

(1967) 03 GUJ CK 0026
In the Gujarat High Court

Modi Mohanlal Bhagwandas and Another	APPELLANT
Vs	
Shah Keshavlal Jethalal	RESPONDENT

Date of Decision : 03-03-1967

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 12, 12(3)(b)
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1967) 8 GLR 814

Hon'ble Judges : N.K. Vakil, J

Bench : Single Bench

Judgement

N.K. Vakil, J.—This Civil Revision Application arises out of the judgment given in civil appeal No. 37 of 1962 by the learned Judge of the 8th Court of the Ahmedabad City Civil Court, confirming the judgment and decree of the Small Causes Court at Ahmedabad dismissing the suit of the applicants for recovering possession of the suit premises from their tenant, the present opponent. The petitioners are landlords of the shop bearing M.C. No. Kalupur Ward 1A No. 1754 on Gandhi Road at Ahmedabad which was leased out to the opponent by the predecessors-in-title of the plaintiffs at the monthly rent of Rs. 60/- under a registered rent note in the year 1935. Under the said rent-note, the landlord paid the municipal rates and taxes in respect of the premises. Subsequently, under a rent-note passed to the petitioner on the 28th of April 1947, the premises were leased from the 1st of September 1947 at the monthly rent of Rs. 60/- but as regards municipal taxes new arrangement was arrived at. It was agreed that the landlord was to bear the amount of municipal rates and taxes payable for the assessment year 1943-44 and the amount of rates and taxes in excess of the said amount will be paid by the tenant and the tenant agreed to pay the same with effect from the assessment year 1947-48. According to the landlords, they reasonably and bona fide require the said shop for their own occupation as they wanted to conduct the business of a provision store. It was their further allegation that the opponent had not paid his share of the municipal taxes for the

period from 1954-55 to 1957-58 and that he was also in arrears of rent from the 1st of January 1958. The tenant was also liable to pay permitted increases under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Rent Act"). Notice was given to the tenant demanding the above arrears and also terminating the tenancy. Despite this notice, which was served on the tenant on the 25th of April 1958, no payment was made within one month thereof but an amount of Rs. 420/- only was remitted in July 1958 by money-order which according to the petitioner, was much less than the amount due for rent and permitted increases including the taxes. Thereafter the petitioners instituted Regular Civil Suit No. 2611 of 1958 on the 22nd of July 1958 in the Court of Small Causes at Ahmedabad against the tenant for recovery of possession and the amount due. The defendants contested the suit on the ground inter alia that the amount claimed as standard rent was not the standard rent, that the landlord was not entitled to the permitted increases as claimed and that there was no bona fide and reasonable personal requirement for which possession was wanted by the plaintiffs. The learned trial Judge negatived the contention of the plaintiffs holding that they were not entitled to evict the defendant tenant on the ground of non-payment of rent. He also held against the plaintiffs as regards their plea that they required the premises for bona fide and reasonable personal use. He fixed the standard rent of the premises at Rs. 67. 50 and further directed that the defendant tenant would be liable to pay such additional amount in respect, of the municipal rates which exceeded the amount by Rs. 32. 37 np. per annum. The trial Court further directed the tenant to pay the sum of Rs. 840-75 np. as arrears of rent and permitted increases from 1-1-1958 to 30-6-1958. Possession was, however, not awarded. The landlords being aggrieved by the said decision, had filed the aforesaid appeal. The appellate Court, however, confirmed the decree of the lower Court and dismissed the appeal holding against the landlords on both the score.

2. On behalf of the petitioners, the following submissions were made in support of the revision application:

(1) The tenant had agreed to pay the taxes under the rent note of 1947. Therefore, it was a part of permitted increase and the tenant was bound to pay it. But he had not sent the full amount due including the taxes upto the date of the money order and therefore he cannot be said to have been ready and willing to pay the standard rent and permitted increases within the meaning of Section 12(1) and the appellate Court had erred in law in holding that the tenant was entitled to the protection of Section 12(1).

(2) On the date of the suit, the tenant was in arrears of standard rent and permitted increases and the amount of tax for more than six months and, therefore, the case fell within the purview of Section 12(3)(a) and not u/s 12(3) (b).

(3) If it were to be held that the condition of payment of municipal taxes is not

"permitted increase" then in any case it is one of the conditions of tenancy and he having not observed it, the tenant would not be entitled to the protection either u/s 12(1) or Section 12(3)(b).

(4) Even if Section 12(3)(b) is attracted, the requirement of the said provision is also not complied with inasmuch as he had not deposited the amount due for standard rent and permitted increases even excluding the amount of tax and further that he had also not deposited the amount of cost.

(5) The Court had erred in refusing decree for possession on the ground of personal bona fide and reasonable requirement of the land lord by taking only one thing into consideration viz. the fact of the plaintiffs having advertised for the sale of the property in suit, which was an extraneous consideration.

(6) The Court had erred in holding that greater hardship would be caused to the tenant if decree for possession is passed, as alternative accommodation was available to the tenant.

