

(1986) 03 GUJ CK 0018
In the Gujarat High Court

Naniben

APPELLANT

Vs

Vidhyaben Ambalal Mistry

RESPONDENT

Date of Decision : 21-03-1986

Acts Referred:

Citation : (1987) 1 GLR 352

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Judgement

R.A. Mehta, J.—This Revision Application by the original-plaintiff landlady is directed against the decree refusing possession on the ground of arrears of rent passed by the lower appellate Court. The following dates are relevant:

1-3-75 Rent is due from 1-12-75 suit notice 13-1-77 suit filed 2-12-77 issues raised 14-12-77 judgment of trial court.

2. The rent note Ex. 23 dl. 1st May 1972 contains a term that the tenant has to pay the education cess which is payable by year and not by month and therefore, Section 12(3)(a) of the Rent Act does not apply. As regards Section 12(3)(b) when the issues were raised on 1st December 1977 there was no full deposit of the arrears of rent then due. The monthly rent is Rs. 145/- plus the education cess. As against the sum of Rs. 2830/- due on the date of the issues, the defendant had deposited Rs. 1,000/- and odd. It appears that the defendant was absent herself and her advocate had passed a purshis of "no instructions" at ex. 26 and, therefore, the trial court felt that there was no point in fixing any other date to enable the defendant to deposit the arrears of rent and, therefore, after raising the issues on 2nd December 1977 within two weeks the decree for possession was passed on 14th December 1977. While passing the judgment and decree the issue regarding standard rent, which was already raised, was decided holding that the standard rent was Rs. 145/- only on the basis of the evidence of the plaintiff as the defendant was absent.

3. It appears that the defendant was absent and was not aware about the decree

and the Appeal which was filed on 15-2-1978 was time barred. Application for condonation of delay was moved by her along with Appeal and stay of execution of the decree was granted. Ultimately the lower appellate Court allowed the appeal and set aside the decree for possession passed by the trial Court on the ground of arrears of rent. It is this decree which is challenged by the landlady in this Revision Application and it is submitted that the learned Appellate Judge has committed an error of law in not confirming the decree for possession on the ground of arrears of rent. It is submitted that the tenant not having deposited the arrears of standard rent on the first date of bearing was in default and liable to be evicted u/s 12(3)(b) of the Rent Act. The tenant had failed to deposit the arrears not only on the first date of hearing but also on the date of the judgment of the trial Court and also during the course of hearing of the appeal. It is submitted on behalf of the landlady that the date when the appeal was preferred and argued also can be taken to be first date of hearing and on that day also the tenant was in arrears and had not paid full arrears and, therefore, the tenant is liable to be evicted. It is also submitted that the trial Court had decreed the suit with costs and the tenant had not deposited this amount of costs and, therefore, also the tenant was liable to be evicted. It was also submitted that during the pendency of the Revision Application in the High Court, the tenant had not deposited the arrears of rent and, therefore also the tenant was liable to be evicted. During the pendency of the Revision Application filed in 1978 the first deposit of Rs. 4,000/- was made on 2nd February 1983. Even thereafter the tenant was in arrears. In December 1975 the tenant deposited further sum of Rs. 9,000/- (Rs. 2,500/- on 6th December and Rs. 6,500/- on 9th December 1985). Thus during the pendency of the Revision Application in all a sum of Rs. 13,000/- was deposited. This amount is sufficient to wipe off the arrears. In fact there is no obligation on the tenant to deposit the arrears of rent during the pendency of the Revision Application or to deposit the same regularly.

4. It is to be noted that in the trial court the issue regarding standard rent was decided for the first time by judgment in the suit and until that question was resolved the tenant had no opportunity to deposit the arrears of rent and the trial court was under an obligation to fix a date giving time to the tenant to deposit the arrears of standard rent. The trial court had straightway passed a decree for possession on the ground of arrears of rent and this was clearly illegal. Since the trial court had not fixed any date for deposit of arrears of rent and/or costs, the tenant had no opportunity whatsoever of complying with Section 12(3)(b) of the Act. In the appellate court also there was no order u/s 12(3)(b) fixing any interim standard rent or giving any direction fixing the date for payment of arrears of rent or costs. In absence of any such fixation of date the tenant would not be in a position to comply with such requirement. In the case of *Paid Chandubhai Bhailalbai v. Khengarbai Jeramji Purohit* 18 G.L.R. 587 it has been specifically held that unless there is an order u/s 12(3)(a) mere noncompliance regarding the decree for costs would not attract Section 12(3)(b). Similarly merely passing a decree for arrears of rent and costs would not amount

to an order u/s 12(3)(b). Similarly the appellate court granting the stay of decree for possession on condition to deposit the arrears of rent upto a particular date can not be treated as an order u/s 12(3)(b) fixing a date for compliance. Fixing a date u/s 12(3)(b) would focus the attention of the tenant that if he does not comply with such express direction u/s 12(3)(b) he may incur liability to eviction. Mere condition of stay would bring a liability of vacating the stay of execution which liability a tenant may be in a position to avoid or cure by satisfying the court by showing a sufficient cause. Admittedly in the present case the appellate court had not fixed any date or passed any order u/s 12(3)(b) fixing a date by which the tenant should deposit all arrears of rent or costs of the suit. In absence of any order u/s 12(3)(b) by the lower appellate court the tenant was not under any obligation to pay the same by a particular date. By the date of the judgment of the lower appellate court the tenant had deposited all arrears of rent and therefore the lower appellate court was justified in refusing to pass the decree for possession on the ground of arrears of rent.

It was also submitted on behalf of the petitioner-landlady that the tenant had not deposited the arrears of rent on the first date of hearing in appeal. It was also submitted by the learned advocate for the petitioner-landlady that the first date of hearing in the appeal was the date on which the appeal was filed by the tenant and on that date the tenant was in arrears of rent and, therefore, was liable to be evicted. There is no substance in this contention because even in the appeal the dispute regarding standard rent had continued and the appellate court had granted stay of decree of trial court and not fixed any date for deposit of arrears of standard rent. The court as under an obligation to fix such a date. The trial court had failed to do so; the appellate court had also not fixed any such date. Such a date had to be fixed by a judicial order after hearing the parties and taking into consideration the circumstances. In the present case the dispute regarding standard rent was resolved for the first time by the judgment of the trial court. It was under appeal and it was stayed. By that time large amount of arrears had become due and if the court had was to fix any date for enabling the tenant to deposit the amount, the court would take into account all the circumstances of the case including the amount that had become due and the capacity of the tenant to pay the same and the right of the landlady to receive the same. Having regard to all these circumstances the court would have granted reasonable time to the tenant while fixing the date and the tenant would also be entitled to seek extension of such date if fixed u/s 12(3)(b). In fact all this having not been done it is impossible to hold that the tenant had defaulted in his obligation to pay the arrears of standard rent and that he was negligent in not depositing any arrears of rent including costs.

5. The learned Judge of the lower appellate court was right in allowing the appeal of the opponent tenant and reversing the judgment and decree of the trial court for possession on the ground of arrears of rent.

In the result this Revision Application fails and is dismissed with no order as to

costs.