

(1952) 06 GUJ CK 0002
In the Gujarat High Court
Case No : Second Appeal No. 7 of 1952

Mansukhlal Chatrabhuj Shah and Others APPELLANT
Vs
Prabhudas Ramjibhai and Another RESPONDENT

Date of Decision : 20-06-1952

Acts Referred:

Saurashtra Rent Control Act, 1951 — Section 12(3), 12(4)
Transfer of Property Act, 1882 — Section 114(3)

Citation : AIR 1952 Guj 68

Hon'ble Judges : S.J. Chhatpar, J

Bench : Single Bench

Advocate : H.L. Bhatt, for the Appellant; V.G. Hathi, for the Respondent

Judgement

Chhatpar, J.—The only point urged before me in the present appeal is as to the interpretation of Sub-section (4), Section 12, Saurashtra Rent Control Act, 1951, whether the Court exercising jurisdiction under this sub-section has power to direct a tenant to deposit in the Court only such amount of rent which is claimed in the suit or the rent claimed along with subsequent rent accrued due up to the date of the order which is to be passed at the first hearing of the suit. The rate of rent is not in dispute in the present case and it is also not disputed that the Defendants have deposited in Court the full amount of rent upto the date of the suit. The only dispute is whether the rent accrued due after the date of the suit can be ordered to be deposited under Sub-section (4). The District Judge of the lower appellate Court has ordered rent upto the date of the application of the Plaintiff to be deposited in the Court.

2. Sub-section (4) runs as under:

In any suit for the recovery of rent, with or without a claim for possession, the Court shall at the first heating of the suit, direct the tenant to forthwith deposit in the Court such amount of rent as the Court reasonably believes to be due to the landlord; and if he fails to deposit such amount, this defence shall be liable to be struck, off.

It may be observed that this clause does not exist in the Bombay Rents Hotel and Lodging House Rates Control Act, 1947, shortly referred to as the Bombay Rent Act; it was inserted in the Saurashtra Adaptation of the Bombay Rent Act in the following form:

Clause (4)-In any suit for the recovery of rent with or without a claim for possession, the Court may, at the hearing of the suit, direct the tenant to forthwith deposit in the Court such amount of rent as he reasonably believes to be due to the landlord or such amount as the Court may order.

In the present Act the clause has been altered; but so far as the point in dispute is concerned, it is not material to consider the difference between the two provisions.

3. Mr. Bhatt the learned Advocate for the Appellants argues that the words "such amount of rent as the Court reasonably believes to be due to the landlord" must refer to the amount claimed in the suit, as the sub-section in question begins with the words "In any suit for the recovery of rent etc." and contends that it could never have been the intention of the Legislature to empower the Court to order deposit of rent which may have accrued due after the filing of the suit, as such rent could not be considered as the subject-matter of the suit. He also draws my attention to the provisions of Sub-section (3) of Section 12, which read as under:

No decree for eviction shall be passed in any such suit if, at the first hearing of the suit, the tenant pays or tenders in Court the standard rent or permitted increases than duty together with the costs of the suit.

He invites my particular attention to the word "then" appearing in Sub-section (3) which word does not find place in Sub-section (4). Sub-section (3) is a provision for giving relief against forfeiture analogous to the provisions of Section 114, T.P. Act. The insertion of the word "then" in Sub-section (3) makes it quite clear that if the tenant wants to get relief against forfeiture, he can only do so by payment of the full rent due upto the date of the first hearing of the suit. This subsection gives the option to the tenant to pay, while Sub-section (4) casts a duty upon the Court to make an order directing the tenant to deposit in the Court such amount of rent as the Court reasonably believes to be due to the landlord. On the other hand, Mr. Hathi, the learned Advocate for the Respondents, argues that the scheme of the Act is to shorten litigation and this Sub-section (4) is inserted for the protection of the landlord against dilatory tactics of the tenant and the Court should pass an order analogous to the option given to the tenant under Sub-section (3) to pay the rent due upto the date of the first hearing.

4. On a simple reading of the sub-section it appears to me that the words "such amount of rent" must be referable to the opening words of the sub-section "in any suit for the recovery of rent" and cannot be construed as including rent which has accrued due subsequent to the filing of the suit, and which in a simple suit for the recovery of rent cannot be the subject matter of the suit. There is

also considerable force in the argument of Mr. Bhatt that if the Legislature wanted to give to the Court the power to order rent since due after the filing of the suit upto the date of the first hearing at which the order of deposit is to be made, the legislature would have inserted the word "then" before the word "due" in Sub-section (4) as has been done in Sub-section (3), I am therefore of the opinion and hold that the word "rent" used in the latter part of the sub-section must bear the same meaning as the same word used in the opening word of the sub-section. I consequently hold that the lower Court had no power to order the rent accrued due subsequent to the date of the suit to be deposited in Court.

5. The result is that this appeal is allowed and the order of the lower Court is Get aside. In the peculiar circumstances of the case, I order each party to bear its own costs throughout.

6. A certificate of fitness for appeal to the Division Bench may issue.