

(1979) 05 GUJ CK 0006
In the Gujarat High Court

Case No : Civil Revision Application No. 1311 of 1977

Harilal Chakubhai Zaveri

APPELLANT

Vs

Jayantilal Kirchand Makani and Another

RESPONDENT

Date of Decision : 11-05-1979

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11, 29(2),
7

Citation : AIR 1980 Guj 11 : (1979) GLR 792

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

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

Judgement

1. This is a petition u/s 29(2) of the Bombay Rent Act by a tenant, who had filed a regular civil suit No. 590 of 1970 in the court of the Civil Judge (J. D.) Rajkot for a declaration that the alleged consent order by the Rent Court, Rajkot in Misc. Application No. 470 of 1969 fixing the standard rent of the rented premises at Rs. 225/- per month was vitiated by fraud practised on him and on the court. The said suit was decreed by the learned trial Judge by his judgment dated 13-12-1976. The respondents-landlords, that is, the landlord and his father-cum-manager, preferred the civil appeal No. 92 of 1976 in the District Court. It came to be allowed by the learned Joint District Judge there. The original tenant has, therefore, moved this court by this revision application, seeking reversal of the appellate order and restoration of the trial court's order.

2. A few facts require to be stated. There is situated a property at Rajkot belonging to Sudhirkant Jayantilal Makani, the real landlord and the defendant No. 2. The said property was managed by his father Jayantilal Makani, the original defendant No. 1. The facts which are established in this case and not in controversy are that the petitioner-tenant was under the decree of eviction from his landlord of earlier premises. He had, therefore, contacted the defendant No. 1 for letting out the suit property to him. According to the petitioner, Jayantilal

insisted on the standard rent being fixed before he could be inducted into possession and, therefore on 12-9-1969 advocate Mr. Doshi was jointly approached. The application, Ex. 76 was then prepared as if it was to be filed by the tenant Harilal. The application was drafted in a very clever manner as could be seen on reading the same. It did not state as to when the premises were taken on rent, but it was stated that the premises were taken on rent by the tenant at the rate of Rupees 250 per month with the tenant's liability to pay house tax and education cess to boot in respect of the suit property. The tenant then alleged in the application that the rent was exorbitant and that the landlord, though called upon, did not show any readiness to get the standard rent fixed and, therefore, the tenant was constrained to file the same. Then in paragraph 6, a prayer clause was set out that the standard rent of the premises should be fixed at Rs. 225 per month, taking into account the location and other facilities including the then prevailing rates and with the house tax and education cess, but with a liability of the tenant to pay the increase in those taxes (if it) is enhanced thereafter. On the same day, Advocate Mr. Doshi prepared the final compromise to be presented to the court. The application is Ex. 76 on the record and the compromise is Ex. 75 on the record. No order of issuance of process appears to have been made below that application, but on 23-9-69 the compromise, Ex. 75, was presented requesting the court to fix the standard rent at Rs. 225 as the reasonable rent, looking to all attendant circumstances, including the then prevailing house tax and education cess, but with the liability of the tenant to pay increases in those taxes. Even in the application, Ex. 76, this tenant had himself requested the court that an order should be passed that future increase in the amount of house tax and education cess; should be left to be borne by the tenant. Such an overenthusiastic tenant is ordinarily not to be found, but we find him here. The standard rent came to be fixed by the court by passing the following order:-

"parties above are present before me and admit the compromise the rent of Rs. 225 inclusive of" taxes is reasonable. Hence I fix it accordingly."

Thereafter the rent note came to be executed on 3-10-69 mentioning that the premises were let with effect from 1-9-69 for the rent of Rs. 225 p. m. The receipt also was passed on 3-10-69 for Rs. 450 mentioning that Rs. 225 were received as a deposit and Rs. 225 were received as rent for the period from 1-9-69 to 30-9-69. The receipt is Ex. 72 and Ex. 73 is the receipt of deposit of one month's rent. The tenant's say was that it was landlord's, insistence that he would be put into possession if and only if he got all those formalities finished as a condition precedent to letting, which was to be shown as if operative from 1-9-69. It is the tenant's contention that it was thereafter that he was put into Possession and the rent was charged only for the month of October, though a show was made that rent for two months was paid simultaneously on 3-10-79.