3. Now, before we go to examine these grounds, it will be convenient to deal with some of the contentions raised on behalf of the tenant and which appear to have appealed to the learned appellate Judge. It was urged in the appellate Court that the landlord had not made a legitimate demand in respect of the permitted increase in rent but had claimed an amount much in excess of what he could legitimately claim under the Act u/s 10(AA). The landlord having claimed an amount which was in excess of what he was entitled to claim in law, the demand of the landlord was not a valid demand and the notice served on the landlord making that demand was not in accordance with law. The learned appellate Judge has observed that the contention raised on behalf of the tenant was that the plaintiff was not entitled to institute a suit for recovery of possession on the ground of non-payment until after the service of the notice demanding standard rent or permitted increase on the tenant u/s 12(2) of the Rent Act. Emphasis was laid on the expression, "...one month next after notice in writing of the demand of the standard rent or permitted increases...". Therefore, if the landlord were to demand something more than the standard rent or permitted increases, the notice would be a notice contrary to the provision of Section 12(2) and since the tenant was not bound to comply with such an illegal notice, the suit instituted against the tenant was bad for want of valid notice u/s 12(2) of the Act. The landlord had made a demand in his notice also for an amount of Rs. 465-75 nP. by way of the amount due from the tenant on the score of taxes and this was considered by the learned Judge as beyond the scope of the notice and in the opinion of the learned Judge, such a demand was contrary to law and the tenant was not bound to comply with such a notice and, therefore, the plaintiffs were not entitled to the relief for possession. I find it difficult to agree with the learned Judge in his conclusion. Merely because in the notice a claim for a larger amount than the standard rent and permitted increases is made, the notice would not be rendered illegal. What is intended by the Legislature by providing for giving of a notice is that the tenant must know

what was demanded from him and if the notice made it clear that he was demanding also the standard rent and the permitted increases, the notice would comply with the requirements of Section 12(1). It may be that if by the notice, any amount is claimed which is beyond the amount of the arrears of standard rent and permitted increases, the plaintiff may not be entitled to recover that amount ultimately if he were to file a suit to recover such an amount. It has also to be taken into consideration, as in this case it is the case of the landlord that the tax which the tenant had undertaken to pay, is permitted increase in the eye of law under the Rent Act and, therefore, he was entitled to claim it from the tenant as permitted increase. Again, the landlord might honestly believe that the particular amount was standard rent which he was entitled to claim and accordingly make such demand in the notice. Ultimately it may turn out that under the provisions of law and after the evidence is led, the amount due was less than what he had claimed to be the amount of standard rent in the notice. It is not possible to interpret this provision of law to mean that, in any case where the demand exceeds the actual amount of standard rent and permitted increases, the notice would be rendered illegal if such a demand is in excess of such standard rent or permitted increases which may ultimately be held to be the standard rent or permitted increase. In this view of mine, I am supported by a decision in *Labhabhai Vithaldas v. Laxmidas Vithaldas* 4 G.L.R. 567, wherein it has been held that when a notice u/s 12(2) of the Bombay Rent Control Act is given for the payment of arrears of rent not at the rate of contractual rent but at a rate higher than standard rent, the notice itself does not become invalid so as to take away the right of the landlord to institute the suit one month after the notice. It is the fact of the notice which is important u/s 12(2) and not the correctness of the contents of the notice. Similar is the view taken by this High Court in another decision in *Panchal Mohanlal Ishwardas v. Maheshwari Mills Ltd.* 3 G.L.R. 574, wherein also a demand over and above the standard rent and permitted increase was made in the notice and a similar contention had been raised on behalf of the tenant which was negatived and the notice was held to be a legal notice which could form the basis of a suit by the landlord.

4. The other point which seemed to impress the learned Judge in favour of the tenant was that under the facts of the case the tenant must be said to be ready and willing to pay within the meaning of Section 12(1) as he had sent the money order before the suit was filed and therefore no question of non-compliance with the provisions of Section 13(2)(b) also arise. The reasoning of the learned Judge was that in the instant case there were two circumstances which were very important. Firstly there was a dispute regarding the amount of standard rent and secondly the tenant had actually sent, by money order, a sum of Rs. 420/- before the institution of the suit even though the amount of rent for only six months would come to Rs. 360/-. This amount remitted by the tenant was not accepted by the landlord and the money-order was returned with an endorsement "Refused" and the landlord admitted in his deposition that he had not accepted the rent by giving a facile explanation that he did not accept the amount because

the full amount claimed by him was not sent to him. According to the learned Judge, when these facts were taken into consideration, one could not say that the tenant was not ready and willing to pay the rent. In fact, it appears that the landlord was not ready and willing to accept the rent and on the facts and circumstances of the case, he had no doubt in his mind that on the date of the institution of the suit by the landlord, the tenant was ready and willing to pay the rent and had, in fact, expressed his willingness in no uncertain terms by sending the remittance to the landlord by money order which was not accepted by the landlord. In his view, therefore, the landlord would have no cause of action to seek relief for possession on this ground and the question of non-compliance u/s 12(3)(b) would not arise. With great respect, I am unable to accept this view also of the learned Judge. It is true that the readiness and willingness of a tenant to pay the standard rent and the permitted increases can be shown and established apart from taking resort to the remedy referred to in the explanation to Section 12 of the Rent Act or even without taking the help of Section 11 by approaching the Court upon an application to fix the standard rent and then make the payment in accordance therewith. It would certainly be open to the tenant, apart from these provisions of law, as a question of fact to prove that he was ready and willing to pay the standard rent and the permitted increases. There is no difficulty about this principle of law, but the important question that arises for our consideration is about the content of that principle, viz. would it be considered to be his readiness and willingness to pay the standard rent and permitted increases even if he were to send some amount according to his own desire or wish or belief which was not actually the amount of standard rent and permitted increases ? Mr. B. K. Amin, the Learned Counsel on behalf of the tenants urged before me that the view of the appellate Court was correct, and readiness and willingness of the tenant to pay the standard rent or permitted increases was a state of mind of the tenant and if the tenant were to send a substantial amount towards the standard rent and the permitted increases, it should be considered to be enough proof of his readiness and willingness to pay the standard rent and the permitted increase. I am unable to accept this submission on the part of the tenant. In my judgment, the readiness and willingness to pay the standard rent and permitted increases must be the readiness and willingness to pay the amount due as standard rent and permitted increases. It is true that it may not always be known to the tenant as to what is exactly the standard rent and permitted increases. But, in order to safeguard the tenant in this respect law has provided that in such a case he can always approach the Court and have the amount fixed and no sooner he took the steps towards it, he would be protected under law. But, if he were not to take such steps and if he were to imagine an amount to be the standard rent or permitted increases and take the risk of remitting an amount which falls short of the actual standard rent or permitted increases or sends subject to contentions and disputes the amount of standard rent and permitted increases claimed from him by the landlord, then he certainly takes a risk for which he himself has to be responsible. It is conceivable that a prudent tenant would, if he did not want to

