

(1992) 07 GUJ CK 0008
In the Gujarat High Court

Mohmedhusen Haji Vafati and Another	APPELLANT
Vs	
Surfunisa Abdulmajid and Others	RESPONDENT

Date of Decision : 20-07-1992

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(3)(a), 29(2), 29(2)

Citation : (1992) 2 GLR 1371

Hon'ble Judges : A.N. Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The decree of eviction ordered to be passed by the Appellate Bench of the Small Causes Court at Ahmedabad by its judgment and order passed on 31st January, 1980 in Appeal No. 30 of 1977 is under challenge in this revisional application preferred by the original tenant before this Court. Thereby the Appellate Court was pleased to accept the appeal of the landlords and to set aside the judgment and the decree passed by the learned Judge of the Small Causes Court (Court No. 6) at Ahmedabad on 30th November, 1976 in H.R.P. Suit No. 3510 of 1972. Thereby the learned trial Judge was pleased to dismiss the suit of the landlords for possession of the rented Premises.

2. The facts giving rise to this revisional application move in a narrow compass. The respondents are the landlords and the petitioner is the tenant in respect of the premises involved in the litigation giving rise to this revisional application. It appears that the tenant was stated to be in possession of two rooms on the monthly rent of Rs. 11 and Rs. 5 for the bigger room and the smaller room respectively. The tenant appears to have fallen in arrears of rent from 1st September, 1969. He was therefore served with one demand notice of 8th June, 1972. He gave his reply thereto on 16th June, 1972. Therein he inter alia contended that the rent claimed in the demand notice was not the standard rent. The landlords thereupon filed one suit in the Small Causes Court at Ahmedabad for possession of the rented premises from the tenant on the grounds of arrears of rent for more than six months even after expiration of one month from the

date of the demand notice and non-user of the rented premises for six months or more preceding the date of the suit. That suit came to be registered as H.R.P. Suit No. 3510 of 1972. It appears to have been assigned to Court No. 6 of the Small Causes Court at Ahmedabad for trial and disposal. The tenant filed his written statement at Exh. 15 on the record of the suit and resisted the suit on various grounds. The learned trial Judge raised the necessary issues. After recording evidence and hearing the parties, by his judgment and decree passed on 30th November, 1976 in H.R.P. Suit No. 3510 of 1972, the learned Judge of the Small Causes Court (Court No. 6) at Ahmedabad as pleased to dismiss the suit for possession of the rented premises filed by the landlords. The aggrieved landlords carried the matter in appeal before the Appellate Bench of the Small Causes Court at Ahmedabad. Their appeal came to be registered as Appeal No. 30 of 1977. By its judgment and order passed on 31st January, 1980 in Appeal No. 30 of 1977, the Appellate Bench of the Small Causes Court at Ahmedabad was pleased to accept the appeal of the landlords and to pass the decree for possession of the rented premises as prayed for by them in the suit. The aggrieved tenant has thereupon invoked the revisional jurisdiction of this Court u/s 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("the Act" for brief) for questioning the correctness of the aforesaid decision of the lower Appellate Court in appeal.

3. The Appellate Court found the present petitioner to be in arrears of rent for more than six months even after expiration of one month from the date of service of the demand notice to him. In view of a consent order passed earlier in the tenant's application u/s 11(4) of the Act, the Appellate Court took the view that the dispute raised by the tenant about the standard rent in his reply to the demand notice was not a bona fide dispute, and as such the case would not fall outside the purview of Section 12(3)(a) thereof. Accordingly, the Appellate Court ordered to pass the decree for possession of the rented premises as prayed for by the landlords in their suit u/s 12(3)(a) of the Act.

4. Shri Thakkar for the petitioner has submitted that it was not open to the lower Appellate Court to make out a new case for the landlords in absence of any pleading in that regard. According to Shri Thakkar, it was for the landlords not only to plead but to prove that the dispute about the standard rent raised by the tenant in his reply to the demand notice was not a bona fide dispute. In absence of any such pleading, runs the submission of Shri Thakkar for the petitioner, the lower Appellate Court ought not to have permitted the respondents herein to make out a new case in appsal. As against this, Shri Bhatt, for the respondents has submitted that it is a settled principle of law that the dispute about the standard rent contemplated in Section 12(3)(a) of the Act should be a bona fide dispute and not any and every dispute as to the standard rent of the rented premises. According to Shri Bhatt for the respondents, the lower Appellate Court has applied the correct principle of law to the facts of the case and as such the decree for possession passed by it u/s 12(3)(a) of the Act calls for no interference by this Court in this revisional application.

