

(1961) 10 GUJ CK 0008
In the Gujarat High Court

In Re: Dave Bhagwarprasad Prabhuprasad and Others

Date of Decision : 10-10-1961

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(3)(a), 12(3)(a), 12(3)(b), 12A

Citation : (1962) 3 GLR 473

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

Bench : Single Bench

Judgement

R.B. Mehta, J.—This is a revision application against an order of dismissal of the petitioners appeal by the learned Extra Assistant Judge Nadiad against an order of ejectment passed by the learned Civil Judge Junior Division Anand. The applicant petitioner was a tenant of a residential premises where incidentally he was also carrying on his business situated at Anand and belonging to the respondents-landlords. Since several years the applicant was holding this tenancy at a contractual rent of Rs. 75/-p.m. which he paid upto 27th July 1949. Thereafter the applicant ceased paying the rent of the premises. Sometimes in 1961 the applicant applied for fixation of standard rent. That application was decided on 31 March 1954 and the standard rent was fixed at Rs. 25/p.m. After the decision in this application for standard rent sometime in July 1954 the applicant is alleged to have offered the payment of rent at the rate of Rs. 25/p.m. which was the standard rent fixed but that offer was to pay at this rate from 5th July 1954 onwards which offer the landlords did not accept. The applicant did not offer the payment of the arrears prior to July 5 1954. The landlords gave notice to quit on 16th October 1954 wherein they stated that the applicant was in arrears of payment of rent for over six months and because of that the notice to quit was given and the applicant was asked to quit on the last day of the month of the tenancy which was incidentally Kartik Vad 30 of S.Y. 2011. The applicant did not pay up arrears on this notice to quit. A suit for ejectment was therefore filed on 16th December 1955 basing the claim for ejectment u/s 12(3) (a) of the Bombay Rents Hotel and Lodging House Rates (Control) Act 1947 (hereinafter referred to as the said Act) which runs as follows:

Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in Sub-section (2) the Court may pass a decree for eviction in any such suit for recovery of possession.

2. The notice which is referred to in Sub-section (3)(a) is to be given according to Sub-section (2) which provides as follows viz.

No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment 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 Section 106 of the Transfer of Property Act 1882.

3. In other words before filing a suit for recovery of possession on the ground of non-payment of rent it is necessary that one month should have expired after one months notice in writing has been given to the tenant demanding the rent. It is only after the said period of one month is over that a suit for ejectment can be filed u/s 12(3)(a) of the Act. It was under those provisions that the plaintiffs filed this suit for ejectment. Within a period of two months after the filing of the suit the petitioner deposited an amount of Rs. 1075/in Court towards the arrears of rent from which by the permission of the Court the landlords were allowed to withdraw a sum of Rs. 900/which were the arrears then due. After the suit was heard the learned Civil Judge Junior Division passed a decree for ejectment against the applicant together with arrears and costs and as stated earlier the arrears which amounted to Rs. 900/were already allowed to be withdrawn by the landlords. Against this decree there was an appeal before the learned Extra Assistant Judge Nadiad who dismissed that appeal. Cross-objections were also filed as the trial Court awarded three years arrears only holding that the arrears beyond three years were barred by limitation. These cross-objections were also dismissed by the learned Extra-Assistant Judge who upheld the point of limitation which was decided against the landlords by the learned trial Judge. It is against the dismissal of this appeal that the present revision application is made to this Court.

4. The points urged in this revision application are that the suit tenancy is not by the Indian Calendar month but by the British Calendar and that both the Courts below have not taken into consideration the tenants evidence on this point and that therefore their finding that the tenancy was by the Indian Calendar month is arrived at without taking into account the evidence on record. Next it was contended that assuming that the agreement of tenancy was by the Indian Calendar by reason of Section 27 of the said Act the tenancy is deemed to be by the British Calendar and that if it is so the notice which is given according to the Indian Calendar is bad and of no effect. It was contended that this aspect of the

case was overlooked by the learned Extra Assistant Judge. Lastly it was contended that the applicant paid the arrears within about 2 months of the filing of the suit and that therefore he must be considered to be ready and willing to pay the rent and in that view of the case the landlord would not be entitled to recover possession of the premises.