3. It appears that the initial agreement did not last longer and the tenant then filed the above-mentioned Civil Suit No. 590 of 1970 on 2-7-70, praying for a

decree to the effect that said consent order in fact was a fraud on the court, though the plaint also mentioned that it was a fraud on the plaintiff-tenant also.

4. The learned trial Judge viewed all the circumstances and held that the tenancy as a matter of fact had commenced after those formalities were completed on 23-9-69 and thereafter. Consequently, the learned trial Judge decreed the suit. The appellate Judge, however, held relying upon the averments made in those various documents referred to above and on the evidence of Advocate Mr. Doshi and the broker Ex. go that possession was delivered to the plaintiff-tenant on 1-9-69, though all payments were made after the court passed the final order of fixing the standard rent. The result was that the learned Joint District Judge dismissed the plaintiff's suit with costs throughout.

5. Mr. S. M. Shah, the learned Advocate for the plaintiff-tenant, urged that the learned Appellate Judge did not take into account the documentary evidence and attendant circumstances and was carried away by the insignificant statements attributed to the tenant as if he had hired the premises on 1-9-69. He requested me to go through the game of the landlord to evade the provisions of the Bombay Rent Act, which is on the statute book as a measure against exploitation of the people in need of accommodation in places where there is more demand and less supply of accommodation comparatively. As against this submission of Mr. Shah, Mr. Nanavati, the learned Advocate for the respondents landlords, contended that the learned Appellate Judge had reached a finding of, fact to the effect that the tenant was put into possession of the property on 1-9-69 and it was not within the competence of this court to go behind that finding of fact. He also submitted that there was no question of fraud as far as the plaintiff-tenant was concerned, because in his evidence he had admitted categorically that he had voluntarily appeared before the learned Civil Judge on 23-9-69 and admitted that he had entered into the compromise. Mr. Nanavati, however, urged that there would not be any question of fraud on the court and if any fraud at all was practised, it was practised by the tenant by filing the application and then calling upon the landlords to join him. In other words, Mr. Nanavati's submission was, this court should not grant the prayer of a man, who on his own admission was a party to the fraud.

6. I am conscious of my limitation on the question of a finding of fact. I, therefore, proceed on the assumption that the tenant might have been put into possession on 1-9-69, though no rent-note was executed till then, no rent was paid till then and nothing was there with the tenant on the basis of which he could raise a plea of tenancy, if the dispute had at all cropped up by then. Left to myself, I would have certainly disagreed with the assessment of evidence at the hands of the learned appellate Judge and would have held that all this was a hoax created by the landlord in order to see that before a tenant placed his toe into the premises of the landlord, he was bound down feet and hands so that he could not raise the defence afforded to him by law, namely, the Bombay Rent Act. The learned Appellate Judge should have seen that it was the case even of

the tenant and the landlord that the rent finally agreed upon was Rs. 225. The landlord very categorically admitted in his evidence that the rent was fixed at Rs. 225 pm. If the premises were let on 1-9-69 and one month's rent was already paid and the relations were not at all strained, there was no earthly reason for the tenant to state in the application, Ex. 76, that the rent was fixed at Rs. 250 per month with all taxes to boot and that the landlord despite being requested was not amenable to getting the standard rent fixed and that on that count the court should fix the standard rent. And what is the prayer put forward by the tenant in his application Ex. 76? Instead of Rs. 250, the tenant besought the court that the rent should be fixed by the court at Rs. 225 per month. All these smack of a clear engineering on the part of the landlord, who was out to exploit the acute need of the tenant, against whom the decree of eviction from his earlier rented premises was already passed and was executed on or before 1-9-69. However, as I said above, this finding based on some evidence, however grossly erroneous it appears to me, is not to be disturbed by me and that is why I proceed on the assumption that the physical possession might have been delivered to the tenant on 1-9-69 with a clear warning to him that unless he got the standard rent fixed, he would not have in his possession any documentary evidence even remotely suggesting his tenancy.

7. The sole question that requires to be determined in a case like this is a question of fraud. Under the law of pleadings, fraud is to be both pleaded and proved. As far as the fraud on the plaintiff is concerned, there is none, though, as held by me above, there was coercion on him. Coercion is writ large, but coercion is certainly distinct from fraud, and the decree is sought to be avoided on one ground, namely, a fraud practised on the plaintiff-tenant. So this ground is not available to the Plaintiff-tenant.

