
(1992) 03 GUJ CK 0040
In the Gujarat High Court

Kalidas Chhaganlal Rana

APPELLANT

Vs

Babaldas Bapubhai Rana and Another

RESPONDENT

Date of Decision : 10-03-1992

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(2),
12(2)
Evidence Act, 1872 — Section 65, 65

Citation : (1993) 2 GLR 1645

Hon'ble Judges : A.N. Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—Can the secondary evidence of the quit notice contemplated u/s 12(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("the Rent Act" for brief) be permitted for mere asking? Is it not necessary for the party to Jay foundation for producing the secondary evidence as provided in Section 65 of the Evidence Act, 1872 ("the Evidence Act" for brief)? These are the main questions arising in this revisional application u/s 29(2) of the Rent Act questioning the correctness of the decree of eviction passed by the learned Judge of the Small Causes Court at Baroda on 30th September, 1976 in Rent Suit No. 389 of 1975 as affirmed in appeal by the learned Assistant Judge of Baroda on 19th December, 1977 in Civil Appeal No. 260 of 1976.

2. The facts giving rise to the present appeal may be summarised thus: The petitioner is the tenant and the respondents are the landlords of the premises involved in the litigation giving rise to the present revisional application. The rented premises formerly belonged to one Bai Jamna. The tenant had taken it on lease from her. Respondent No. 1 herein is the father and respondent No. 2 is his son. The father purchased the suit premises from the previous owner in the name of his minor son by the registered sale deed executed on 15th March, 1968. The sale deed is at Exh. 17 on the record of the trial Court. The original document needed some correction and the document of rectification is at Exh. 18 on the record of the trial Court. It appears that the tenant fell in arrears of rent

for 31 months, from 1st January, 1969 to 31st July, 1971. The landlords thereupon served the defendant with a quit notice of 5th August, 1971 demanding from the tenant the arrears of rent due from him upto 31st July, 1971. The tenant was also called upon to vacate the rented premises. It was sent by post under registered cover. It came back to the sender with the endorsement of refusal made by the postman on the envelope. It would mean that the addressee, that is, the tenant had refused it. The landlords thereupon filed one suit in the Court of the Civil Judge (S.D.) at Vadodara against the tenant inter alia for the decree for possession on the ground of arrears of rent for more than six months. It came to be registered as Regular Civil Suit No. 1439 of 1971. On establishment of the Small Causes Court at Vadodara, it came to be transferred thereto. It was thereupon re-registered as Rent Suit No. 389 of 1975. The tenant filed his written statement at Exh. 10 on the record of the trial Court and resisted the suit on various grounds. He inter alia contended that he was not served with any notice as provided u/s 12(2) of the Rent Act. On the pleadings of the parties, the learned trial Judge framed the issues at Exh. 11 on the record of the trial Court. After recording evidence and hearing the parties, the learned Judge of the Small Causes Court at Vadodara, by his judgment and decree passed on 30th September, 1976 in Rent Suit No. 389 of 1975, was pleased to decree the suit for possession on the ground of arrears of rent for more than six months.

3. The aggrieved tenant thereupon invoked the appellate jurisdiction of the District Judge of Vadodara by means of his appeal against the decree of eviction passed by the trial Court. His appeal came to be registered as Civil Appeal No. 260 of 1976. It appears to have been assigned to the learned Assistant Judge of Vadodara for hearing and disposal. By his judgment and decree passed on 19th December, 1977 in Civil Appeal No. 260 of 1976, the learned Assistant Judge of Vadodara was pleased to dismiss the appeal and to affirm the decree for possession passed by the trial Court.

The aggrieved tenant has thereupon invoked the revisional jurisdiction of This Court u/s 29(2) of the Rent Act.

4. Smt. Davawala for the petitioner has invited my attention to the fact that the landlords in the instant case led the secondary evidence of the notice contemplated u/s 12(2) of the Rent Act without laying any foundation therefore as provided u/s 65 of the Evidence Act. Relying on this factual position, runs the submission of Smt. Davawala for the petitioner, no secondary evidence could have been permitted by the trial Court. According to her, once the secondary evidence produced in the instant case is discarded, there is no notice given to the tenant u/s 12(2) of the Rent Act before filing the suit for eviction u/s 12(3) thereof. Shri J.G. Shah for the respondents has on the other hand, submitted that the secondary evidence of the suit notice was rightly permitted by the trial Court, and as such it is not necessary to upset the decree of eviction passed by the Courts below for want of the required notice u/s 12(2) of the Rent Act.

