
(1968) 09 GUJ CK 0025
In the Gujarat High Court

Ganpatrao Diyajirao

APPELLANT

Vs

Abdul Hamid Haji Ahmad and Others

RESPONDENT

Date of Decision : 25-09-1968

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11(4),
11(4)
Civil Procedure Code, 1908 (CPC) — Section 115, 115

Citation : (1969) 10 GLR 112

Hon'ble Judges : J.B. Mehta, J

Bench : Single Bench

Judgement

J.B. Mehta, J.—Both these revision applications raise common questions of law as to whether Section 11(4) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter referred to as "the Act" applies to pending suits and, therefore, they are being disposed of by this common order. In C.R.A. No. 759/65 the order of the trial Court has been confirmed by the District Court, Surat, and the view taken is that Section 11(4) is merely a procedural section and, therefore it can be invoked even in a pending suit. In C.R.A. No. 1018 of 1966, however, the Bench of the Small Causes Court at Ahmedabad has confirmed the order of the Small Causes Court and has held that Section 11(4) created new obligations and fettered the right of defence and it could not have retrospective operation to a pending suit. The said two orders are, therefore, challenged in the present revision applications.

2. Section 11(4) runs as under:

Where any stage of a suit for recovery of rent, whether with or without a claim for possession of the premises, the Court is satisfied that the tenant is withholding the rent on the ground that the rent is excessive and standard rent should be fixed, the Court shall, and in any other case if it appears to the Court that it is just and proper to make such an order the Court may, make an order directing the tenant to deposit in Court forthwith such amount of rent as the

Court considers to be reasonably due to the landlord. The Court may further make an order directing the tenant to deposit in Court, monthly or periodically such amount as it considers proper as interim standard rent during the pendency of the suit. The Court may also direct that if the tenant fails to comply with any such order within such time as may be allowed by it, he shall not be entitled to appear in or defend the suit except with leave of the Court which leave may be granted subject to such terms and conditions as the Court may specify.

This amendment came into force on 31st December 1963 during the pendency of these two suits. The short question which, therefore, arises is whether it could apply to such a pending action and on which, as I have already pointed out, the lower Courts in the two cases have differed. It should be kept in mind that before Section 11(4) was enacted there was no such provision empowering the Court to order such deposit and on the failure to deposit the amount as directed by the Court to strike out the defence. Section 11(4), therefore, for the first time empowers the Court to direct such deposits and in the event the tenant fails to make the deposit within the time allowed, the Court is entitled also to direct that he shall not be entitled to defend the suit, with leave of the Court. There could, therefore, be no doubt that the tenant's right to defend which was originally unfettered under the existing law at the date when the present suit was filed has not been fettered by the restrictions created by Section 11(4). If the tenant did not comply with the order of the deposit u/s 11(4) he may lose the entire right to defend unless the Court granted him express leave for the purpose and thus, the suit shall be decreed against him on his failure to make the deposit of rent as directed by the Court. This is not a mere procedural provision which only regulates the details of the Court procedure as to the manner and method in which the suit has to be defended. It affects substantive rights and creates obligations and provides for a new jurisdiction in the Court by empowering the Court to direct that the tenant shall not be entitled to defend the suit. As per the settled principles of construction the amendment which affects such substantive rights cannot apply to pending proceedings as Section 11(4) has not been expressly made retrospective and there is nothing in that section which would lead to this inevitable construction by way of necessary implication. Mr. Shelat in this connection rightly relied upon the decision of Dixit C.J. *Dharam Chand v. Rajendra Kumar* ILR 1960 M.P. 901. The learned Chief Justice in that case was concerned with a similar Section 5 which enjoined upon the Court to make an order for the deposit of rent on a request being made by the landlord and provided that on (be failure of the tenant to deposit the lent his defence shall be struck off. At page 903 the learned Chief Justice observed that such a provision as embodied in Section 5 would make the defendant's right of defence onerous and stringent, and fettered it by conditions which did not exist at the time of the filing of the suit for the making of a defence and, therefore, Section 5 touched a vested right and that Section 5 could not therefore, be given a retrospective operation in the absence of an express provision or necessary intendment. I am in complete agreement with the said observations.

3. Mr. Oza next argued that there is no question of any vested right involved in the present case as the amendment is only a procedural amendment. Mr. Oza further argued that this is a remedial statute, in any event and, therefore, it must necessarily have a retrospective operation being both remedial and procedural. Mr. Oza relied upon the decision of the Supreme Court in *Anant Gopal Sheorey Vs. The State of Bombay*, , where the Supreme Court held at page 917 that no person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the altered mode. (See *Maxwell on Interpretation of Statutes* on page 225; *Colonial Sugar Refining Co. Ltd v. Irving* 1 905 A.C. 369). In other words, a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective. That decision could not apply for the simple reason that the amendment in question is not a procedural amendment. It affects substantive rights as in fact the entire right of defence which was unfettered is now completely fettered. Mr. Shelat in this connection rightly relied upon the decision of the Supreme Court in *Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others*, right of appeal continues to exist must necessarily imply that the old law which created that right of appeal must also exist to support (the continuation of that right. The Supreme Court negatived the argument that the right of appeal remained intact even when it was whittled down by the provision of deposit. Such a provision was held not to introduce any new matter of procedure as it was calculated to deprive the appellant of the unfettered right of appeal and would be regarded as a mere alteration in procedure. The fact that the pre-existing right of appeal continued to exist must, in its turn, necessarily imply that the old law which created that right of appeal must also exist to support the continuation of that right-and it must govern the exercise and enforcement of that right of appeal and there could then be no question of the amended provision preventing" the exercise of the right. On a parity of reasoning the defendant tenant had also vested right of defence which was completely unfettered and the provisions of the old law must be deemed to exist for the enforcement of that existing right which was completely unfettered and the new amendment cannot seek to deprive him of his right of defence.