5. It is not in dispute that the demand notice to the tenant was issued on 8th June, 1972. It is again not in dispute that the tenant gave his reply thereto on 16th June, 1972, that is within merely eight days from the date of the demand notice. It is again not in dispute that, in his reply of 16th June, 1972, the tenant did raise the dispute about the standard rent of the rented premises. These facts were very much in the know of the landlords when they approached the Rent Court for possession of the rented premises from their tenant inter alia on the ground of arrears of rent for more than six months even after expiry of one month from the date of service of the demand notice. If they wanted possession of the rented premises u/s 12(3) (a) of the Act, it was necessary for them to plead the ingredients thereof in their plaint. If the necessary ingredients thereof are or any one of them is not pleaded, the tenant cannot be said to have any opportunity to meet with the case set up by the landlords for his eviction from the rented premises u/s 12(3)(a) of the Act. In the instant case, it was for the landlords to plead that the dispute as to the standard rent of the rented premises as raised by the tenant in his reply of 16th June, 1972 to the demand notice of 8th June, 1972 was not a bona fide dispute in view of its resolution earlier in the Court proceeding between the same parties. In absence of such pleading in the plaint, it would not be open to the landlords to prove that the dispute raised by the tenant in his reply to the demand notice was not bona fide. It is a settled principle of law that a party cannot be permitted to prove what is not pleaded by him.

6. I am fortified in my view by the binding ruling of the Supreme Court in the case of Duggi Veera Venkata Gopala Satyanarayana Vs. Sakala Veera Raghavaiah and Another, . It has been held therein:

In order to obtain an order of eviction of a tenant u/s 10(3)(a)(iii) the facts mentioned in Sub-clause (iii) are to be pleaded in the petition and thereafter proved at the trial. Any amount of proof offered without appropriate pleading is generally of no relevance.

There can be no doubt that under the law of pleadings facts mentioned in Sub-clause (iii) are to be pleaded in the petition and thereafter proved at the trial for the purpose of an order of eviction against the tenant. In a decision of this Court in Hasmat Rai and Another Vs. Raghunath Prasad, , it has been observed by Desai, J. that in order to obtain an order of eviction of a tenant u/s 12(1)(ra) of Madhya Pradesh Accommodation Control Act, 1961, the landlord has to plead and establish (i) that the bona fide requires the accommodation let to the tenant for non-residential purposes for the purpose of continuing or starting his business: and (ii) that he has no other reasonably suitable non-residential accommodation of his own in his occupation in the City or the town concerned. Further, it has been observed that any amount of proof offered without appropriate pleading is generally of no relevance. We respectfully agree with the above statement of law and reiterate the same. We are, however, not inclined to interfere with the impugned order of eviction in the instant case for the reasons

stated hereinafter.

It is true that the Supreme Court did not feel like dismissing the suit in absence of pleading with respect to the ingredients of the ground for eviction simply because such contention was raised for the first time before the Supreme Court. That is not so in the present case. As pointed out hereinabove, there was no pleading with respect to the falsity or frivolousness of the dispute as to the standard rent in respect of the rented premises raised by the tenant in his reply of 16th June, 1972 to the demand notice of 8th June, 1972. This point was taken up for the first time before the Appellate Court. The present petitioner was indeed taken by surprise. He would therefore be justified in raising the contention based on the absence of such pleading before this Court in the present revisional application.

7. In view of the law declared by the Supreme Court in its aforesaid ruling in the case of Duggi Veera Venkata Gopala Satyanarayana (*supra*), the absence of pleadings in that regard would be fatal to the decree for possession u/s 12(3)(a) of the Act. It is not in dispute that the petitioner is entitled to protection u/s 12(3)(b) of the Act.

8. In the instant case, there was no pleading in the plaint as to non-genuineness of the dispute as to the standard rent of the rented premises as raised by the tenant in his reply on 16th June, 1972 to the demand notice of 8th June, 1972. No issue was raised thereon by the trial Court. No attempt was made to amend the pleading in that regard or to seek an additional issue thereon in the course of the proceedings before the trial Court. It appears that the landlords were permitted to tender in evidence a certified copy of the compromise in standard rent Application No. 54 of 1958 dated 3rd February, 1960. It appears to have been taken on the record of the suit as Exh. 38. It appears that application was made by the tenant for fixation of the standard rent in respect of the rented premises and by compromise it was fixed at Rs. 11. In view of the aforesaid dictum of law culled out from the aforesaid ruling of the Supreme Court in the case of Duggi Veera Venkata Gopala Satyanarayana (*supra*), the landlords could not have been permitted to prove what was not pleaded by them. As aforesaid, they very well knew that the standard rent was fixed by a compromise between the parties arrived at on 3rd February, 1960 in standard rent Application No. 54 of 1958 made in the competent Court at Ahmedabad. In spite of this knowledge of factual position if the landlords do not set up a case in their plaint to the effect that the dispute as to the standard rent of the rented premises raised by the tenant in his reply of 16th June, 1972 to the demand notice of 8th June, 1972 was not a genuine dispute, they have to thank themselves. They cannot be permitted to travel beyond their pleadings.