go to the Court to have the standard rent fixed and in order to seek the protection of Section 12(1) would always send an amount which would be larger than the standard rent and permitted increases in order to err on the safe side. If the tenant does not take steps to protect himself as available to him under the Act and tries to take a risk, thereafter he cannot take up the stand that he was ready and willing to pay the amount of the standard rent and permitted increases even though he actually did not send or tender the exact amount to cover up the standard rent and permitted increases. It would always be open to a tenant to prove that he was ready and willing to pay the standard rent and permitted increases by proving that he had tendered the standard rent and permitted increases either by money order or by cheque or had actually tendered the amount in presence of some witnesses, or by correspondence it would be open to prove that he had made such tender or had sent the amount. But it will not be open, in my view, to him to claim that he had been willing to pay the amount of standard rent and permitted increases if he did not pay or tender an amount sufficient to cover the standard rent and permitted increases, due. In the view that I am taking as regards the total amount due and to which I will presently refer to, the conclusion is that the amount was not sufficient to cover the standard rent and the permitted increases payable to the landlord. Therefore, it cannot be said, that the tenant here was entitled to the protection u/s 12(1) as the tenant had not remitted or tendered the amount sufficient to cover the standard rent and the permitted increases, due to the landlord. The landlord may refuse such tender and the refusal cannot go to help the tenant in any way to prove his readiness and willingness. In this view which I am taking that the landlord is not bound to accept an amount sent which is not sufficient to cover the standard rent and permitted increases, I am supported by a decision of this Court in Nathubhai Gulabdas Vs. Bhakhibhai Muljibhai, , wherein it has been observed that it was contended by the Learned Counsel for the opponent that the money-order sent by the tenant to the landlord was refused by the landlord and so he must be deemed to have paid the rent. Willingness to pay a part of the rent was not readiness and willingness to pay the rent. The fate of this contention of the defendant would depend on the answer to one of the contentions raised by the landlord before me as to whether the amount of the municipal taxes is permitted increase within the meaning of Section 12.

5. That takes us to the first ground raised by Mr. Zaveri, the learned advocate for the petitioner. It was urged that the tax amount agreed to be paid, under the rent note of 1947 permitted increases within the meaning of Clause (7) of Section 5 of the Rent Act and therefore u/s 12 of the Act. In the first place it was contended that it was not open to the appellate Court to reopen this question or permit the tenant to challenge the fact of it not being so. In support of this contention, my attention was drawn to the fact that the trial Court had held that the premises were let to the defendant in 1935 and the monthly rent was Rs. 60/-. The tenant was bound to pay an increase in rent upto a maximum of 12 1/2% on the rent on 1-9-40, which was Rs. 60/- per month. He was also bound

to pay the increase in municipal taxes. The plaintiffs had produced the tax receipts and were entitled to recover Rs. 465-75 as arrears of tax from the defendant. While passing the order it is stated that the standard rent of the premises is Rs. 67-50 plus municipal tax in excess of Rs. 32-37 per annum. The defendant shall pay Rs. 840-75 nP. as arrears of standard rent and permitted increases from 1-1-1958 to 30-6-1958 to the plaintiffs. It was urged that this clearly showed that the trial Court had held that the taxes that were due were a part and parcel of permitted increases. No cross-objections or appeal had been filed by the tenant. It was, therefore, not open to him nor the appellate Court to enter into that question and the appellate Court should have held on this finding that the whole amount of standard rent and permitted increases had not been tendered or deposited. It is true that the trial Court's finding is as was pointed out to me. But it was a summary trial and the judgment of the trial Court does not indicate with any certainty as to whether the question of law, that the amount of taxes to be paid is to be taken as a part of the permitted increase was raised and considered by the Court or not. Again, when the landlord contended that the Court had erred in holding that the tenant had not failed to comply with the requirement of law of tendering or depositing the full amount of standard rent and permitted increase, a question of law arose before the appellate Court as to whether the tax amount should be considered as "permitted increase. " In my view, therefore, it cannot be said that the Court was estopped from examining this legal position despite the general order and finding of the trial Court for which no reasons are to be found in the judgment. We shall proceed to examine the contention raised by the landlord in this Court on its merits.