5. Dealing with the first point it is not correct to say that the learned Extra assistant Judge has omitted to consider the evidence on record in arriving at his conclusions that the tenancy was by the Indian Calendar month. There is a rent-note Ex. 60 which in terms says that the premises were rented from Kartak Sud 1 of S.Y. 1963 and that the rent was to be paid every month. There is no controversy that for several years prior to 1949 the rent was being paid at the rate of Rs. 75/-. The rent note Ex. 60 is clear on the point that the tenancy was agreed to be by the Indian Calendar month. Mr. Parghi for the applicant contended that in reply to the notice of demand dated 16th October 1954 which stated that the applicant should vacate at the end of the Indian Calendar month of the tenancy the tenancy by the Indian Calendar month was denied and that this fact has not been considered by the learned Extra Assistant Judge in arriving at his conclusion that the tenancy was by the Indian Calendar month. I asked Mr. Parghi to point out to me any evidence on behalf of the applicant in which it was clearly stated that the tenancy was by the British Calendar month. Mr. Parghi was unable to point out any such evidence. It is not necessary for the learned Extra Assistant Judge to refer to every detail of evidence in the judgment but reading his judgment as a whole I do not find anything from which it can be inferred that the learned Extra Assistant Judge has overlooked any evidence on this point. In these circumstances the plea of Mr. Parghi that the learned Judge has arrived at his finding that the tenancy was by the Indian Calendar month was arrived at without considering all the evidence on record is unfounded. This is a finding of fact which has been arrived at by the learned Extra Assistant Judge after appreciation of the relevant evidence before him and therefore this Court will not in revision disturb that finding of fact.

6. Coming to the second point that the notice to quit is bad because it is given by the Indian Calendar month by reason of Section 27 of the Act 1 must refer to Section 27 of the Act which provides as follows:

(1) Notwithstanding anything contained in any law for the time being in force or any contract custom or local usage to the contrary rent payable by the month or year or portion of a year shall be recovered according to the British Calendar.

7. Mr. Parghi contended that this section contemplates that irrespective of any contract custom or local usage to the contrary the calculation of any rent payable by the month or year or portion of a year should be by the British Calendar month and that therefore automatically it should follow that the tenancy also should be according to the British Calendar month. I am unable to agree with Mr. Parghi's contention for Section 27 applies only to cases for recovery of rent. It does not mention anything in regard to the tenancy itself being by the British

calendar. Monthly tenancy by itself being month to month and the monthly computation of rent are two different concepts. Merely because the rent is to be calculated on the basis of the British Calendar month it does not follow from the language of Section 27 of the Act that the tenancy itself should be deemed to be by the British Calendar month. Mr. Parghi has been unable to cite any decision in respect of the contention which he was put forward and a simple reading of the section itself cannot lead me to accept the contention of Mr. Parghi. Therefore in this case it cannot be said that the notice to quit which has been given by the Indian Calendar month was void and of no effect.

8. Coming to the last contention of Mr. Parghi Mr. Parghis contention was that u/s 12 (1) of the Act 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 the amount of the standard rent and permitted increases if any and observes and performs the other conditions of the tenancy in so far as they are consistent with the provisions of this Act. Mr. Parghi said that his client was ready and willing to pay the rent and that it was shown by the deposit of the rent within two months of the filing of the suit. The answer to Mr. Parghis contention is given by Section 12 (3)(a) which says that if any tenant neglects to make payment of the rent for a period of six months or more until the expiration of the period of one month next after the notice which has been referred to in Section 12(2) which has been referred to in an earlier part of this judgment the Court is entitled to pass a decree for eviction. It is also provided by Sub-section (2) of Section 12 as stated earlier that where a suit is filed for recovery of possession by a landlord on the ground of nonpayment of rent it can only be so filed after the expiration of one month next after the notice in writing of the demand of rent has been served upon the plaintiff. Now in this case therefore a notice as contemplated by Section 12(2) of the Act has been given. The suit has been filed after the expiration of one month from this notice. Section 12(3)(a) says that if there are arrears of rent for a period of six months or more and the tenant neglects to make payment thereof until expiration of the period of one month after the notice as referred to above the Court is entitled to pass a decree of eviction. Section 12(3) (a) applies where there is no dispute regarding standard rent or permitted increases. In this case at the date of the filing of the suit there was no dispute regarding the standard rent for the standard rent was fixed about six months before the institution of the suit. Therefore in this case it cannot be said that the tenant was ready and willing to pay the amount of rent in terms of Section 12 A further answer to Mr. Parghis argument that even if the tenant deposits rent after the institution of the suit he can be said to be ready and willing to pay the rent is also furnished by Sub-section 3(b) of Section 12 which provides as follows:

In any other case no decree for eviction shall be passed in any such suit it on the first day of hearing of the suit or on or before such other date as the Court may fix the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tenders in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the

suit as directed by the Court.

