

(1962) 12 GUJ CK 0017
In the Gujarat High Court

Case No : Civil Revision Application No. 103 of 1961

Nathubhai Gulabdas

APPELLANT

Vs

Bhakhibhai Muljibhai

RESPONDENT

Date of Decision : 04-12-1962

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 12(1), 12(3)
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1(2), 115
Constitution of India, 1950 — Article 219
Evidence Act, 1872 — Section 165, 38, 40, 41, 42

Citation : AIR 1963 Guj 305

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Advocate : A.H. Mehta, for the Appellant; S.B. Vakil, for the Respondent

Final Decision : Allowed

Judgement

V.B. Raju, J.—(27-11-1962) The petitioner's suit for possession from his tenant on the ground that the tenant was in arrears of rent for a period exceeding six months that he had not paid the arrears not with standing a notice, within one month of the date of the notice and that the plaintiff was in bona fide requirement of the suit premises, was decreed by the 2nd Joint Civil Judge, Junior Division, Surat, who accepted both the contentions. But in appeal the learned Extra Assistant Judge, Surat, allowed the appeal and dismissed the suit of the plaintiff. His finding that the plaintiff was not in bona fide requirement of the suit premises is not challenged in revision. But his finding that the defendant was ready and willing to pay the rent and was, therefore, not entitled to be ejected is challenged in revision, and it is contended that in view of the provisions of section 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which will hereinafter be referred to as the Act, the learned Appellate Judge was wrong in not confirming the decree for possession.

2. The learned counsel for the opponent has raised a preliminary objection. He

contends that it is not open to the learned counsel for the petitioner to urge that ground, as he had not urged before the lower appellate Court, that Section 12(3) (a) of the Act overrides the provisions of Section 12(1) of the Act, and if the plaintiff satisfies the requirements of Section 12(3)(a) of the Act, he is entitled to succeed whatever be the provisions of Section 12(1) of the Act. The learned counsel relies on *Karimbhai v. Hariprasad* (1962) 3 Guj LR 529. He also relies on the following observations of Macleod, C. J. in *Haridas v. Ratansey* 23 Bom LR 802 : AIR 1922 Bom 149) which are relied on by the Single Judge of the Gujarat High Court:

"A new question has been raised before us whether, when the plaintiffs gave notice to the defendant, the plaintiff's title had been determined. The defendant relies on the explanation to Section 48 of the Presidency Small Cause Courts Act. He never raised that point in the Small Causes Courts and never attempted to prove that plaintiffs' title had been determined prior to the date of the application to the Small Causes Court for possession. No doubt, it appears that the plaintiffs had received notice from his landlord, but we are not aware of what nature the notice was, and it is not the function of this Court in revision to entertain a point of law which has not been taken in the Court below. None of the provisions of Section 115 of the CPC apply to such a case. If a party does not choose to take a point of law in the Court below, then it cannot be said that the lower Court has acted illegally or with material irregularity in deciding the case without taking into consideration a point of law that was never raised before it. If we entertain this application on that ground, we should be exceeding the powers that are granted to the High Court to exercise revisional jurisdiction over the decision of the lower Courts. The application must be refused."

The learned Single Judge of the Gujarat High Court referred to the Bombay decision in 23 Bom LR 802 : (AIR 1922 Bom 149(2)). But the point decided by him was only this: where a contention regarding standard rent was expressly abandoned in appeal by the advocate of the defendant with the result that the District Judge was not called upon to consider whether the standard rent fixed by the trial Court was correct or not, the District Judge cannot be said to have acted illegally or with material irregularity in not deciding a point which was not raised before him and in proceeding with on the basis of which he was invited to proceed. The learned Judge thereupon held that it is not open in revision before him to contend that the appellate Court's decision on the question of standard rent was not proper. The learned Judge also observed that it was not open in revision before him to urge the contention that the defendant was ready and willing to pay the standard rent and that the plaintiff was by reason of the provisions of Section 12(1)(a) of the Act precluded from recovering possession of the suit premises from the defendant. The learned Judge observed that the same objection which was urged in relation to the contention as regards the standard rent applies with equal force to this contention. The learned Judge was therefore of the opinion that this contention was also not open in revision. The learned Judge also observed that the defendant expressly abandoned the contention as

regards readiness and willingness to pay the standard rent and that therefore, he did not see what under those circumstances the learned District Judge could do except to confirm the decree passed by the trial Court. The learned Judge also observed that the question whether the defendant was ready and willing to pay the standard rent was a question of fact and the defendant having expressly abandoned that contention, the defendant cannot be permitted to raise the question before him in the revision application.