6. According to the landlord; the excess amount of tax which was to be paid under the Rent Note of 1947 is permitted increase within the meaning of the Rent Act. I think there is substance in this submission. Sub-section (7) of Section 5 of the Rent Act gives the definition of permitted increase which is as follows:

"permitted increase" means an increase in rent permitted under the provisions of this Act.

It clearly shows that any increase of amount over the amount of standard rent viz. the rent permitted under the provisions of this Act, would fall within the definition of permitted increase. Section 7 of the Act is as follows:

7. Except where the rent is liable to periodical increment by virtue of an agreement entered into before the specified date, it shall not be lawful to claim or receive on account of rent for any premises any increase above the standard rent, unless the landlord was, before the coming into operation of this Act, entitled to recover such increase under the provisions of the Bombay Rent Restrictions Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, or is entitled to recover such increase under the provisions of this Act.

This section, therefore, makes illegal any claim or receipt of rent above the

standard rent unless the landlord was, before the coming into operation of the Rent Act, which came into force on the 13th of February 1948, entitled to recover such increase in the amount of rent either under the provisions of the Bombay Rent Restriction Act, 1939 or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 or was entitled to recover such increase under the provisions of the present Act. So this section makes it entirely clear that if the landlord were to show that he was entitled to recover the tax amount, over and above the amount of the standard rent, he would not be prevented from recovering it u/s 7 and that under the force of Sub-section (7) of Section 5, it would be permitted increase in the rent as contemplated by law. As we have already seen," the present tenant was in occupation of the suit premises as tenant from the year 1935. We have, therefore, to find out as to whether under the Act of 1939 he was entitled before the present Act came into force, to recover this tax amount which he claimed as permitted increase. Sub-section (3) of Section 4 defined standard rent under the Act of 1939 and it provided that standard rent in relation to any premises would mean (a) the rent at which the premises were let on the 1st day of January 1939. We are not concerned with the rest of the sub-section because, as established, the premises were let before the 1st day of January 1939 at Rs. 60/- to the present tenant. The next section of the said Act which has relevance is Section 5(1) which again provided for restriction on raising rent. Sub-section (1) of Section 5 is as follows:

5. (1) Subject to the provisions of this Act, where the rent of any premises has been or is hereafter during the continuance of this Act, increased above the standard rent, the amount by which the rent payable exceeds the amount which would have been payable had the increase not been made shall, notwithstanding any agreement to the contrary, be irrecoverable:

Provided that nothing in this section shall apply:

- (a) to any rent which accrued due before the first day of January 1939,
- (b) to any periodical increment of rent accruing due under any agreement entered into before the first day of January 1939, or
- (c) to rent payable under any lease entered into before the first day of January 1939, which has not expired on the said date.

Section 8 of the said Act, however, provides that where a landlord paid any municipal rate, cess or tax in respect of any premises, any increase of the rent thereof shall not be deemed to be an increase for the purposes of Section 5, if the amount of the increase did not exceed any increase in the amount for the time being payable by the landlord in respect of such rate, cess or tax over the amount paid in the period of assessment which included the first day of January 1939. Now, as pointed out under the rent note dated the 28th of August 1947 (Exhibit 44 on the record) and as can be seen from the judgment of the appellate Court itself, the tenant had agreed to pay excess amount of taxes which covered the amount of taxes payable in 1943-44 and had also further agreed to pay, as

and when it arose from the year 1947-48. So the tenant had become liable to pay the excess amount of taxes as and when they were levied from 1947 under the said agreement. Therefore u/s 7 of the present Act, as pointed out, that increase was protected and, therefore, claimable as the permitted increase within the meaning of the definition clauses of Section 5(7). Having regard to all these provisions of law that I have referred to, in my view, the tax claimed by the landlord falls within the category of permitted increase within the meaning of Section 5(7) and, therefore, of Section 12.

7. Now, at this stage, it will be convenient to also look to the provisions which permit such increase under the provisions of the present Rent Act. The relevant provision for our purposes is Section 10C. It lays down that a landlord shall be entitled to make an increase in the rent of the premises referred to in column I which were let on or before the 1st day of September 1940 by an addition to the rent at the rates specified against them in column No. 2 as given in the said section and the present case will be governed by Clause (4)(b) of Sub-section (1) where it is provided that "Non-residential premises other than those specified in items (5) and (6) below (and the present premises do not fall in item Nos. 5 and 6), the rent of which exceeds Rs. 50/- per month, the increase allowed will be not exceeding Rs. 12 1/2 per cent, of the standard rent. Sub-section (2) provides that any increase under Sub-section (1) shall not be deemed to be an increase for the purpose of Section 7. Therefore, it will fall within the category of permitted increase. Then Section 10AA provides for another type of increase allowable to the landlord and the result of that provision is that the landlord is entitled to an increase of 5 per cent, on standard rent. Sub-section (2) of the said section also lays down that any increase made under Sub-section (1) shall not be deemed to be an increase for the purposes of Section 7. The learned appellate Judge, while examining this question of permitted increase, seems to have confined his reasoning only to permitted increase u/s 10AA and possibly u/s 10C, but has not considered the question as to whether the amount of taxes which were claimed by the landlord could or could not be held to be permitted increases in the light of the definition of clause 5(7) of the provisions of Section 7 read with the relevant provision of the Rent Act of 1939. The result of the above discussion is that the claim of the amount of tax is permitted increase within the meaning of Section 12. What effect it will have in its application to Section 12(3) (a) or 12(3)(b) is a different matter, but the fact remains that at the date when the tenant sent the money order, the amount due was not only of the standard rent for six months but also permitted increases under Sections 10C and 10AA of the present Act as well as the tax amount which, was also permitted increase within the meaning of Section 12. It may be mentioned that the total amount due for standard rent for six months would be Rs. 393 with the permitted increase u/s 10C and Section 10A of the present Act and the permitted increase by way of tax was Rs. 465-75nP. This makes the total of Rs. 858/-. As against that, the amount which was tendered was Rs. 420/-.