5. The case of the landlords in the suit was that the tenant had refused to accept

the notice u/s 12(2) of the Rent Act served to him by post under registered cover. The original unopened envelope bearing the postal endorsement of refusal was produced by the landlords with the list at Exh. 4 at Serial No. 1. In the pursuance of evidence given on 17th February, 1976 at Exh. 23 on the record of the trial Court, it was reiterated that the unopened envelopes containing the suit notice u/s 12(2) of the Rent Act as refused by the tenant was produced at Exh. 4/1. The oral testimony of respondent No. 1 herein appears to have been recorded at Exh. 16 on the record of the trial Court. His examination in-chief appears to have been recorded on 11th December, 1975. In para 4 thereof respondent No. 1 has deposed "I had sent quit and demand notice to the defendant by Registered post A.D. I have produced the envelope bearing postal endorsement "refused" at Ex. 4/1. Notice from it is taken out. I produce a copy of the notice." It appears that at the time of recording of the oral testimony of respondent No. 1 at Exh. 16 on the record of the trial Court the envelope at Exh. 4/1 was found not containing any notice therein. In that case what was required to be done was to bring it to the notice of the Court that the unopened envelope containing the quit notice as required by Section 12(2) of the Rent Act was tampered with and its contents were found missing. In other words, a foundation ought to have been laid to the effect that the original notice was lost from the unopened envelope produced by and on behalf of the landlords with the list at Exh. 4 at serial No. 1. This was necessary before leading its secondary evidence. Nothing of the sort appears to have been done in the course of trial. The secondary evidence of the original notice was permitted to be led for mere asking and appears to have been taken on record at Exh. 32. I think the trial Court could not have permitted leading of such secondary evidence for mere asking without any foundation therefore being laid as provided in Section 65 of the Evidence Act.

6. It is needless to say that Section 65 of the Evidence Act specifies the grounds on which any secondary evidence can be given inter alia of the contents of a document. No ground specified therein is shown to have been in existence when the landlords attempted to produce the secondary evidence of the original notice contemplated u/s 12(2) of the Rent Act.

7. The language of Section 65 of the Evidence Act is so clear that it is not necessary to refer to any binding ruling on this proposition of law that no secondary evidence could have been permitted to be led without laying any foundation therefore as provided u/s 65 of the Evidence Act. The reference can, however, be made to the binding rulings of the Supreme Court in the case of *The Roman Catholic Mission Vs. State of Madras and Another*, and in the case of *Ashok Dulichand Vs. Madhavlal Dube and Another*, . In neither case the Supreme Court permitted the leading of any secondary evidence without laying any foundation therefore as provided in Section 65 of the Evidence Act.

8. In view of the aforesaid two binding rulings of the Supreme Court, there is no escape from the conclusion that the trial Court erred in permitting the landlords

to produce the secondary evidence of the quit notice u/s 12(2) of the Rent Act for mere asking and without any foundation being laid therefore as provided in Section 65 of the Evidence Act. The lower Appellate Court also did not find any fault with the trial Court when it was confronted with that situation. In that view of the matter, I am of the opinion that the secondary evidence led by and on behalf of the appellants of the suit notice u/s 12(2) of the Rent Act was illegal. The secondary evidence of the suit notice at Exh. 32 cannot, therefore, be taken into consideration. Once the notice at Exh. 32 on the record of the trial Court goes out of consideration, there is nothing on record to show that the tenant in the instant case was served with any notice u/s 12(2) of the Rent Act. It is needless to say that no suit u/s 12(3) of the Act could be filed without complying with the requirement of Section 12(2) of the Rent Act. There is no escape from the conclusion that the suit filed by the landlords in the instant case could be said to be premature. No decree of eviction can be passed in any premature suit.

9. In the result, the petitioner succeeds. This revisional application of his is accepted. The decree of eviction passed by the Judge of the Small Causes Court at Vadodara on 30th September, 1976 in Rent Suit No. 389 of 1975 as affirmed in appeal by the learned Assistant Judge of Vadodara on 19th December, 1977 in Civil Appeal No. 260 of 1976 is hereby set aside. Rule is accordingly made absolute however with no order as to costs on the facts and in the circumstances of the case.