

(2011) 02 GUJ CK 0107

In the Gujarat High Court

Case No : Civil Revision Application No. 268 of 2010

Kiritkumar Narshibhai Bhatia (K.N. Vandhucha) and Another	APPELLANT
Vs	
Jayaben Nathugar Gusai and Others	RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 29

Citation : (2011) 02 GUJ CK 0107

Hon'ble Judges : Rajesh H Shukla, J

Bench : Single Bench

Advocate : Mehul S. Shah and Suresh M. Shah, for the Appellant; C.H. Vora, for the Respondent

Final Decision : Allowed

Judgement

Rajesh H. Shukla, J.—Rule. Learned Counsel, Mr. C.H. Vora appears and waives service of notice of rule on behalf of the Respondents.

2. The present Civil Revision Application is taken up for final hearing with the consent of the parties.

3. The present Civil Revision Application has been filed u/s 29 of the Bombay Rent Act, wherein the applicants have prayed that Judgment & Order dated 11.10.2010 passed by the Learned Additional District Judge, (Fast Track Court), Bhuj-Kutch in Civil Regular Appeal No. 75 of 1997 and the Judgment & Decree dated 15.03.1997 passed by the Learned 1st Joint Civil Judge (JD), Bhuj-Kutch in Regular Civil Suit No. 607 of 1986 may be quashed and set aside on the grounds set out in the application.

4. Learned Counsel, Mr. S.M. Shah for the applicants has stated that the application for additional evidence was given by the Defendants-tenant, which was postponed and kept along with the hearing of the main Appeal and at that time, when the Appeal was finally heard, no order has been passed, meaning thereby, it has not been properly brought on the record and the opportunity has

been denied. Therefore, learned Counsel, Mr. Shah submitted that the impugned Judgment & Order may be quashed and set aside and lower Appellate Court may be directed to decide such application in accordance with law and also thereafter consider the Civil Appeal afresh on the basis of the additional evidence if it is allowed.

5. Learned counsel, Mr. C.H. Vora for the Respondents resisted the application and submitted that as discussed in the Judgment & Order of the lower Appellate Court, a reference is made to the facts with regard to payment of rent, which is discussed while referring application, Exh.6 and, thereafter, substantially it has been considered. Learned Counsel, Mr. Vora, however, submitted that it could not have been considered without properly granting such application and permitting the parties to have the opportunity to contest on merits.

6. Learned counsel, Mr. Vora has also referred to and relied upon the judgment in case of Malayalam Plantations Ltd. Vs. State of Kerala and Another, and submitted that the Hon''ble Apex Court has also observed that in such cases, proper course would be to remand the matter back and the same course may be adopted.

7. Having heard learned Counsel, Mr. S.M. Shah for the applicants and learned Counsel, Mr. C.H. Vora for the Respondents and having considered the rival submissions as discussed hereinabove, admittedly application, Exh.6 was given for additional evidence by the original Defendants, wherein the order was passed by the lower Appellate Court to be heard with main matter i.e. along with the hearing of Civil Appeal. Therefore, when it was disposed of for hearing along with the main matter, order ought to have been passed and, thereafter, additional evidence could have been permitted after providing the opportunity to both sides. As that has not been followed though effectively it has been discussed, the facts remain that there is nothing to show that whether such application was allowed and whether the opportunity has been given to the Plaintiff to meet with the said additional evidence. Therefore, interest of justice would be served if the present application is allowed only on that count and it is remanded the matter back to the lower Appellate Court for deciding afresh in accordance with law after deciding application, Exh.6.

8. Accordingly, the present Civil Revision Application stands allowed. The Judgment & Order dated 11.10.2010 passed by the Learned Additional District Judge, (Fast Track Court), Bhuj-Kutch in Civil Regular Appeal No. 75 of 1997 is hereby quashed and set aside. The matter is remanded back to the District Judge, Bhuch, who shall decide Civil Regular Appeal No. 75 of 1997 in accordance with law after deciding application, Exh.6 for the additional evidence on merits, that too, after giving opportunity to both sides. The concerned Judge is hereby directed to decide the Civil Regular Appeal No. 75 of 1997 as well as application, Exh.6 for additional evidence within a period of three months from the receipt of the copy of the order, for which, the parties are directed to give their cooperation in expeditious disposal. In the meantime, status quo as on

today shall be maintained by the parties till final disposal of the aforesaid Civil Regular Appeal No. 75 of 1997.

9. Rule is made absolute to the aforesaid extent.