8. In support of the second ground Mr. Zaveri tried to urge that on the date of

the notice, the amount due was Rs. 465-75 P. for tax which was the permitted increase and Rs. 240/-, standard rent for four months, the total being Rs. 705-75 P. Calculating this amount on the monthly basis, it would come to Rs. 60/~, standard rent, plus Rs. 7-50 nP. u/s 10C at this rate of 12 1/2% increase, plus Rs. 9-75 for the tax. It would total up to Rs. 77-25 P. Calculating at this rate, the amount due for six months for standard rent and permitted increases would be Rs. 463-53 P. while, as seen, when the notice was given, the total amount of Rs. 705-75 P. had already become due. The notice reached the tenant on the 25th April 1958 and within one month the amount due was not paid. Therefore, as at the date of the notice, rent for more than six months was due and he had not paid the amount within one month of the receipt of the notice, the case would fall u/s 12(3)(a) and not u/s 12(3)(b) provided, of course he succeeded in proving that there was no dispute regarding standard rent or permitted increase. This part of the contention of Mr. Zaveri may even require, to my mind, a further inquiry as to whether for the purposes of Sub-section 3(a) of Section 12 it would be permissible to him to consider the amount of the tax, though permitted increase, to be payable monthly. I do not propose to enter into this inquiry as it is not necessary to decide it because on the broader ground that I shall be stating presently, in my view, the present case cannot fall within the purview of Sub-section 3(a) of Section 12. Mr. Zaveri tried to persuade me to agree with him, that in the present case, having regard to the various facts and circumstances it must be held that there was no dispute in respect of standard rent or permitted increases. He urged that before it could be concluded that there was a dispute in respect of standard rent or permitted increase within the meaning of this subsection, the dispute must be a real dispute between the parties. According to him, the facts of the present case are such that it could not be held that there existed any dispute in the eye of law. He argued that in this case right from 1935, the present tenant himself had taken on lease the suit premises at the rate of Rs. 60/- per month as rent under a registered rent-note. Therefore, when he raised the dispute at the stage of notice as well as in his written statement that Rs. 60/- was not the standard rent, it was palpably a falsehood and, therefore, such a dispute could not have been intended to be covered by the expression "dispute" occurring in Sub-section 3(b) of Section 12. Now, to my mind, merely because there was a registered rent-note passed by the tenant in 1935 fixing the rent, it may not exclude the possibility of a different amount being the rent on the appointed day i. e. on 1st of September 1940 which is the basic date for the purposes of fixing the standard rent, and even when such a document exists, a possible and bona fide dispute as regards the standard rent may arise. Therefore, it could not be concluded that merely because there was a rent note passed by a tenant at some period prior to 1st of September 1940, it would exclude his case from falling within the purview of expression "dispute" u/s 12(3)(a). But that is not all. In the present case there was also the dispute in respect of the permitted increase. Sub-section 3(a) contemplates not only a dispute in respect of the standard rent but also a dispute in respect of the permitted increase and if there is dispute in respect of either,

the case would be taken out of the provisions of Sub-section 3(a) of Section 12. In the present case, the plaintiff landlord was claiming the tax to be the permitted increase. The tenant had raised the question that the tax could not be considered as permitted increase. Not only that, but he had also contended right from the beginning that the claim of the landlord for the amounts stated by him in the notice as well as in the suit as permitted increase u/s 10C and 10AA of the Rent Act was not tenable. Having regard to all these facts. I am convinced that the case cannot fall within the purview of Sub-section 3(a) of Section 12 and the case of the plaintiff landlord must stand or fall under the provisions of Sub-section 3(b).

9. Mr. Amin, the Learned Counsel for the tenant pointed out another lacuna and rightly to my mind, in this claim on behalf of the landlord that Sub-section 3(a) applies. It was pointed out that reading Sub-section 2 and Sub-section 3(a) of Section 12 together, it becomes clear that the amount for six months of the standard rent must be due at the date of the notice. It is an admitted fact that at the date of the notice the amount due for the standard rent was only for four months. But as regards the permitted increase it was claimed on behalf of the landlord that the amount was due for more than six months. This again would involve a question as to whether the amount due, of the taxes, could be calculated on a monthly basis as permitted increase for the purpose of Section 3(a) or not. As pointed out hereinabove, as I have come to the conclusion that there was a "dispute" in respect of the standard rent as well as the permitted increase, it would not be expedient to enter into this inquiry.

