

(1984) 04 GUJ CK 0009

In the Gujarat High Court

Case No : Civil Revision Application No. 1949 of 1982

Jethalal Raghunath and Another

APPELLANT

Vs

K.H. Sojitra

RESPONDENT

Date of Decision : 27-04-1984

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11(3)
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 8
Constitution of India, 1950 — Article 226

Citation : AIR 1985 Guj 87 : (1984) GLH 752

Hon'ble Judges : N.H. Bhatt, J;M.B. Shah, J

Bench : Division Bench

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

Judgement

Bhatt, J.—this is a revision application referred to us by our Brother R. A. Mehta J. by his, order dt. 21-2-1984.

2. In order to understand what the controversy is, the history of this litigation is required to be looked at. The opponent herein, who admittedly is a tenant of the premises situated at Jamnagar, has filed an application for fixation of standard rent in respect of the premises hired by him from the present petitioners-landlords. He has a right to file an application and there is no controversy about it. In that substantive application itself, the opponent-tenant filed an application for fixation of interim rent, presumably under S. 11(3) of the Bombay Rent Act. The learned trial Judge fixed the interim rent of Rs. 1575/- p.m. as against the contractual rent of K 2500/_Soon on being served with this order fixing the interim rent, the landlords appeared before the learned Judge and gave him an application, ex. 32, requesting the learned Judge that the said order fixing the interim rent below application ex. 4 was ex parte and, therefore, he should be heard before any order to his obvious prejudice could be passed. The learned Judge, however, rejected that application holding that the Gujarat High Court in one unreported decision had held that there was no provision in the Act whereby

the landlord could make an application to have refixation of the interim rent or to get revised the interim rent fixed by the Court ex parte. The judgment relied upon by the learned trial Judge is in the case of Mahavi Jain Vidyalaya v. Bostor Taylors (C. R. A. 1259 of 1979) decided by our Brother S. L. Talati J. on 29-12-80. Being aggrieved by the said refusal to re examine the question, the landlords invoked this High Court's revisional jurisdiction under S. 115 of the Civil P.C. The thrust of their arguments before us vigorously put forward by Mr. Shah is that in this case when the landlords had not given any notice under S. 12(2) of the Bombay Rent Act the Court had no jurisdiction whatsoever to fix the interim rent and secondly Mr. Shah urged that even if such a power was assumed to be there vested in the Court under S. 11(3) or (4) of the Act, such a prejudicial order passed by way of ad interim order had to be revised or affirmed after hearing t e person likely to be adversely affected thereby.

3. We have heard the learned Advocates .We are convinced that this revision application referred to us by our Brother R. A. Mehta J.deserves to be allowed on both the counts urged before us. It is the common case of the parties that the opponent herein, the tenant, was not served with any notice under S. 12(2) of the Bombay Rent Act and if there was no such impending threat of institution of a suit for possession on the ground of non-payment of rent, there was no occasion for the tenant to get the interim rent fixed. The Scheme of S.11 of the Act requires to be closely looked at Sec. 11(1) enumerates the cases in which the Court would be justified in fixing the standard on the criteria provided thereto. Section 11(2) gives the Court under the Act power to fix the amount of permitted increases Section 11(3) of the Act then provides for fixing of interim rent, obviously at the behest of tenant who has filed an application for fixation of standard rent for determining permitted increases if he has received a notice from the landlord under S. 12(2), which threatens him with an action of eviction on the ground of non-payment of rent if the amount demanded is not paid within a period of one month of the receipt of the notice of demand. The purpose behind enacting this section is very clear, as could be viewed from the Scheme of the Act Section 12(1) provides a sort of an umbrella above the head of a tenant. It says that as long as the tenant is ready and willing to pay the rent and to comply with other terms of tenancy, he cannot be evicted. Section 12(2) then provides a sort of a further safeguard to the tenant. Section 12(1) says by necessary implication that if a tenant is not paying rent, he can be proceeded against in the matter of eviction. In order to give a sort of a further protection to the tenant, a procedural safeguard is envisaged by S. 12(2) which says that before filing a suit for possession on the ground of non-payment of rent, a sort of an eleventh hour opportunity should be extended to tenant so that he may make good his lapse. Section 12(2), therefore, posits that before a landlord exercises his right of eviction envisaged under S. 12(1) of the Act, he must give an opportunity to the tenant to make good that lapse by paying or tendering the amount allegedly due. Now a situation may arise that the tenant may be genuinely disputing the rate of rent or permitted increases. What should be done

