
(1982) 04 GUJ CK 0007
In the Gujarat High Court

Naranbhai Nathabhai Koli

APPELLANT

Vs

Modhia Panalal Maganlal

RESPONDENT

Date of Decision : 09-04-1982

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(3)(a),
12(3)(b), 29(2), 29(2)
Evidence Act, 1872 — Section 114

Citation : (1982) GLH 723 : (1982) 2 GLR 98

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is a revision application u/s 29(2) of the Bombay Rent Act filed by the original defendant-tenant of the Regular Civil Suit No. 104 of 1976 decided in his favour by the learned Civil Judge (Junior Division), Dohad, whose judgment had come to be set at naught by the learned Joint District Judge of Panchmahals at Godhra in the landlord's appeal No. 12 of 1979 in the District Court there. Being aggrieved by the said order of eviction, the tenant has filed the present revision application.

2. A few facts which are held as established and which could not be controverted deserve to be specifically noted in serial order:

(1) The tenant had agreed to pay Rs. 16/- per month as the contractual rent.

(2) He had not paid rent from 1st of May, 1973, except for the sum of Rs. 100/- which the learned appellate Judge himself has given credit of in paragraph 12 of his judgment.

(3) The landlord had given the notice on 25th February, 1976 to the tenant u/s 12(2) of the Bombay Rent Act calling upon the tenant to pay up all arrears of rent at the rate of Rs. 16/- per month, Rs. 100/- ultimately found to have been paid by the tenant, being not given credit of.

(4) The said notice was returned to the landlord with the endorse" ment

"refused" and the appellate Court has drawn an inference by relying upon Section 114 of the Evidence Act that the tenant was offered the notice but he had declined to accept the same.

(5) The tenant had not obviously, therefore, given any reply to the notice nor had he raised any dispute about the standard rent within one month of the assumed receipt of the notice.

(6) The landlord filed the aforesaid suit on 26th April, 1976, in which he claimed the arrears of rent at the rate of Rs. 16/- per month and here also he did not give credit of Rs. 100/-.

(7) In the notice of demand u/s 12(2), the landlord had also put forth claim for education cess and it was conceded even before the learned appellate Judge that because of this annually payable education cess, one of the four requirements of Section 12(3)(a), viz. payability of rent every month was not complied with and so Section 12(3)(a) was not applicable.

(8) The tenant had raised the dispute about the standard rent in the written statement and the Court had framed on 20th December, 1976 issues, the sixth one of which was pertaining to the standard rent.

(9) The tenant had made various deposits on various dates as could be found in the tabular form in paragraph 12 of the appellate Judgment.

(10) The learned trial Judge had fixed the standard rent at Rs. 10/- per month for the first time when he delivered his judgment on 30th December, 1978, and by that date, the sum of Rs. 1.081/- was already lying deposited with the Court as against the landlord's claim of Rs. 670/- by that date, viz. 30th December, 1978, at the rate of Rs. 10/- P.M. minus Rs. 100/- given credit by the learned appellate Judge, i.e. Rs. 570/-. This amount is worked out on the basis of Rs. 10/- per month as the standard rent which was not challenged by the landlord himself in his appeal when it was heard by the learned Assistant Judge though in the memo of appeal he had raised the question.

3. In the light of the above facts, the question that has been raised by Mr. Amin for the tenant is required to be considered and decided. Mr. Amin's contention is that the learned appellate Judge has grossly erred in holding that the tenant had not deposited all due rent by the time the issues had come to be framed and, therefore, the first requirement of Section 12(3)(b) was not complied with. Mr. Amin's contention in this connection was that the tenant was not in a position to know on the day the issues were framed and thereafter as to how much amount and at what rate he should deposit because the Court was seized with the question of the standard rent. Had the Court fixed the standard rent by that stage, the liability of the tenant to deposit all arrears of rent by the day the issues came to be framed would have arisen.

4. Perusal of the judgment paragraph 12 of the learned Joint District Judge shows that he has examined the case of the tenant u/s 12(3)(b) on the tent of

Rs. 16/- per month without considering the fact that the tenant was not in a position to deposit the standard rent as required u/s 12(3)(b) for want of its adjudication at the hands of the learned trial Judge. I repeat that the standard rent came to be fixed for the first time at the rate of Rs. 10/- per month by the learned trial Judge on 30th December, 1978, the day on which he pronounced the judgment and never earlier. The Division Bench of this Court in the case of Nanji Pancha v. Daulal Naraindas 11 G.L.R. 285, has clearly laid down that:

Where there is a dispute as to standard rent, the tenant would not be in a position to pay or tender the standard rent, on the first date of hearing....

The Division Bench further observes:

When, therefore, there is a dispute of standard rent which is resolved by the Court at the end (because both the proceedings were consolidated at the request of the parties) the tenant would not be in a position to pay or tender standard rent. Even the Court would not be in a position to fix another date, because the fixing of such date would be in fructuous....

