

(1978) 10 GUJ CK 0018
In the Gujarat High Court

Jamna Mangaji

APPELLANT

Vs

Vaktavarmal Gangaram and Others

RESPONDENT

Date of Decision : 19-10-1978

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 17, 29(2), 29(2)
Constitution of India, 1950 — Article 227

Citation : (1979) 1 GLR 664

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

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is a petition under Article 227 of the Constitution of India by the original judgment-debtor of one decree in Civil Suit No. 3292 of 158 passed for eviction by the learned Small Causes Judge, Ahmedabad.

2. A few facts need to be stated.

3. The subject-matter of the dispute is a single room - residential house which originally belonged to the respondent No. 2-Bhuralal Gmgaram who was entitled to claim Rs. ? per month as rent from the tenant. Said Bhuralal had filed the aforesaid suit for eviction of the petitioner-tenant on the ground of personal bona fide requirement and arrears of rent. On 22nd November, 1962 a decree had come to be passed by the trial Court only on the ground of personal requirement. The tenant-petitioner preferred the Appeal No. 152 of 1967 before the Appellate Bench and by consent, decree was confirmed but with the modification that the tenant was given time upto 31st December, 1970 to vacate. Before the time for executing the decree arose, the respondent No. 2-Bhuralal sold off his right under decree and the property itself to the respondent No. 1- Vakatavermal Gangaram who as a transferee of the decree filed the execution petition No. 32 of 1972 in the Small Causes Court. This tenant resisted the execution proceedings by contending Inter alia that the decree had become inexecutable because of the subsequent development viz. the transfer of the property by

Bhuralal in favour of the respondent No. 1. Both the trial court as well as the Appellate Bench in Appeal No. 56 of 1974 negated the contention of the tenant-petitioner who has filed the present petition under Article 227 of the Constitution.

4. At the outset I invited the attention of Mr. Shah that in Rent Act matters any operative final order would amount to a decree and so the only proceedings that would be competent would be u/s 29(2) of the Bombay Rent Act. Mr. Shah readily agreed to this proposition and he said that this petition should be treated as the Civil Revision Application u/s 29(2) of the Rent Act. I have permitted Mr. Shah to convert the Special Civil Application into a Civil Revision Application.

5. It is a settled legal position that a decree u/s 13(1)(g) of the Rent Act is a personal decree. If a person dies or gets rid of the property, his personal requirement comes to an end. Mr. P.V. Nanavati, the learned advocate for the respondent - however, urged that the executing court cannot go beyond the decree and the decree has got to be executed as it is. As a broad proposition of law, Mr. Nanavati's submission is well-founded. But in this case there is no question of going beyond the decree because the respondent No. 1 himself went to the Court with the facts that changed the entire context. Therefore, there is no question of going beyond the decree. It is a question of interpreting and implementing the decree on the facts averred by the respondent No. 1-the execution-petitioner.

6. u/s 17 of the Bombay Rent Act it has been provided that if the premises are not occupied by the landlord who has obtained decree for eviction on the grounds specified in Clause (g) of Sub-section (1) of Section 13 within a period of one month from the date the landlord recovers the possession or the premises are relet within the period of one year of the said date to any other person other than the original tenant, there accrues a right to the original tenant to seek reinstatement of his in the premises. When the respondent No. 2 washed his hands of the property once for all it follows that there is no possibility of his keeping the premises in exercise of the right of the decree which has been transferred by him to the respondent No. 1. It is idle excrete to allow the decree first to be executed and then invite the application from the tenant u/s 17 for reinstating the earlier position. The courts of law never undertake their exercise in futility. On the facts stated by the responded No. 1 himself, there has arisen impossibility of the respondent No. 2's enjoying the fruits of the decree. In this view of the matter an indefatigable right of the tenant u/s 17 would arise and would make the decree nonexecutable.

7. Mr. Nanavati, however, invited my attention to the judgment of Miabhoy, J. (as he then was) in the case of Budhaji Bakorji v. Shantilal 4 GLR721 and urged that there was nothing in Section 13(1) of the Act to show that the decree procured by the landlord on that basis is a personal decree. It was a case u/s 13(1)(i) of the Bombay Rent Act. Whether a decree u/s 13(1)(i) is not a personal decree or not, is not a question that crops up for my determination here. As far as decree

for bona fide personal requirement is concerned it has been held to be a personal decree. The legal position is changed since after Justice Miabhoy (as he then was) decided the said case. At any rate the ratio of the said judgment would not be attracted to the case on hand wherein decree was u/s 13(1)(g) and not u/s 13(1)(i) of the Act. Moreover, Section 17 steps in. The result is that the petition is required to be allowed. The orders passed by the Executing Court and the Appellate Court which are challenged herein are set aside and the execution application filed by the respondent No. 1 is directed to be dismissed. Rule is accordingly made absolute with no order as to costs, throughout.