9. It is true that the dispute contemplated by Section 12(3)(a) of the Act should be a bona fide and genuine dispute and not a false or frivolous dispute. It should not be a dispute raised for its own sake with a view to taking the case out of the purview of Section 12(3)(a) of the Act. It should be a dispute which the Court

can adjudicate upon without being bound by the doctrine of res judicata or without having influenced by the principle of estoppel. If the doctrine of res judicata or the principle of estoppel is pressed into service against resolution of the dispute as to the standard rent of the rented premises, the Court would not be able to adjudicate upon such dispute. If the standard rent is already fixed by the decision of the Rent Court in a proceeding before it, the doctrine of res judicata would be applicable if such a dispute is sought to be raised in a subsequent proceeding before the competent Court between the same parties or their successor-.in-interest. If such standard rent dispute is resolved by compromise in a proceeding before the competent Court, the principle of estoppel can be pressed into service if either side regards such dispute in a subsequent proceeding between the same parties or their successors-in-interest. In neither case, the Court would be able to adjudicate upon the dispute as to the standard rent in respect of the rented premises raised in a subsequent proceeding. It becomes clear from this that the dispute contemplated for taking the case outside the purview of Section 12(3)(a) of the Act should be a bona fide and genuine dispute. But then the fact that such dispute raised by the tenant in his reply to the demand notice within one month from its service to him is not a bona fide and/or genuine dispute has to be both pleaded and proved by or on behalf of the landlords at trial.

10. I am supported in my view by the Division Bench ruling of the Bombay High Court in the case of Yeshbai and Another Vs. Ganpat Irappa Jangam and Another, . The Division Bench ruling was given on a reference made to it for answering the question:

Whether the dispute as contemplated u/s 12(3)(a) must be a bona fide dispute in order to claim benefit u/s 12(3)(b)?" In the course of its judgment, the Division Bench of the Bombay High Court in the aforesaid ruling in the case of Yeshbai and Anr., (supra), has held:

We have shown above on an analysis of the provisions of Section 12 and the scheme of the Act that the legislative intent of a restrictive meaning being given to the word "dispute" in Section 12(3) (a) is clear and that the construction suggested by the Counsel would lead to absurd and ambiguous results. By incorporating Section 12(3)(a) in the Act, the Legislature has created vested right in the landlord on fulfilment of the four conditions deducible from the said provision. To entitle himself to a decree for eviction, the landlord has to prove that there is no dispute regarding the amount of standard rent or permitted increases. This can be proved not only by showing that the tenant has not taken up a plea about standard rent and permitted increases, but also by the landlord by showing that the so-called dispute raised by the tenant is not genuine or bona fide. Of course, the burden of proving that the dispute raised by the tenant is not bona fide would be on the landlord.

I am in respectful agreement with the aforesaid principle of law enunciated by the Division Bench of the Bombay High Court in its ruling in the case of Yeshbai

and Anr. (supra).

11. In accordance therewith, the burden to prove that the dispute raised by the tenant as to the standard rent of the rented premises is not a bona fide or genuine is on the landlord. In order to prove this fact at trial, it would be necessary for him to plead it for the simple reason that he cannot be permitted to prove what is not pleaded by him in view of the aforesaid dictum of law deducible from the aforesaid ruling of the Supreme Court in the case of Duggi Veera Venkata Gopala Satyanarayana (supra). As pointed out hereinabove, in the instant case, the landlords have never pleaded in their plaint that the dispute raised by the tenant in his reply 16th June, 1972 to the demand notice of 8th June, 1972 as to the standard rent of the rented premises was neither bona fide nor genuine. In that view of the matter, the lower Appellate Court ought not to have permitted the landlords to make out a new case in that regard in appeal. The approach of the lower Appellate Court in that regard is therefore not sustainable in view. The decree of eviction passed against the present petitioner by the lower Appellate Court cannot therefore be sustained in law.

In the result, this revisional application is accepted. The decree for possession of the rented premises ordered to be passed by the lower Appellate Court in its impugned decision of 31st January, 1980 in Appeal No. 30 of 1977 is hereby quashed and set aside. The decree passed by the trial Court on 30th November, 1976 in H.R.P. Suit No. 3510 of 1972 is restored. The result would be that the suit of the landlords for possession of the rented premises is dismissed. Rule is accordingly made absolute however with no order as to costs on the facts and in the circumstances of the case.