in such circumstances? If he raises the dispute, say within a period of one month, then he cannot thwart the action of the landlord, but he may get protection under S. 12(3) of the Act at any rate, but the Legislature does not want that the tenant should be subjected to this sort of torture of litigation. If the tenant genuinely contests the landlord's claim about the rate of rent, such a tenant is given a sort of a further protection to vindicate his grievance about the standard rent under S. 11(1) and 11(3) of the Act then provides that such a tenant, to whom a notice under S. 12(2) has been served, may request the Court to fix the interim rent. The moment the interim rent is fixed, the arrears at that interim rate are to be deposited with the order to go on paying the rent regularly at that interim rate, and the landlord's right to proceed against the tenant on the ground of non-payment of rent would stand arrested. The entire scheme of S.12(1) and 11(3) of the Act, therefore; clearly lays down that the question of interim rent arises if and only if the tenant stands the threat of being proceed against in the form of eviction proceedings on the ground of non-payment of rent, which threat can be initiated only by a notice under S.12(2) of the Bombay Rent Act. If there is no such imminence, there is no case for getting interim rent fixed. So in the present case the very application, Ex, 4, given by the tenant to the learned Judge for fixing the interim rent was without jurisdiction and on this ground, the impugned order of interim rent is required to be quashed and it is hereby quashed on that ground. We, however, make it clear that if during the pendency of the application under S. 11(1) of the Act for fixing the standard rent or permitted increases or both, the landlord chooses to give a notice under S. 12(2) of the Act, it will be open for the tenant to seek fixation of interim rent under S. 11(3) of the Act.

4. We have to set aside the order of the learned Judge even on the second ground. The genesis of the rule of law and the present system of administration of justice also, is that no man shall be condemned unheard. To put it differently, it is to be stated that before any order to the detriment of any person is to be passed, that person has to be heard. If a peremptory situation calls for some immediate order as it is in the matter of some injunctions to be issued ex parte under O. 39 of the Civil P.C., such orders may be passed to look after the intervening period and before that peremptory impetuous ex parte order is to hold the field till the conclusion of the proceedings, it is the inevitable obligation of judicial or quasi-judicial authority to see that the prejudicial ex parte passed order does not continue to operate to the detriment of the person concerned till those original proceedings in which this interim order is passed come to be concluded. Even if this provision is not specially there, it is to be understood as implicitly existing there in order to save this provision from being arbitrary and discriminatory, ultimately violative of Art. 14 of the Constitution of India. Judicial precedents abound in this connection. It is the modicum of the rule of law. It is the minimum requirement of the system of justice. The learned Judge unfortunately did not have full grasp of this basic tenet of administration of justice in our country and therefore, was carried away by the bare text of S.

11(1) of the Act. The learned Judge., however had not the benefit of the entire judgment of our Brother Talati J. in C. R. A. No. 1259 of 1979 because his judgment shows that he had only before him short notes published by the G. L. T. agencies. In that case, as the first paragraph of the judgment shows, the Court had fixed the interim rent ultimately, but thereafter it had come to be revised by the Court and then there was perhaps further application to get it revised by the landlord, At any rate, some observations of the learned Judge, which we extract below, went home to the learned Judge. The words are as follow: -

There is no provision by which the landlord can apply for the purpose of fixing any interim standard rent. There is further no provision whereby the landlord can make an application to get revised the interim rent which is fixed by the Court."

The above observation of the learned Single Judge in C. R. A. 1259 of 1979 can hardly be taken as the correct exposition of law and we, therefore, respectfully say that the correct position is what we have observed above.

5. We are in the company of earlier Division Bench of this Court in the case of Harisondas Chunilal Chokshi Vs. Prabhavatiben, . It was a case under S. 1] (4) of the Act, as the present one is under S. 11(3) of the Act similar argument. Which found favour with the learned trial Judge was advanced before the High Court on that occasion and the Division Bench, on the same line of reasoning, which we have adopted, above, has observed as follows (at p, 250) -

"It is true that sub-section (4) does not in terms enact that before passing any of the orders under the said sub-section, the Court should issue a notice to the tenant and give him an opportunity to controvert the case of the landlord or to put forward his own case. However, it appears to us clear. Having regard to the nature of the orders which the Court is authorized to pass under the said sub-section and the factors which it is required to take into consideration before passing such orders that the duty of giving a notice as well as a hearing to the tenant must be necessarily implied. We also cannot overlook the fact that the power to make orders under the said sub-section is conferred upon the Court and that such power is to be exercised in the course of a judicial proceeding. Under our system of administration of justice, no order affecting the rights of a party would ordinarily be made by a Court without issuing a notice and giving a hearing to such party; - even if an ex parte order is passed to meet the exigencies of a situation, such order would not be confirmed unless the party likely to be affected thereby has been given an opportunity to put forward his case. It is therefore, obvious that none of the orders contemplated by sub-section (4) can be made by the Court without issuing a notice and giving a hearing to the tenant."

6. In above view of the matter, we allow this revision application by quashing the orders not only one below Ex. 32, but also the one below the application Ex3, 4 before the learned trial Judge. Rule is accordingly made absolute with costs.

7. Application allowed.