
(1995) 04 GUJ CK 0037

In the Gujarat High Court

Case No : Civil Revision Application No. 1014/88

Jagdisbhai J. Desai

APPELLANT

Vs

Vidyaben Rambhai Patel

RESPONDENT

Date of Decision : 01-04-1995

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 12(2), 12(3), 29(2), 29(3)

Citation : AIR 1996 Guj 1 : (1993) 2 GLR 653

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

Bench : Single Bench

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

Judgement

J.N. Bhatt, J.—In this revision application, the original defendant-tenant has questioned the legality and validity of the ejection decree passed by the learned Additional Judge, Small Cause Court, Baroda and confirmed by the appellate Court, by invoking aids of provisions of Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("Rent Act" for short).

2. Relevant material facts giving rise to this revision may be stated. Respondent is the original plaintiff-landlord who instituted rent suit No. 1978 of 1976 in the Small Cause Court at Baroda on 6-9-1976 seeking possession of the demised premises consisting of three rooms, kitchen and galary on the first floor in residential area situated at Raopura, Baroda bearing municipal census No. 21/3-396 on the ground that the petitioner has incurred liability and rigours of the provisions of Section 12 of the Rent Act as he was in default in payment of rent for more than six months at the time when the notice was sent.

3. The defendant tenant appeared and resisted the suit by filing written statement raising various contentions. He denied that he was in arrears of rent as claimed by the plaintiff-landlord. According to his contention, he had paid the amount of rent to Shantibhai Bhartiya for and on behalf of the plaintiff and claiming to have paid rent from 1-5-1975 to 31-5-1976 to one Natubhai

Bhailabhai. He also denied the title of the plaintiff.

4. In view of the facts and circumstances and pleadings of the parties, issues came to be settled at Ex. 28. On appreciation of the facts and circumstances and evidence on record, the learned trial Judge found that the tenant was in arrears of rent for more than six months and was pleased to reject the contention of the tenant that he had paid the rent. The trial Court, therefore, found that there was case for eviction u/s 12(3)(b) of the Rent Act. Accordingly, judgment and decree came to be passed against the defendant u/s 12(3)(b) of the Rent Act.

5. Being aggrieved by the said judgment and decree, the defendant-tenant preferred regular Civil Appeal No. 282 of 1982 in the Court of the District Judge on 8-11-1982. The original plaintiff also filed cross-objection. After hearing the parties and considering the facts and circumstances and the evidence on record, the learned appellate Judge was pleased to dismiss the appeal filed by the tenant and was pleased to allow the cross-objections filed by the landlord modifying the decree under challenge. The appellate Court undoubtedly found that in light of the facts and circumstances, the tenant is liable to be evicted u/s 12(3)(a) of the Rent Act. Accordingly, a decree came to be passed against the tenant.

6. Being aggrieved by the said order, the original defendant-tenant has now come up before this Court challenging its legality and validity invoking the aids of Section 29(3) of the Rent Act.

7. After having heard the learned advocate for the parties and having examined the facts and circumstances and considering the limited scope of the provisions of Section 29(3) of the Rent Act, this Court has no hesitation in finding that the present revision is without any substance.

8. The material facts and aspects attracting the rigours of provisions of Section 12(3)(a) are significantly established. Notice, Ex. 46 dated --76 u/s 12(2) was received by the defendant wherein arrears of rent was claimed which was for more than six months. Monthly rent was Rs.250/- and the defendant was served with the notice by the landlord demanding rent for more than six months. Reply to notice is produced at Ex. 65. There was no dispute of standard rent. The notice was not complied with. The Courts below have concurrently found that the dispute of the payment raised by the defendant is not only incorrect but is false and fabricated with a view to create defence to get out of rigours of eviction u/s 12(3)(a). The contention of the tenant that he had paid rent to Shantilal Bharatiya for the period from 1-10-1972 to 30-4-1975 and rent from 1-5-1975 to 31-5-1976 to Natubhai Bhailalbai for and on behalf of the plaintiff-landlord is found farthest from truth. The consistent and concurrent finding of fact recorded by both the courts below is fully justified requiring no interference.

9. The contention of the defendant that he had paid an amount of Rs. 3,590/- on 30-4-1978 vide receipt Ex. 83 signed by Natubhai Patel is not only disbelieved but is found to be concocted and fabricated. Rent payable during the period from 1-2-1975 to 31-7-1982 came to Rs. 22,500/-; whereas the amount which was

actually paid came to Rs. 18,750/-. Thus, not only at the stage of notice, not only at the stage of decree passed by the trial Court but even at the stage of first appeal and in the revision, the defendant tenant has remained a defaulter consistently all throughout. Protection u/s 12 is available to a tenant who is a bona fide tenant and who is regularly a paying rent to the landlord. A defaulter-tenant has no right to seek protection of the Rent Act. In the opinion of this Court, the Courts below have rightly and concurrently, on facts, found the defendant-tenant a defaulter and, therefore, the decree for eviction on the ground of non-payment of rent for more than six months at the time of notice is fully justified u/s 12(3)(a) which requires no interference in this revision.

10. However, learned counsel for the petitioner-tenant has submitted that the petitioner may be given one years time for vacating the premises. This stand is strongly resisted by the learned counsel for the respondent. Having regard to the facts and circumstances and the evidence on record, the defendant tenant is given three months" time to vacate the demised premises. In other words, ejection decree shall not be executed only for a period of three months from today, on the condition that the petitioner-tenant gives an undertaking before this Court within ten days" time that he shall not part with or transfer possession of the demised premises and shall pay full amount of rent which is in arrears till the date of delivery of possession. Petitioner-tenant is, therefore, directed to vacate and hand over peaceful possession of the demised premises to the respondent-landlord on 1-7-1995. In view of the aforesaid observations and discussion, this petition stands dismissed with costs. Rule discharged.