

(2002) 08 GUJ CK 0053
In the Gujarat High Court

Case No : Civil Revision Application No. 1443 of 2001

Murlis Chandrakant Choksi

APPELLANT

Vs

Maganbhai Hansjibhai Patel

RESPONDENT

Date of Decision : 30-08-2002

Acts Referred:

Bombay Rent Act, 1985 — Section 12, 12(3), 29(2)
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2002) 22 GLH 411

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : J.B. Pardiwala, for the Appellant;

Final Decision : Allowed

Judgement

B.J. Shethna, J.—This revision application is filed by the present applicant who is the original plaintiff no.1. He and the present opponent no.1 Rajendra Chandrakant Choksi jointly filed Regular Civil Suit No. 221 of 1998 in the Court of Civil Judge (S.D.), Navsari against the present opponent no.1 and 2 - original defendant no.1 and 2 for recovering the possession of the suit premises and arrears of rent of the property bearing Municipal House No. 301/6 in the town of Navsari.

2. It's an old tenancy of 1972. It is contended by the original plaintiffs in the suit that the suit property was let out to the defendant no.1 for the purpose of running a diamond factory subject to the following conditions:-

1. The month of tenancy would start from 1st day of each English calendar month and would end on the last day of the same month.
2. The rent was required to be paid as and when it accrues due from month to month before 5th day of each month.
3. No major or permanent changes would be effected in the rented premises.

4. The rented premises would be used only for the purpose of running a diamond factory.

5. The rented property would not be permitted to be sublet or transferred or assigned in any manner in favour of anybody else.

6. No act would be permitted to be committed in the rented premises so as to cause any nuisance or annoyance to the neighbours of the rented property.

7. No easily inflammable substance will be permitted to be stored in the rented premises.

8. The tenant-defendant No.1 is required to pay an amount of Rs.100/- per month by way of rent of the suit premises to the plaintiffs-landlords regularly.

3. The defendant no.1 failed and neglected to pay rent of the suit premises regularly to the plaintiffs and the rent had accrued due from 1.1.1987. Thus, the defendant no.1 was in arrears of rent for more than six months. Therefore, the plaintiffs became entitled to recover possession of the suit property from him. Accordingly, they filed suit before the Civil Court. It was also contended by the plaintiffs that the defendant no.1 had unlawfully sub-let the suit premises to the defendant no.2.

4. Thus, in short, the suit was filed for recovering possession of the suit premises on two grounds:- (i) The rent had become due for more than six months from the date of institution of the suit. Thus, the defendants are in arrears of rent for a period of 14 months on the date of filing of the suit which was filed in 1988. They neglected to pay the said rent despite of service of statutory notice and (ii) the defendant no.1 had unlawfully sublet the suit premises to the defendant no.2 and thereby violated the conditions of Rent and provisions of the Rent Act.

The Learned Trial Judge after recording the evidence of both the parties came to the conclusion that notice for termination issued by the land lord u/s 12 of the Bombay Rent Act was legal and valid. He has also come to the conclusion that the tenants were not ready and willing to pay the rent regularly and that they neglected in making payment of rent. However, the taxes were to be paid by their tenant, therefore, the Learned Judge held that provisions of Section 12(3) (b) of the Rent Act would apply and not Section 12(3)(a). On that ground alone, the Learned Judge dismissed the suit.

5. Shri Pardiwala, Ld. Counsel appearing for the petitioner-land lord conceded that the taxes were to be paid by the tenant and therefore, it would be yearly tenancy and not monthly and the case would fall u/s 12(3)(b), but his submission was that when he had challenged the impugned judgement and decree dated 30.12.1997 passed by the Learned Trial Judge in Regular Suit No. 221 of 1998 by filing Regular Civil Appeal No. 72 of 1993 before the Court of Assistant Judge, Valsad then during the appeal also, the tenants were required to make the regular payment. He submitted that though the appeal was admitted in 1992 and pending for last 8 years, the tenant failed to make regular payment.

He submitted that during the pendency of the appeal, the tenant made payment only twice (1) On 14.7.1995 and (2) 28.8.2000 before the Appeal was finally heard and decided on 20.2.2002. Therefore, the Appellate Court should have passed the decree in favour of the plaintiff-landlord u/s 12(3)(b) of the Rent Act. The submission of Mr.Pardiwala was that though word "regularly" was omitted as per the amended Act No. 7 of 1985 in 1985 from Section 12(3)(b)(i), but the tenant was required to make payment `continuously" to the landlord during the pendency of the suit and appeal or tenders it in the court rent and permitted increases till the suit or appeal is finally decided. He submitted that by depositing the arrears only twice during the pendency of the appeal for a period of 8 years the tenant failed to make continuous payment or tenders in the Court, therefore, he was not entitled for any protection u/s 12(3)(b). He submitted that if he had any hardship then the tenant should have requested the Court and if the Court had exercised its discretion in his favour and granted time to deposit the arrears, then only he could have been saved from the decree of eviction, otherwise not.

