

(1991) 09 GUJ CK 0007
In the Gujarat High Court

Madhavrao Rambhai Thakore

APPELLANT

Vs

Trushabai Ramrao Jadhav (Decd.) through her Heirs and LRs.
Shantaben S.J. Pawar and Others

RESPONDENT

Date of Decision : 19-09-1991

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 12(1), 12(2), 12(3)(a), 12(3)(b)
Transfer of Property Act, 1882 — Section 106

Citation : (1993) 2 GLR 1763

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

Bench : Single Bench

Judgement

J.N. Bhatt, J.—Petitioner herein has questioned the judgment and decree passed against him for ejectment and arrears of rent by the learned Assistant Judge, at Baroda, in Regular Civil Appeal No. 72 of 1978, by invoking the aids of the provisions of Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("Bombay Rent Act" for short hereinafter).

2. The petitioner herein is the original defendant-tenant and the opponents, herein, are the original plaintiffs-landlords in respect of a residential property, consisted of one room towards the south of a house situated at Khanderao, Navapura, Bhatt Falia, at Baroda, hereinafter referred to as the "demised property" for the convenience and brevity sake. The parties are hereinafter addressed to as "plaintiffs-landlords" and "defendant-tenant". One deceased Trushabai Ramrao was the owner in respect of the demised property. It was let out by her to the tenant at the monthly rent of Rs. 40/-. The plaintiffs filed Regular Civil Suit No. 922 of 1973, on 5-5-1973, which was subsequently given different number as it was transferred to Small Causes Court, and it was given Case No. 1355 of 1975. The suit was filed for recovery of arrears of rent and for possession on the ground that the tenant was in arrears of rent for more than six months and also on the ground of nuisance, and damage to the demised property.

3. Defendant-tenant appeared and resisted the suit by filing written statement. He, inter alia, contended that he was not liable for eviction on the ground of non-payment of rent or on the ground of nuisance or annoyance and also on the ground of alleged damage to the demised property. All the grounds were, seriously, challenged. He raised a dispute of standard rent by filing Miscellaneous Civil Application No. 326 of 1975. Dispute of standard rent was also raised in the reply to the notice and in the written statement. The application preferred by the tenant for fixation of standard rent and the suit filed by the landlords for eviction had been consolidated and decided by a common judgment.

4. On appreciation of the evidence on record and in the facts and circumstances of the case, the trial Court was pleased to dismiss the suit for recovery of possession of the demised property. The trial Court held that there was no case for eviction on any grounds. The trial Court was pleased to fix the standard rent of the demised property, at Rs. 25/- instead of Rs. 40/-.

5. Being aggrieved by the said judgment and decree, the original plaintiffs-landlords filed Regular Civil Appeal No. 72 of 1978, in the District Court, at Baroda. The appeal was allowed and the judgment and decree of the trial Court came to be set aside. The decree for possession on the ground of non-payment of rent u/s 12(3)(a) of the Bombay Rent Act, came to be passed. The First Appellate Court fixed the standard-rent of the demised property, at Rs. 40/- instead of Rs. 25/- fixed by the trial Court. Hence, this revision at the instance of the original defendant-tenant u/s 29(2) of the Bombay Rent Act.

6. The First Appellate Court, reversing the decree of the trial Court, granted decree for possession of the demised property u/s 12(3)(a) of the Bombay Rent Act. This part of the decree is, seriously, challenged in this revision. It would be, therefore, necessary to refer the relevant provisions of Section 12 of the Bombay Rent Act. Section 12 of the Bombay Rent Act is a substantive section affording protection to the tenant against ejection. It creates restriction on the landlord's right to the recovery of possession. Needless to mention that it also imposes certain restrictions on the landlord to earn higher rent of the rented premises. The Court is debarred from passing decree in favour of landlord so long as the tenant pays the standard rent and permitted increases and observes the conditions laid down in Section 12(1) of the Bombay Rent Act.

7. In order to attract the rigorous of the provisions of Section 12(3)(a) of the Bombay Rent Act, the following conditions are required to be satisfied that:

1. rent is payable by month,
2. there is no dispute regarding standard rent or permitted increases,
3. arrears of rent or permitted increases is for a period of six months or more,
4. notice for determination of tenancy and demanding arrears under Sub-section (2) is served in the manner provided in Section 106 of the Transfer of Property Act, 1882,

5. tenant neglects to pay arrears of rent or increases though one month after the notice has expired.