If the ratio of the Division Bench of this Court is applied to the facts of the present case, the situation would be to the benefit of the tenant. As already observed by me above, the standard rent came to be fixed, for the first time, on 30th December, 1978. The tenant was in arrears from 1-5-1973 and so upto the end of December, 1978, he was in arrears of rent for 5 years and 7 months, i.e. 67 months. So, his total liability by that period would come to Rs. 670/-; but, out of that, Rs. 100/- are given credit, of and so the tenant's liability would come to Rs. 570/- in all. As against that, by that date, Rs. 1081/- were already deposited. So, there was surplusage of Rs. 501/- which would cover 51 months, i.e. the total period of the appeal which was decided on 22nd August, 1980, and some more period.

5. Mr. R.N. Shah, the learned Advocate for the landlord, however very vehemently urged before me that the ratio of Nanji Pancha's case (supra) would not be attracted because in that case the tenant had already filed an application for fixation of standard rent in my view, Mr. Shah's contention is not well-founded. The proposition of law that was laid down by the Division Bench is that if there is a dispute regarding the standard rent to be resolved by the trial Court, the tenant would not be in a position to deposit the rent for want of information with him about the rate of standard rent. It was a sheer accident that, in that case, there was an application for fixation of standard rent also. It was an innocuous circumstance by itself. So, in my view, the ratio of Nanji Pancha's case is attracted.

5.1. Another argument which was canvassed by Mr. R.N. Shah for the landlord deserves to be specifically noted. Mr. Shah urged with appreciable vehemence, that the tenant not having raised the dispute within one month of the assumed receipt of the notice of demand, it must be held that there was no dispute of standard rent and in order to avail himself of the benign protection of Section

12(3)(b), it was incumbent upon the tenant to deposit all arrears on the day the issues were framed and subsequently thereafter, regularly all at the rate of Rs. 16/- per month. In my view, Mr. Shah confuses two different concepts of law because of their identical wording. Section 12(3)(a) is attracted if four conditions are satisfied. One of them is the existence of a dispute about the standard rent. The Supreme Court has interpreted that particular condition to mean "existence of a dispute" within one month of the notice of demand. For the purpose of Section 12(3)(a), this meaning is relight. Had there been no demand of education cess in the case on band, the case would have certainly fallen u/s 12(3)(a); but the present case comes u/s 12(3)(b), not because there was no dispute about the standard rent, but because of the circumstance that the rent was not payable monthly. Secondly, it is to be noted with pertinence that dispute about standard rent in terms of Section 12(3)(b) is in a different context altogether. In order to avail himself of the benefit of Section 12(3)(b), the tenant must pay all arrears on the first date of hearing and must continue to pay regularly the rent till the suit is finally decided, meaning thereby throughout the appellate period also; but his liability is to so deposit, only if the rate of standard rent is known.

6. The question is, at what rate he should deposit it. Section 12(3)(b) requires that he should deposit standard rent. On the day the issues are framed and till the trial is concluded, the tenant does not know what the standard rent is. For the technical purpose of Section 12(3)(a), it can be said that there was no dispute about the standard rent and the case would fall u/s 12(3)(b). But, for the purpose of Section 12(3)(b), the dispute of "standard rent" very much exists and to debar the tenant of the benefit of Section 12(3)(b), there must be a clear "adjudication" either; earlier or in that proceeding itself, about what the "standard rent" is. If Mr. Shah's submissions are carried to their logical meaning, no dispute about the "standard rent" can be raised in a proceeding u/s 12(3)(b) of the Act. This is, in my view, absurd and against the tenor of "the benign provisions of the Bombay Rent Act. It is in this context that I have said that absence of the dispute of the standard rent for the purpose of Section 12(3)(a) has got a connotation different from the one of the term "existence of a dispute" for the purposes of Section 12(3)(b).

7. A tenant, who has not raised a dispute within one month of the notice of demand, may invite the strict provisions of Section 12(3)(a) and despite his readiness and willingness to pay all arrears, even more, he will be thrown out. Had the situation been of this type in the present case, Section 12(3)(a) would have certainly helped the landlord; but, that section docs not apply, and the residuary clause of Section 12(3)(b) is attracted. This Clause (b) is not as stringent as Clause (a) is. Even a tenant in arrears of rent, say for 6 months or 60 months, would be able to save his skin if this Section 12(3)(b) is attracted. The protection afforded by this Clause (b) no doubt is to be earned by complying strictly with the conditions there. But, as this defence which the long-standing Judgment in Nanji Poncho's case (supra) provides for is that, this becomes available only if the standard rent is fixed.

8. In the above view of the matter, the learned Joint District Judge was clearly in error in decreeing the suit against the defendant. His Judgment is therefore, set aside and the plaintiffs suit in so far as it concerns possession is declared as rightly dismissed i.e. there is restoration of the trial Court's judgment in that regard. Rule is accordingly made absolute with no order as to costs throughout.