6. Before dealing with the aforesaid submission of Mr.Pardiwala, I must state that initially the word "regularly" was there in Section 12(3)(b)(i). That word "regularly" was subsequently deleted with a view to remove the hardships caused to the tenants on account of the judgement of the Honourable Supreme Court in case of *Mrinalini B Shah & Another Vs. Bapalal Mohanlal Shah* reported in 1980 SC Page 954. In *Mrinalini's* case (Supra), this Court followed the Division Bench judgment of the Gujarat High Court in case of *Lalchand V. Nanalal* (Civil Application No. 522 of 1971) and held that the term "regularly" in the later part of Section 12(3)(b) is only directory and not mandatory. Therefore, substantial compliance with the said provision by the tenant is sufficient and it was held that if the standard rent and permitted increases were paid by the tenant even at irregular intervals during the pendency of appeal, so that at the time of decision of the appeal no rent remains in arrears, that would be sufficient compliance of Section 12(3). However, in appeal, the Honourable Supreme Court held that the provisions of Section 12(3)(b) were mandatory and must be strictly complied with by the tenant during the pendency of the suit or appeal. If the landlords claim for eviction on the ground of default then payment of rent is to be defeated. The Supreme Court further held that, "It enjoins a payment or tender characterised by reasonable punctuality, that is to say, one made at regular times or intervals. The regularity contemplated may not be a punctuality, of clocklike precision and exactitude, but it must reasonably conform with substantial proximity to the sequence of times or intervals at which the rent falls due". It was further held that, "Thus where the rent is payable by the month, the tenant must, if payable by the month, the tenant must, if he wants to avail of the benefit of the latter part of cl.(b), tender or pay it every month as it falls due, or at his discretion in advance. If he persistently defaults during the pendency of the suit or appeal in paying the rent, such as where he pays it at irregular intervals of 2 or 3 or 4 months (as is the case before the Lordships). The Court has no discretion to treat what were manifestly irregular payments, as

substantial compliance with the mandate of this clause irrespective of the fact that by the time the judgement was pronounced all the arrears had been cleared by the tenant."

7. With a view to nullify the effect of the judgement of the Honourable Supreme Court delivered in Mrlani's case (Supra), the State of Gujarat introduced amendment in the Bombay Rent Act and by way of amending Act No. 7 of 1985, the word "regularly" in Section 12(3)(b) was deleted. The statement of objects and reasons for Amendment Act No.7 of 1985 states that:

"The hardship caused to tenants on account of aforesaid decisions of the Supreme Court could be removed if a tenant is permitted to pay or tender in Court rent and permitted increases according to the direction of the Court. It is, therefore, considered necessary to confer, as suggested by the Supreme Court, a discretionary jurisdiction on a court to give directions in that behalf."

The aforesaid amendment was duly considered by the Learned Single Judge of this Court (Coram: A.P.Ravani, J (as he then was) in the case of Malganbhai Rasulbhai Versus Puspavadan Manilal Desai through his L.R.s and Others reported in 1986 G.L.H.739. In Malganbhai Rasulbhai's case (Supra), this Court held that:-

"Once there is an application by the tenant and if he complies with the order passed below such application then he is entitled to the protection under the Rent Act. Such an application can be made by the tenant, at any time and the court also may pass order on the application at any time, on or before or subsequent to, the first day of hearing of the suit. Such an order may be passed by the court on the application of the tenant, or on the application of the landlord or even suo motu (See Division Bench judgement) of this High Court in the case of Sureshchandra Maganlal, reported in 8 GLR 1003, Coram: P.N.Bhagwati, J. (as he then was) and A.R.Bakshi, J). The defendants-tenants having complied with the order of the court passed on December 26, 1968 in Misc. Civil Application having been consolidated with the suit, it has got to be held that that the defendants-tenants have complied with the first requirement of the payment of standard rent and permitted increases. In this view of the matter, the contention raised by the counsel for the petitioner that the tenants have not complied with the condition regarding the payment of standard rent and permitted increases then due on the first date of hearing cannot be accepted and hence the same is rejected."

8. I am in respectful agreement with the view taken by the Learned Single Judge of this Court. In the instant case, as stated earlier, on two occasions, the tenant deposited the amount of arrears of rent before the Appellate Court and when the appeal was decided, there was no arrears. In that view of the matter, when the Learned Appellate Judge has dismissed the appeal, then this Court would certainly not interfere with such orders in its revisional jurisdiction u/s 29(2) of the Bombay Rent Act. In the case of Bhaichand Ratanshi Vs. Laxmishanker

Tribhoyan, , the Honourable Supreme Court has held that although the High Court has a wider jurisdiction in revision u/s 29(2) of the Rent Act then the one exercised in Section 115 of the Civil Procedure Code, but it can only be exercised for a limited purpose with a view to satisfying itself that the decision was in accordance with law. In the instant case, having carefully gone through the appellate court's order, it cannot be said that the appellate court committed any error in dismissing the appeal of the plaintiff.

9. Before parting, I would like to state that one more submission has been made by Mr.Pardiwala that on the basis of the commentary of the Learned Author Shri M.C.Raijiwala on Bombay Rent Act that after the amendment, the payment of the rent was to be paid by the tenant as per the directions and in this case, the tenant failed to obtain any directions from the court and at his own sweet will deposited the arrears only twice, once in 1995 and second time in 2000. He, therefore, submitted that there was a breach of Section 12(3)(b) and the Appellate Court should have decreed the suit of the plaintiff and passed the decree of eviction against the defendant-tenant. I am afraid this submission of Mr.Pardiwala cannot be accepted for the simple reason that during the pendency of the appeal, the applicant-plaintiff never applied before the Court calling upon the defendant-tenant to deposit the arrears during the pendency of the appeal. In absence of any directions by the court to the defendant-tenant, there was no question of depositing the amount.

10. The Legislature has introduced the amendment in Section 12(3)(b) of the Rent Act only with a view to remove the hardships of the tenant. Therefore, no other view is possible then the view taken by this Court that during the pendency of the appeal, if the tenant pays the entire arrears before the appeal is finally decided, then no decree of eviction can be passed against the tenant u/s 12(3) (b) of the Rent Act.

11. In view of the above discussion, this revision application fails and is hereby summarily dismissed.