4. Mr. Oza next argued that such an amendment in the Rent Act has always been held to be not affecting the vested right for the simple reason that the Rent Act merely provided immunity and did not affect" any Vested right in a tenant. In *Vasumali v. Ndvirdfti* 5 G.L.R. 969 , the amendment in the Rent Act was one introducing the Section 12(3)(a) in place of Section 12(3). Under the old Section 12(3) the tenant could get immunity from protection on his depositing of all the arrears of rent at any time" during the pendency of the suit or even during the appeal while that immunity could not be claimed in the face of the amended Section 12(3)(a). At page 973 the Supreme Court held that this provision cannot

be said to confer any right or vested right on the tenant. But even if the tenant had a vested right to pay the money in Court at the" hearing of the suit. Their Lordships did not see how that consideration could alter the plain effect of the words used in Section 12(3)(a). The suit was filed after the amended section came into force, and clearly the amended provision applied to the suit and governed the decision of the dispute between the parties. Their Lordships had come to this conclusion not on the ground alleged by Mr. Oza that the tenant who has only a protection under the Rent Act has no right but on the ground that the right In the present case was only a contingent right or inchoate right which would be getting a right only when the tenant deposited the arrears. Before the contingent right became an acquired right the amended statute had come into operation. It was on that basis that Their Lordships held that there was no question of any right or vested right being affected. On the other hand in *Moti Ram Vs. Suraj Bhan and Others*, , the Supreme Court considered an amendment in the Rent Act as regards the ground of ejectment and held that there was a vested right under the existing law under which the landlord was entitled to get a tenant "evicted and the amended section could not apply to a pending action. At page 658 Their Lordships held that such an amendment as regards the ground of ejectment was not in relation to any procedure and could not be characterised as procedural. It was in regard to a matter of substantive law since it affected the substantive rights of the landlord. Their Lordships also observed that it must be conceded that the Act was intended to provide relief to the tenants and in that sense was a beneficial measure and such its provision should be literally construed; but this principle would not be material or even relevant in deciding the question as to whether the new provision was retrospective or not. In those circumstances the amendment was held not to be retrospective when it sought to affect the vested right. Therefore, it is not open to Mr. Oza to contend that in the present case the amendment is only procedural or that it did not affect the vested right of defence which vested in the defendant as soon as the suit was filed.

5. As regards the alternative ground of Mr. Oza that the present amendment is remedial in character, this contention is wholly misconceived in the present case. Mr. Oza argued that the tenants not depositing the rent in Court has become well known, and to prevent this mischief and to protect landlords" right the Legislature has introduced this beneficial provision. The question before me is not one of any ambiguous provision of law where I would have to prefer the beneficial construction against the plain liberal construction. There is nothing in the section which makes this amendment retrospective by its express terms or by necessary intendment. This section does not fall in that category of remedial or explaining declaratory statutes which are treated as retrospective and as I have already held that it is not procedural in character it cannot have retrospective effect to pending actions. All the pending suits must therefore be governed by the law as it existed before the present amendment and in all such pending actions the Court could not direct these deposits so as to create the new

obligation on the tenant. In that view of the matter, it must be held that Section 11(4) could not have retrospective effect so as to effect the pending proceedings. The view of the Division Bench of the Small Causes Court at Ahmedabad was the correct view and the view of the District Judge at Surat was erroneous. Mr. Oza next argued that even if there is an error of law this Court has no jurisdiction to interfere with the order u/s 11(4) which is merely interlocutory order and which does not disclose any jurisdictional error. In the present case, as I have already mentioned the effect of the order u/s 11(4) is that if the tenant fails to make deposit as directed by the Court, his defence is liable to be struck down. Therefore, the direct and necessary impact of this order is that there would be a decree against the defendant without his getting any opportunity to defend the suit. Such an order would clearly amount to a case decided as per the test laid down by Their Lordships of the Supreme Court in Major S.S. Khanna Vs. Brig. F.J. Dillon, . in Prabhudas v. Bhogilal 8G.L.R. 649 . Besides the error in the present case was obviously a jurisdictional error within the meaning of Section 115 of C.P. Code for the simple reason that the order would be wholly ultra vires and the Court would have no jurisdiction to pass such an order. It would be in plain violation of the provisions of the Rent Act as it existed and, therefore, such an error which is involved in a decision which is ultra vires provisions of the Rent Act would be clearly a jurisdictional error in the exercise of its jurisdiction within the meaning of Section 115C. This was the view taken by the learned Chief Justice in the aforesaid decision in Dharamchand v. Rajendra Kumar ILR 1960 M.R 901, with which I am in complete agreement.

6. In the result C.R.A. No. 759/85 must be allowed. The order u/s 11(4) passed by the trial Court and confirmed by the District Court is set aside and the trial Court is directed to dispose of the suit in accordance with law.

7. Rule accordingly made absolute with costs in the Revision Application. C.R.A. No. 1018/66 must, however, be rejected. Rule in C.R.A. No. 1018/66 is discharged with costs.