10. We then proceed to consider the case on the basis that it falls within the purview of Sub-section 3(b) of Section 12. Mr. Zaveri had a two-fold submission to make in this respect. One was based on the conclusion that I have reached that the taxes were part of the permitted increase and if this amount of tax is treated as permitted increase and even if Section 12(3)(b) is attracted, the tenant cannot succeed because on the 1st day of hearing, i. e. on the 7th of October 1961, he did not deposit the amount due for standard rent and permitted increases because the total amount due on that score was Rs. 3270/- while the amount deposited was only 3050. Again, the defendant had also not deposited the amount of costs which was Rs. 138-50 as awarded by the Court. Now, as regards the accuracy of the figures there is no dispute. The second limb of the submission was that, even if the amount of the tax was not considered as permitted increase and is excluded from consideration, the amount deposited fell much short of the amount due by way of standard rent and permitted increase only under Sections 10C and 10AA. It was pointed out that the amount due for rent was Rs. 2700/- calculating it from the 1st of January 1958 to 30th of September 1961 at the rate of Rs. 60/- per month. Rs. 307-50 were due u/s 10C(4)(b) from the 1st of May 1938 to 30th September 1961. Over and above that, Rs. 126/- at the rate of Rs. 3/- per month u/s 10AA were due from the 1st of April 1958 to 30th of September 1961. This is the suit period. The total comes to Rs. 3133-50 nP. Over and above this, the amount of Rs. 144/- was also due

from 1954-55 to 1957-58 i. e. the period prior to the filing of the suit and which was claimed in the suit as permitted increase u/s 10AA. The overall total, therefore, is Rs. 3277-50 nP. As against this, the defendant had deposited only Rs. 3050/-. Now, it may be stated here that there is no dispute on the part of the tenant before me that these calculations are not correct. On the contrary, even if we have a look at the judgment, we find that these calculations are supported. However, as I shall presently point out, in making the total of the amount due by way of standard rent and permitted increases, apart from even the amount of tax due, the learned Judge omitted to take into account certain sums which I have mentioned hereinabove. It is, therefore, contended by Mr. Zaveri that even apart from the disputed question as to whether the tax could be considered to be permitted increase for the purpose of Sub-section (3)(b) of Section 12, the tenant had forfeited the protection as he had not complied with the provisions of that sub-section by depositing the amount of standard rent and the permitted increases which are held by the appellate Court to be legally recoverable from the tenant as standard rent and permitted increases.

11. Now, when we turn to the judgment of the appellate Court, we find that the learned Judge has observed that the total amount due till the date of the deposit, i. e. 27th of October 1958, was Rs. 2997-50 nP. In the said total the amounts taken into consideration are as follows:

Rs. 2700-00 Standard rent at the rate of Rs. 60/- for 45 months. Rs. 307-50 Permitted increase for 41 months from 1-5-1958 to _____ 30-9-1961. Rs. 2997-50 Total.

After taking into consideration these figures about which no dispute was raised before the appellate Court, the appellate Judge has observed that, therefore, the tenant was liable to deposit the total amount of Rs. 2997-50 nP. in Court on account of rent in arrears and permitted increase due till the date of the first hearing i. e. on the 27th October 1958. As against this, the tenant had deposited in Court a sum of Rs. 3050/- on the said day. Therefore, if these factors alone are taken into consideration, the tenant would not be a tenant in arrears forfeiting the right of the protection afforded by Section 12(3)(b) of the Rent Act. But obviously, the other amounts of permitted increases u/s 10AA which have been mentioned herein above are not taken into calculation at all viz.

Rs. 126-00 for the period of 1-4-58 to 30-9-61 for 42 months at the rate of Rs. 5/- per month and Rs. 144-00 for the period of 1954-55 to 1957-58 i. e. prior to the suit and which was included in the claim made in _____ the suit. Total Rs. 270-00

It is conceded before me that this amount the plaintiff was entitled to recover and that it was due to him by way of permitted increase. So calculating, the amount due exceeds the amount of Rs. 3050/- the amount deposited. The learned Judge observed that if the amount of the tax claimed were to be taken into account, which is Rs. 465-75 nP. for calculating the permitted increase, then

even on the total of Rs. 2997-50 arrived at on the calculation mentioned in his judgment, the landlord may be entitled to a decree for possession as was urged by his advocate. Thereby the learned Judge implied that the amount due would then exceed the amount deposited and the tenant would thus lose the protection given under Sub-section 3(b). Having regard to these figures given before me and which are not disputed, the conclusion is irresistible that even if the disputed amount of Rs. 465-75 nP. of the taxes is not taken into account, obviously the tenant had not deposited the amount of standard rent and permitted increases due on the first day of hearing and, therefore, he could not be said to have complied with the requirements of the provisions of Sub-section 3(b) of Section 12 and the learned Judge ought to have passed a decree for possession on the ground of arrears of rent and permitted increase.

12. Mr. Amin, however, urged that even if the tenant is held not to have deposited the amount as indicated above, as there was a dispute about the standard rent and the permitted increases, the tenant would be protected under the ratio of the decision of the Supreme Court in *Vora Abbisbhai Alimahomed v. Haji Gulamnabi Haji Safibhai* 5 G.L.R. 55.

There is no merit in this submission. He placed reliance on the following observations made in para 10 of the judgment in that case:

But in the practical working of Clause 3(b) some difficulty may arise. Where there is no dispute as to the amount of standard rent or permitted increases, but rent is not payable by the month, or the rent is not in arrears for six months, by paying or tendering in Court the standard rent and the permitted increases and continuing to pay it till the suit is finally decided the protection granted by the clause is made effective. Where there is a dispute as to the standard rent, the tenant would not be in a position to pay or tender the standard rent, on the first date of hearing, and fixing of another date by the Court for payment or tender would be ineffectual, until the standard rent is fixed. The Court would in such a case on the application of the tenant, take up the dispute as to standard rent in the first instance, and having fixed the standard rent, call upon the tenant to pay or tender such standard rent so fixed, on or before the date fixed. If the tenant pays the standard rent fixed, on or before the date specified, and continues to pay or tender it regularly till the suit is finally decided, he qualifies for the protection of Clause 3(b).