Unless and until the aforesaid requirements are present in a case, no decree for eviction could be passed u/s 12(3)(a) of the Bombay Rent Act. Therefore, it will be material at this juncture to see as to whether the aforesaid conditions are established in the present case so as to sustain the decree for recovery of possession passed against the tenant u/s 12(3)(a) of the Bombay Rent Act.

8. In so far as the first condition, as aforesaid is concerned, there is no dispute that rent is payable by the month. However, in so far as the second condition, as aforesaid, is concerned, there is no compliance. In other words, there was a dispute in existence with regard to the standard rent on the date of service of notice u/s 12(2) of the Bombay Rent Act. It appears that this aspect was not brought to the notice of the learned appellate Judge. If the dispute of standard rent is in existence on the date of service of notice, one of the conditions is not satisfied, i.e., absence of dispute of standard rent, as aforesaid. Consequently, the provisions of Section 12(3)(a) would not be attracted.

9. It would be interesting to note that the learned appellate Judge held that there was no dispute of standard rent as an application for fixation of standard rent had been dismissed for default. It is true that Miscellaneous Civil Application No. 261 of 1972 filed by tenant was dismissed for default, but it was dismissed, on 15-3-1973, as per Exh. 33. Notice u/s 12(2) dated 13-9-1972 was received by the tenant, on 14-9-1972 and it was replied, on 16-9-1972. The notice is produced, at Exh. 30 and the reply to the said notice is produced, at Exh. 43. So, within three days, the tenant replied the notice and reiterated his dispute with regard to the standard rent. He has, specifically, mentioned in the reply to the notice that Miscellaneous Civil Application No. 261 of 1972, for fixation of standard rent, is already preferred. It was filed in the year 1972. It is also not disputed before This Court that earlier Miscellaneous Civil Application for fixing the standard rent was pending in the Court on the date of service of notice. No doubt, that application came to be dismissed for default, on 15-3-1973. It is an undisputed fact that the dispute with regard to standard rent was existing on the date of service of notice u/s 12(2) of the Bombay Rent Act. Once the dispute exists on the date of notice, one of the conditions to attract the rigorous of Section 12(2) of the Bombay Rent Act. is not satisfied. Therefore, the landlords will not be entitled to claim recovery of possession on the ground of nonpayment of rent u/s 12(3)(a) of the Bombay Rent Act. With due respect to the learned Appellate Judge, he has failed to appreciate the relevant facts and the material requirements of Section 12(3)(a) of the Bombay Rent Act. Unless and until all the material requirements of Section 12(3)(a) are satisfied, no decree for ejectment could be passed on the ground of non-payment of rent. The learned Appellate Judge has committed a serious, error of law, resulting into miscarriage of justice, in passing the decree for ejectment u/s 12(3)(a) of the Bombay Rent Act. The finding of the learned Appellate Judge, on this score, deserves to be

quashed.

10. The landlords would be entitled to claim ejectment decree even u/s 12(3)(b) of the Bombay Rent Act if the material conditions therein are satisfied. However, unfortunately, no specific issue was raised in the trial Court and no attention was focussed even before the appellate Court. Therefore, the Learned Counsel appearing for the tenant has contended that in absence of a specific issue before the Courts below, parties are likely to be prejudiced and the said question may not be examined in this revision. This contention is, fairly and rightly, not disputed by the Learned Counsel appearing for the landlords. In the interest of both the parties, it is, rightly, contended that it will be in the interest of both the parties to remand the matter to the trial Court. Therefore issue No. 4 which is arising out of the provisions of Section 12(3)(a) of the Bombay Rent Act shall be recast by the trial Court, considering now the provisions of Section 12(3)(b) of the Bombay Rent Act. It is also jointly contended that issue No. 7 is not required to be decided again and, therefore, it should be deleted. This submission is acceptable. It pertains to the allegation of nuisance and annoyance and damage to the demised property. This issue is, rightly not pressed. Therefore, the trial Court shall delete issue No. 7 while recasting issue No. 4 at Exh. 10.

11. In view of the facts and circumstances narrated hereinbefore, the matter is required to be remanded to the trial Court for decision afresh in " the light of the aforesaid directions and observations. The trial Court shall afford an opportunity for leading evidence to both the parties. The trial Court shall accord priority to this matter and shall dispose of this matter as early as possible, and not later than 3 months after receipt of Records and Proceedings from This Court.

12. In the result, this revision is, partly, allowed. The impugned judgment and decree are set aside. The matter is remanded to the trial Court for "determination in accordance with law, in the light of the aforesaid observations. Rule made absolute to the aforesaid extent. There shall be no order as to costs in the peculiar circumstances of the case.