
(1974) 07 GUJ CK 0004
In the Gujarat High Court

Lilavanti Dhirajlal Boradiya

APPELLANT

Vs

Soni Harjivan Devjibhai

RESPONDENT

Date of Decision : 16-07-1974

Acts Referred:

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

Citation : (1975) 16 GLR 1002

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Judgement

S.H. Sheth, J.—The plaintiff filed the present suit against the defendant for recovering possession of the suit premises on the ground that the defendant had been in arrears of rent from 1st August 1967 until the date of the suit. The suit was April 1969. The defendant in his turn challenged the validity of the statutory notice served upon him.

2. The learned Trial Judge held that the statutory notice was valid and found that the defendant had been in arrears of rent from 1st November 1967 to 20th April 1969. However he held that he was protected by Section 12(3)(b) of the Bombay Rent Act. In that view of the matter he dismissed the suit.

3. The plaintiff appealed against that decree to the District Court. The learned District Judge confirmed the finding recorded by the learned Trial Judge and dismissed the appeal.

4. It is that appellate decree which is called in question in this Civil Revision Application by the plaintiff.

5. Mr. S.M. Shah, appearing for the plaintiff has tried to challenge the finding recorded by the learned Appellate Judge on the ground that the defendant had not remitted or paid to the plaintiff the entire arrears of rent and that, therefore, he had rendered himself liable to be evicted from the suit premises. In order to appreciate the contention raised by Mr. S.M. shah it is necessary to note a few

facts about which there is no dispute. On 23rd December, 1967 the defendant remitted by money order to the plaintiffs sum of Rs. 40/-. At that time the defendant had been undisputedly in arrears from 1st August 1967 to 30th November 1967. It was a period of four months. The monthly rent of the suit premises was Rs. 10/-. Therefore, on 23rd December, 1967 he remitted to the plaintiff the entire amount of arrears of rent then due. The plaintiff had no reason to refuse to accept that remittance and yet she did it. Thereafter on 27th January 1968 the defendant remitted to the plaintiff by money order a sum of Rs. 20/-. It was rent for the months of December 1967 and January 1968. He did not by that money order remit again the amount of Rs. 40/- which had been earlier remitted by him to the plaintiff and which the plaintiff had refused to accept. The plaintiff refused to accept the second remittance of Rs. 20/-. Therefore on 5th February 1969 the defendant remitted to the plaintiff a sum of Rs. 150/- by money order. It was rent for 15 months. At that time the rent was due for a total period of 18 months commencing from 1 st August 1967 and ending on 31st January 1969. The amount which was due from him at that time was, therefore, Rs. 180/-. Since he had remitted earlier by two money orders the aforesaid sums of Rs. 40/- and Rs. 20/- which the plaintiff had refused to accept, he did not repeat the remittances of those amounts but only remitted Rs. 150/- which covered the period of 15 months commencing from 1st November 1967 and ending on 31st January 1969. The plaintiff also refused to accept it.

6. The plaintiff, after having refused to accept the aforesaid three remittances, served upon the defendant notice of demand and notice to quit on 28th March 1969 and made a claim against him for recovering possession of the suit premises on the ground of arrears of rent. Both the Courts below have negated the plaintiff's claim and, in my opinion, rightly. On 30th April 1969 the defendant had been in arrears of rent for a total period of 21 months. The arrears of rent amounted, for the aforesaid period, to Rs. 210/-. He had remitted on one occasion Rs. 40/- and on another occasion Rs. 20/- and on the third occasion Rs. 150/- which totalled at Rs. 210/-. Therefore, prior to the service of notice of demand on 28th March 1969 the defendant had remitted the entire amount to the plaintiff but the plaintiff had refused to accept it. The plaintiff cannot take advantage of her own faults and seek possession of the suit premises from the defendant. The failure on the part of the plaintiff to accept the remittances sent to her by the defendant without any justifiable cause whatsoever cannot visit upon the defendant.

7. Mr. S.M. Shah has tried to argue that though the plaintiff might have refused to accept the first remittance of Rs. 40/- it was the duty of the defendant to remit that amount along with the amount of Rs. 20/- when he remitted to the plaintiff the latter amount. He has also tried to argue that, even though the plaintiff might have refused to accept the aforesaid two remittances of Rs. 40/- and Rs. 20/- it was the duty of the defendant to remit the entire amount including the amounts which the plaintiff had refused to accept when the defendant remitted Rs. 150/- to the plaintiff. Mr. S.M. Shah has tried to argue

that since the defendant had remitted arrears of rent in broken amounts and in parts the plaintiff was under no obligation to accept them and that she was justified in refusing to accept them. It may be noticed at this stage that when the defendant remitted the first amount of Rs. 40/- he remitted the entire arrears of rent which were then due. What was due on 23rd December 1967 was the amount of Rs. 40/- as arrears of rent due for the period from 1st August 1967 to 30th November 1967. It was not a part payment at all.

8. If a landlord refuses to accept the amount tendered by his tenant either by money order or in any other recognized mode of payment without any justifiable cause the tenant is not bound nor is he under an obligation to go on repeating the remittances of the same amount over and over again. A landlord cannot try to take advantage of his own wrong and seek the recovery of possession of the premises from his tenant. The argument advanced by Mr. S.M. Shah highlights the proposition that the Rent Act is the measure which is intended to protect the tenants. It is not a trap for the landlord to lay in order to draw his tenant in. There cannot be, in my opinion, more absurd behaviour on the part of the landlord than one of which the plaintiff in the instant case is guilty.

9. Mr. Shah has tried to rely upon the decision of Mr. Justice D.P. Desai in *Jagmohan Ratilal Sheth v. Jayantilal Laxmishanker* 14 Gujarat Law Reporter 161. The principle which has been laid down by the learned Judge in that case is that a landlord is not bound to accept a part of the arrears of rent tendered to him. If a tenant tenders a part of the arrears of rent, he cannot claim protection of the Rent Act. The principle laid down by the learned Judge cannot be controverted but it has no application to the facts of the instant case because in that case the learned Judge was not dealing with the situation in which the landlord had refused to accept full remittances and had later on contended that the tenant was liable to be evicted because he had not tendered the entire arrears of rent after the service of statutory notice upon him but only a part of it even though he had earlier tendered the full amount then due.

9.1 In the result, I find no substance in this Revision Application. It fails and is dismissed. Rule is discharged with costs.