In my opinion, the said observations, on the contrary, go against the opponent's case. It indicates that where the tenant disputes the standard rent or permitted increases and finds it difficult to know exactly what amount he should deposit, he has to move the Court to fix the amount. So the tenant who desires to have protection or qualify for protection under Sub-section (3)(b), he has to be vigilant and take the steps of having the standard rent fixed by applying to the Court. If however, he does not do so and takes the risk of depositing the amount on his own calculation, he cannot then complain if it is ultimately established that he had not deposited the amount of standard rent and permitted increases due

to the landlord. In the present case, the tenant did not have the amount fixed by the Court and deposited on his own, the amount which, as shown above, fell much below the required amount. The said observations, in my judgment, therefore do not help the tenant at all. Mr. Amin then urged that if this Court enhances the amount of standard rent or permitted increases, the tenant should be given an opportunity of depositing the amount and should not pass an order of ejecting the tenant on the ground of non-payment of arrears of rent and permitted increases till such opportunity is given and the tenant fails to deposit the amount. Reliance was placed on the following observations in the same paragraph of the said decision of the Supreme Court:

If in an appeal filed against the decree, the standard rent is enhanced, the appeal Court may fix a date for payment of the difference, and if on or before that date the difference is paid, the requirement of Section 12(3)(b) would be complied with.

Once again I find that the said observations can be of no use to the tenant in this case. The principle decided therein is that if the standard rent or permitted increases determined by the lower Court is, on an adjudication by the higher Court, enhanced then it cannot be held that the tenant had not deposited the required amount of standard rent and permitted increases due to the landlord, because the tenant had deposited the amount as fixed by the lower Court. If, under the circumstances, the higher Court enhance the standard rent or permitted increases, the tenant cannot suffer and an opportunity is to be given to the tenant to deposit the further amount. This is so, because the tenant in order to qualify for the protection has to deposit the standard rent and permitted increases on the first day of hearing or on any other date that the Court may fix and continue to pay the same thereafter the amount recurring due till the suit is finally decided. It is also important to keep in mind that these latter observations are made in relation to and as a continuation of the preceding observations as reproduced hereinabove. In the instant case, so far as the present point is concerned, I have not enhanced either the standard rent or permitted increases. I have found that even on the assumption that the tax is not a part of the permitted increases and on the amount of standard rent and permitted increases as even otherwise due, the requisite amount was not deposited by the tenant. Besides, as observed above, the tenant had not got the amount of standard rent or permitted increases fixed by the Court so that it can be said that he had deposited the amount as fixed by the Court and as this Court is enhancing the amount, he must get the opportunity to deposit such enhanced amount. In my view, therefore, this latter principle, in any view of the matter, cannot be relied upon by the tenant in the instant case.

13. Then Mr. Amin urged that this Court, sitting in revision, should not interfere with the judgment of the appellate Court and the trial Court even on the finding I have made and that any such interference would be unjustifiable. He relied upon the following observations made in the decision of *Bell & Co. Ltd. v. Waman*

Hemraj 40 Bom. L.R. 125. Sir John Beaumont, C. J. in the said case has observed that the revision application purported to have been made u/s 25 of the Provincial Small Causes Courts Act. The scheme of Small Causes Courts Act was to provide a summary remedy for recovering small sums and it was an essential part of the scheme that the Judge's decision was final. Section 27 of the Act provided that "Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final". There is no appeal either on facts or law, but Section 25 gives a power of revision to the High Court. In the opinion of the learned Chief Justice that section ought not to be construed as giving the parties a right of appeal on points of law. The object of Section 25 was to enable the High Court to see that there has been no miscarriage of justice and that the decision was given according to law. The section did not enumerate the cases in which the Court may interfere in revision as did Section 115 of the Civil Procedure Code. Whenever the Court came to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court could interfere. But, in his opinion, the Court ought not to interfere merely because it thought that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at. There can be no quarrel with the principle reiterated in the said decision by the learned Chief Justice. In my view, the very principle laid down therein would require interference by this Court in the instant case. As we have seen, here on the very findings of the appellate Court, the Court would not have come to the conclusion it did if it had not missed taking into consideration the above-mentioned amounts of permitted increases. The plaintiff in law was entitled to recover possession for non-payment of standard rent and permitted increases due if the tenant did not comply with the requirements of the provisions which the legislature had provided for his protection, not one but at least in three different ways Besides, in this case, the tenant had obviously raised false dispute as regards the standard rent despite the registered rent-note passed by himself which fixed the monthly rent at Rs. 60/-. In order to create obstruction in the right of the landlord, he had put up the false dispute regarding the standard rent. Again, despite the written undertaking in the rent-note of 1947 to pay the municipal taxes, he failed to do so and again raised disputes in regard to it. Having regard to all the facts, circumstances and legal position obtaining in the case before me, in my view, the decision of the appellate Court is not in accordance with law and there will be miscarriage of justice if the said judgment is not reversed.