9. In other words relief is given to a tenant in cases where he deposits the rent in Court after the institution of the suit and is confined to cases which are covered by Sub-section 3(b) of Section 12. Therefore I do not think that in this case where the deposit was made within the period of 2 months after the filing of the suit where the rent in arrears was for six months or more and where as here the case falls under Sub-section (3)(a) of Section 12 it can be said that the tenant was ready and willing to pay the rent. Again the readiness and willingness to pay u/s 12(1) is to be judged as the position is at the date of the filing of the suit. Reference may be made in this connection to Kurban Husseins case reported in 59 Bom. L.R. 158. I am unable to accept Mr. Parghis contention that the tenant was ready and willing to pay within the meaning of Section 12(1) and that therefore the suit was not maintainable for in this case the deposit was made admittedly after the institution of the suit and the case fell u/s 12(3)(a).

10. Lastly it was contended by Mr. Parghi that under the provisions of Section 12(3)(a) where a tenant neglects to make payment of rent for six months or more the Court may pass a decree for eviction. Mr. Parghi said that the Legislature has not used the word Court shall pass a decree for eviction and that therefore Mr. Parghi contended that it is discretionary with the Court even in cases falling under Sub-section 3(a) of Section 12 whether to pass a decree or not and that it is open to this Court to interfere with the discretion of the lower court in passing a decree for eviction. I am unable to accept Mr. Parghis contention that where all the conditions requisite u/s 12(3)(a) are fulfilled it is still discretionary with the Court to pass a decree for ejectment. For if the intention of the Legislature was such as contended for by Mr. Parghi there was no necessity for enacting a separate provision for arrears of six months or more as enacted in Section 12(3)(a) for all cases of arrears of rent could have been provided for u/s 12(3)(b) read with the Explanation. That is a sufficient indication in my view of the mind of the Legislature that may in the context in Section 12(3) (a) should mean shall. But it is not necessary to pursue this matter further for in the above cited Kurban Husseins case Mr. Justice Gajendragadkar who delivered the judgment of the Court repelling the argument similar to Mr. Parghis observes as follows at page 163 of the report:

Sub-section (3)(a) of Section 12 deals with cases of tenants who are in arrears as to payment of rent for a period of six months or more and who fail or neglect to make payment of the rent in question until the expiration of the period of one month after notice as mentioned in Sub-section (2) of Section 12. Legislature has used the word may while dealing with cases of tenants who are in arrears for a long period and who fail or neglect to make payment of rent due within a month after receiving notice in that behalf from the landlord. In our opinion it is clear that the scheme of Section 12 indicates that in regard to tenants who are in arrears for a long period and who refuse to pay the rent even within a month after receiving notice a decree for ejectment shall follow as a matter of course.

Cases where there is a dispute about the standard rent or permitted increases are covered by the explanation to Section 12. In such cases the tenant is required to make an application to the Court in the manner and within the period mentioned in the explanation for fixation of standard rent; so that these cases do not fall within the purview of Section 12 Sub-section 3 (a) Section 12 Sub-section (3)(b) naturally deals with cases where the rent due from the tenant is for a period less than six months. In respect of such cases Legislature has provided that no decree for ejectment shall be passed provided the payment of rent is made as provided in the Sub-section. Having given adequate protection to tenants who are not in arrears for such a long period as six months Legislature appears to have taken the view that where tenants are in arrears for such a long period as six months if the tenant do not take steps to pay the rent within one month after receiving notice from the landlord they are not entitled to any further protection and the landlord would be entitled to obtain a decree as a matter of right. That is why we are inclined to take the view that in the context in which the word may is used in Section 12 Sub-section (3)(a) it must be held that the said word introduces an element of obligation or compulsion and in effect means must or shall.

11. I am in respectful agreement with the above interpretation of the word may as shall or must in Kurban Husseins case. Under the circumstances the last contention of Mr. Parghi also fails.

In these circumstances it is not possible to accept any of the contentions advanced by Mr. Parghi.

There is therefore little substance in this revision application. The revision application is dismissed with costs. Rule discharged. Interim stay vacated.