8. The next question is the fraud on the court. This landlord was out to see that the tenant did not have with him any evidence of tenancy till the standard rent was fixed. He was shrewd enough to get the tenant file an application, containing facts which were incorrect to the knowledge of both. There was no occasion for the tenant to file such an application within 12 days of the alleged hiring of the premises. The averment in the application, Ex. 76, that the landlord despite repeated request did not respond to the call of getting standard rent fixed is also clearly an engineered one. A tenant in the initial stages of hiring the premises is hardly interested in getting the standard rent fixed, unless of course he apprehends that the landlord would turn round and seek the enhanced rate of rent. Here the landlord assumes the pose of absolute innocence and if it be so, there was no earthly or conceivable reason for the tenant to file an application for fixation of standard rent within 12 days of the hiring of the premises. The fact that he did so within 12 days, the fact that he was made to state facts as if there was a dispute though there was none, and the fact that till then even the rent receipt is not passed, go to show that this was all an engineering on the part of the landlord. The purpose is obvious. Though there was no dispute, the landlord made the tenant represent that there was a dispute and here lies the fraud.

When a court is misled on a question of fact, the fraud arises because had there not been such a representation to the court, the court would not have proceeded to fix the standard rent at all. u/s 11 of the Rent Act, the court's jurisdiction is attracted if there is a dispute between the landlord, and the tenant. There must be a lis before adjudication. In this case, there was no lis and, therefore, the adjudication has to be held perforce a matter of plot or arrangement or to put it in legal language a matter of clean-cut fraud on the court.

9. Mr. Nanavati's argument, however, was that it was the plaintiff-tenant who had moved the court and if anyone had practised the fraud on the court, it was the tenant. This is too simple a view of the situation. A man coerced into filing such an application acted only as the helpless agent of the landlord. For practical purposes, this was the presentation of the application by the landlord through the tenant. This conclusion is inescapable in the facts and circumstances of this case. The fact that the compromise was also drafted fully and finally by the very Advocate Mr. Doshi on 12-9-69 to be presented after a few days is a circumstance further clinching the issue. It is, therefore, inevitable to hold that this was all a tame affair already mooted out well in advance and the court was made a sort of a tool for the purpose of pinning down the tenant to a position from which he could not resile and could not avail himself of the protection of the law, namely, Section 7 of the Bombay Rent Act. This is nothing short of a dishonest design on the part of the landlord and it was a clever manoeuvring arranged by the landlord. I am, therefore, not prepared to believe that the tenant and the landlord stand on equal footing as far as representation to the court is concerned. I say that the tenant was a helpless tool in the hand of the crafty landlord and the consent order that was passed is unequivocally in favour of the landlord. If this is no fraud on the court, no better case of the type can be had in the annals of the rent litigation.

10. Mr. Nanavati, however, invited my attention to the judgment of my brother S. H. Sheth J. in the case of Jayantilal Chunilal Panchali Vs. Bai Jashoda, . In that case Mr. Justice Sheth did hold that a particular amount could be fixed as standard rent by consent. more particularly when in respect of the premises let out for the first time the contract rent is the standard rent unless the court, upon a dispute having been raised by the tenant fixed a different amount as the standard rent. The learned Judge, however, was not oblivious of the interested proverbial foresightedness of the landlords and that is why in paragraph 7 of his judgment, he has observed as follows:-

"Since in my opinion it was a valid and lawful order made by the court, it operates as res judicata and it is not open to the tenant to reagitate that question unless it has been got rid of on the ground of fraud, coercion, misrepresentation, undue influence or on any such legal ground."

11. This is a case and in my view eminently a fit case where the court's order can be annulled and declared inoperative and ineffective on the ground of engineering of a plot at the behest of a landlord in which the tenant was a mere

helpless tool.

12. In above view of the matter, it to inevitable to hold that the earlier fixation of standard rent stands vitiated. The learned trial Judge had, therefore, rightly held it so. I, therefore, allow the revision application set aside the appellate court's order and restore the trial court's Judgment and order. Rule is accordingly made absolute with costs throughout.

13. Revision allowed.