14. On behalf of the petitioner it was tried to be urged that the amount of costs should have also been deposited by the tenant if he desired to seek protection of Sub-section (3)(b) of the Act and the tenant had admittedly not done so. This contention of the petitioner cannot be sustained. The requirement of Sub-section (3)(b) to deposit the amount of costs also is made dependent on the factor of a direction being given by the Court in respect of the costs. It is possible that when the tenant, in order to seek the protection under Sub-section (3)(b) requests the

Court to fix the standard rent and permitted increases, the Court may, at that time, direct the tenant to deposit costs also. But that is not the position in the present case. So unless there is the direction of the Court to pay the costs, there is no obligation on the part of the tenant to deposit or tender the amount of costs also. This is the view now also held by the Supreme Court as can be seen from the decision in the case of Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai (supra) where it has been observed that to bring his claim within Section 12(3)(b), the tenant may pay or tender the standard rent and permitted increases on or before the first day of hearing or on or before such other date as the Court fixes and also the costs of the suit as may be directed by the Court. It is further observed that it is to be noticed that the statute imposes upon the tenant obligation to pay or deposit the amount of costs if the Court so directs and not otherwise. So saying the Supreme Court has said that the following observation made by this High Court to the contrary in 1963 G.L.R. 282 at page 297 is erroneous:

It is therefore, clear that the tenant in order to be entitled to claim the protection of Section 12(3)(b) must deposit cost of the suit along with the arrears of standard rent and permitted increases

I have, therefore, no hesitation in rejecting this contention of the petitioner.

15. The next contention on behalf of the petitioner is that the Court had erred in refusing to give a decree for possession on the ground of personal bona fide and reasonable requirement of the landlord by taking into account an extraneous consideration. It was urged before me that the only consideration which was taken into account in rejecting the relief of the petitioners for possession on the ground of personal requirement was that plaintiff No. 2 had given an advertisement to sell the suit house. This fact however, did not in any way militate against the personal requirement of the plaintiffs. This act on the part of the plaintiffs did not necessarily mean that they wanted to sell the house. It was pointed out to me that the evidence showed that the plaintiff No. 2 had given an explanation for this act of theirs in his evidence that the advertisement was given only in order to ascertain what price the property would bring as they wanted to carry into effect a partition between the plaintiffs. Now, if we turn to the judgment, I do not find that the submission made on behalf of the petitioners is justifiable. The appellate Court has taken into account the factors existing on the record for coming to the conclusion that there was no bona fide and reasonable requirement of the plaintiffs for personal occupation, such as the fact that the defendant was in occupation of the suit premises as tenant since 1-8-1935, that the defendant had been carrying on business in the suit premises since more than about 25 years, that both the plaintiffs had their shops in Ahmedabad and were carrying on their independent business individually in those shops. The learned Judge also took into account a submission on behalf of the plaintiffs that as it was a small cause suit, only the notes of evidence were taken and that, in fact, plaintiff No. 2 was in service as an apprentice in the shop at Three-Gates

locality and that he was not doing business. The appellate Judge has said that "Even so fact remains that the second plaintiff had inserted an advertisement inviting offers in respect of the suit premises which he wanted to sell. This advertisement was inserted only 1 \ months before the suit giving rise to this appeal was instituted. On account of these circumstances, I am not satisfied that the requirement of the plaintiffs is either bona fide or reasonable". It would show, therefore, that the factors which the Judge should take into account in determining the question of bona fide and personal requirement were not away from the mind of the learned Judge and it is true that he had also taken into account the circumstances of the insertion of the advertisement inviting offers in respect of the suit premises. Now, the question of bona fide and reasonable requirement for personal occupation is necessarily a question of fact and in revision this Court would have no jurisdiction to interfere on the finding of the appellate Court and the trial Court on the question. Therefore, there is no reason for me to interfere on this finding of the two lower Courts on this question.

16. The point as regards greater hardship was also tried to be raised before me but necessarily on the conclusion that I have reached on the point of bona fide and reasonable personal requirement, this question of greater hardship does not survive.

17. It was also contended by Mr. Zaveri that on the finding of the appellate Court, if the liability for the payment of municipal taxes is not to be taken as forming part of the expression permitted increases, then the under taking given by the tenant in his rent note of 1947 to pay the monthly taxes in excess of the amount of tax that were paid at a particular period, then it remains a condition of the tenancy and if such an interpretation is placed, then under Sub-section (1) of Section 12, which makes the observance of the conditions of the terms of the tenancy other than rent and permitted increases a pre-requisite of the protection extended to the tenant from eviction, the tenant should be held to have lost the protection as he admittedly had not paid those taxes. There is some force in the submission made on behalf of the petitioners, but I have held that the liability of payment of municipal taxes under the rent note of 1947 in the light of the various provisions of law referred to hereinabove, is permitted increase within the meaning of that expression. Therefore, the contention raised that there is a breach of the condition of the term of the tenancy other than the payment of standard rent or permitted increase does not survive. 18. These are all the points which were raised before me on both the sides and having regarding to the aforesaid discussion, I hold that the judgment and order passed by the trial Court and the appellate Court refusing the plaintiff a decree for possession requires to be reversed.

18. The revision application is, therefore, allowed and I set aside the decree of dismissal passed by the trial Court and confirmed by the appellate Court and pass a decree for eviction against the defendant. The opponent tenant shall hand over vacant and peaceful possession of the premises to the plaintiffs-petitioners

on or before the 2nd of June 1967. There will be no order as to costs.