sagdi in Fali passage and accordingly there is a breach of terms of tenancy. It is also a case of the plaintiff that the defendant has committed an act of nuisance. The plaintiff, therefore, gave notice u/s 12(2) of the Rent Act and demanded arrears of rent. The defendant failed to

comply with the said demand notice, and ultimately the plaintiff filed the aforesaid suit for possession.

2. The defendant appeared in the suit and filed his written statement at Exh.9. It was denied that he was in arrears of rent. According to the defendant, he has paid the entire rent, but the plaintiff had not given any receipt about such payment. It was also contended that, the rent in question is not the standard rent. The suit of the plaintiff accordingly was denied by the defendant on all counts. The defendant - tenant, in the mean while, had submitted an application for fixation of standard rent being Misc. Civil Application No.129/77. The aforesaid application was consolidated with the suit and accordingly the suit as well as the aforesaid application were heard together.

3. Learned trial Judge framed various issues and ultimately came to the conclusion that the plaintiff has failed to prove that the defendant was in arrears for a period of 10 years as alleged. The trial court did not believe the say of the plaintiff regarding nuisance etc. and accordingly the suit was dismissed by the learned trial court by judgment and decree dated 31.7.1981. Copy of the judgment given in the suit was ordered to be kept in Misc. Civil Application No.129/77. So far as fixation of standard rent is concerned, the same was fixed at Rs.10/- per month.

4. The respondent - landlord herein having aggrieved by the decree of the trial court by which his suit was dismissed, preferred an appeal being Regular Civil Appeal No.85/81 in the District Court at Bhavnagar. The said appeal was heard by the learned Assistant Judge, Bhavnagar who by his judgment and order dated 27.4.1982 allowed the said appeal and decreed the suit of the plaintiff for possession on the ground of arrears of rent. The aforesaid decree of the appellate court is impugned in the present revision application by the defendant - original tenant.

5. At the time of hearing of this revision application, it is submitted by Mr.Gandhi, learned counsel for the petitioner that the petitioner - tenant was always ready and willing to pay the rent and that the appellate court had committed an error in coming to the conclusion that the tenant was in arrears of rent for about 10 years at the time of issuance of the notice u/s 12(2) of the Rent Act. The trial court came to the conclusion that, the landlord would not remain silent for 10 years and that it was not possible to believe that the tenant had not paid the rent as demanded in the suit notice. Therefore, learned trial Judge dismissed the suit of the plaintiff on the aforesaid ground. The appellate court reversed the aforesaid finding and came to the conclusion that the say of the plaintiff was more probable and that accordingly it was found that the defendant had not paid the rent for a period for which the same was demanded by the landlord. Accordingly, the appellate court came to the conclusion that the defendant - tenant was in arrears of rent for a period of more than six months. The appellate court also came to the conclusion that though the case falls u/s 13(1)(a) of the Rent Act. However, assuming that, it falls u/s 13(1)(b) of the Rent Act, then also

the tenant had not deposited the rent regularly and that he was not entitled to protection of the aforesaid provisions also. In view of the aforesaid findings reached by the learned Appellate Judge, he allowed the appeal and decreed the suit of the plaintiff for possession. The aforesaid decree of the appellate court is under challenge before me.

6. During the pendency of the revision application, the petitioner was allowed to produce the receipt dated 1.9.1998 showing the deposit of Rs.1830/- before the Civil Judge (Senior Division), Bhavnagar in Misc. Civil Application No.129/77. The certificate of the Civil Judge (Senior Division), Bhavnagar is produced on the record certifying the said payment. In view of that, it is clear that, when the petitioner had filed the Standard Rent Application No.129/77, he had deposited the aforesaid amount of Rs.1830/- in that application on 1.9.1977. It is submitted by the petitioner that the petitioner had received the suit notice on 8.8.1977 and within one month of the said receipt, he had deposited the entire rent. In fact, Rs.15/- excess on 1.9.1977. In view of the aforesaid certificate given by the Civil Judge, Bhavnagar, it is clear that, within one month of the receipt of the suit notice, the petitioner had deposited the entire amount of arrears of rent. Not only that, the landlord had withdrawn the said amount also. In that view of the matter, the tenant had already complied with the demand notice within a period of one month from the receipt of the same by depositing the entire amount as per the demand.

7. In response to the demand notice which is to be sent by the landlord as per the requirement of Section 12(2) of the Rent Act, if the tenant fails to pay up the rent within a period of one month from the receipt of such notice, and if no dispute of standard rent is taken within a period of one month from such notice, there is no escape from the decree u/s 12(3)(a) of the Rent Act. If, a dispute of standard rent is taken within a period of one month from the receipt of such notice, the case would fall u/s 13(1)(b) of the Rent Act. However, within a period of one month, if the tenant has paid up the entire rent, then, naturally there is no cause of action which may be available to the landlord for filing the suit for eviction. In that view of the matter, if it is proved that the tenant has paid the rent within a period of one month from the receipt of the suit notice, then naturally there is no question of filing the suit for getting the decree for eviction on the ground of arrears of rent. In fact, notice of demand as envisaged u/s 12(2) of the Rent Act is required to be given only with a view to see that the tenant pay up the arrears of rent as per the said demand and if there is a compliance of the said notice by the tenant, naturally, there cannot be any cause of action for knocking the door of the court. In the instant case, within a period of one month, the tenant has already deposited the entire amount of rent and the landlord has already withdrawn the said amount also. In that view of the matter, the tenant was protected by the provisions of Section 12(1) of the Rent Act. As per the aforesaid provisions of Section 12(1) of the Rent Act, if in response to the notice u/s 12(2) of the Rent Act, the tenant has paid up the entire amount of rent and permitted increases, then no suit for recovery of

possession shall lie on the aforesaid ground of arrears of rent, and therefore, under such circumstances, it is presumed that the tenant is ready and willing to pay the standard rent and permitted increases. In that view of the matter, since the tenant had paid up the entire rent within a period of one month, that of course in the standard rent application, the tenant is entitled to protection u/s 12(1) of the Rent Act and the suit on the ground of arrears of rent was not maintainable against the said tenant. On the aforesaid ground, the decree of the appellate court is required to be set aside and that of the trial court, though on the different ground, is required to be restored.

8. In view of what is stated above, the decree of the appellate court shall have to be set aside and accordingly it is set aside. The suit of the respondent-plaintiff for possession shall stand dismissed and the decree of the trial court is restored. Rule is made absolute accordingly with no order as to costs.