3. On the question as to whether a contention " " can be taken up in a revision when it has not been taken up before the first appellate Court, the distinction between a ground and argument must be remembered. Order 41, Rule 1(2) of the CPC provides that every memorandum of appeal shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative, and such grounds shall be numbered consecutively. In an appeal, therefore, only the grounds of objection to the decree appealed must be stated and not the arguments on which the grounds are based. If a ground of objection is not stated in the memorandum of appeal or with the permission of the Court not taken in the argument advanced, it cannot be taken up in revision, because the appellate Court cannot be considered to have acted with material irregularity in the exercise of jurisdiction in not considering a ground of objection which was not urged before it. But if a ground of objection is raised before the appellate Court and in support of it, three arguments are urged, while in the revisional Court fourteen are urged in support of the same ground, all the fourteen arguments must be considered notwithstanding that only three out of them have been urged in the first appellate Court. But the grounds must be based on questions of law, if they are to be entertained by the revising Court. If any of the arguments urged before the revising Court depends on a finding of fact, the revising Court will naturally refuse to entertain those arguments, because they involve a finding of fact on which the Court below has not given any finding, and it is not proper for a revising Court to give a finding of fact for the first time in revision when no such finding is given by the Court below. To give an illustration : If the suit relates to an adoption and it is urged in appeal that the adoption is invalid, and it is also urged at the time of the argument that the adoption is invalid because the adoption is contrary to the provisions of statute A, it is open to the counsel to urge in revision that the adoption is invalid and that it contravenes not only the provisions of Statute A but also the provisions of statute B and Statute C. These are merely arguments to show that the adoption is invalid and the ground that the adoption is invalid has been taken up in the memorandum of appeal. A finding of the trial Court which has been challenged in appeal on some ground of law can be challenged in revision on any other ground of law, but not on any other grounds of law, if they involve determination of fresh issues of facts. To give another illustration : Even if it is not urged in appeal that a certain finding on a certain issue of the trial Court is not correct, because it is contrary to a decision of the Supreme Court, it is open in revision to contend that that finding

on that issue is contrary to the decision of the Supreme Court. The distinction between a ground and argument must therefore be kept in mind. If a ground is not taken up in appeal, it cannot be urged in revision, but a new argument in support of a ground can be urged in revision, although that argument has not been urged before the appellate Court. For example, if in the appellate Court a finding on a certain issue is challenged as incorrect on the ground that the finding is contrary to the provisions of Statute A and it is not argued before the appellate Judge that the finding is contrary to the provisions of Statute B, it would be open in revision to contend that the finding on that issue is contrary to the provisions of Statute notwithstanding that that argument has not been urged before the appellate Court. But the learned counsel for the opponent contends that in such a case, if the argument has not been urged before the appellate Court, the appellate Court cannot be said to have acted with material irregularity in the exercise of jurisdiction. But the ready answer to this argument is that the Courts are always supposed to apply the whole law and not a part of law. The omission to apply Statute B is not a fault of the lawyer but of the Judge. It is true that Judges are usually indebted to lawyers for their assistance, but strictly speaking, the Judge must apply the entire law and not a part and if he omits to do so, it would be a material irregularity in the exercise of jurisdiction as it amounts to ignoring certain provisions of law. I am, therefore, of the opinion that if a ground is urged in appeal, a new argument in support of that ground can be urged in revision, provided it does not involve new findings of fact.

4. In the instant case, the suit was for possession from a tenant on the ground amongst others that the tenant was in arrears of rent for over six months and that he did not pay the arrears within one month after a notice was issued to him. The trial Court decreed the suit it is, therefore, that the defendant went in appeal. The plaintiff was, therefore, only to support the judgment of the trial Court. Even in the judgment of the appellate Court the question whether the plaintiff would be entitled to possession on the ground that the defendant was in arrears for over six months was considered at length in para 9 of its judgment. The contention of the defendant in answer to the plaintiff's case that the defendant was in arrears of rent for a period of over six months and he did not pay the arrears within one month of the receipt of the notice is referred to in it. Para 9 of the judgment of the learned appellate Judge opens with the following words : "The plaintiff has also brought the suit for ejectment against the defendant on the ground that he had failed to pay arrears of rent for a period of six months within one month of the receipt of the notice Ex. 55 dated 8-1-1957." The ground that the plaintiff would be entitled to possession because the defendant was in arrears for over a period of six months and that he had failed to pay the arrears within one month, of the notice Ex. 55, dated 28-1-1957 was taken up in both the Courts below and it can be urged in revision also and in support of that contention, any number of legal arguments can be advanced in revision. For example, it is open in revision to say that for such reasons the plaintiff is entitled to a decree for possession because Section 12(3)(a) of the Act

overrides the provisions of Section 12(1) of the Act. This argument can always be urged in support of the ground already taken up. The preliminary objection is therefore, rejected.

5. The provisions of law to be applied to the instant case are to be found in Section 12 of the Act and they are as follows:

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act. (2) No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand, of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882. (3) (a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in Sub-section (2), the Court may pass a decree for eviction in any such suit for recovery of possession, (b) In any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the Standard rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court.

(4) Pending the disposal of any such suit, the Court may out of any amount paid or tendered by the tenant pay to the landlord such amount towards payment of rent or permitted increases due to him as the Court thinks fit.

Explanation-- In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in Sub-section (2), he makes an application to the Court under Sub-section (3) of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court." The word "may" used in Section 12(3)(a) of the Act has been construed to mean "shall". It is the finding of the trial Court that the defendant was in arrears of rent for a period of over six months on 8-3-57, the date of the notice given by the plaintiff to the defendant. * * * * * It must, therefore, be held for the purpose of this revision that there is a concurrent finding of both the Courts below that the defendant was in arrears of rent from 1-6-56, that on the date of the notice he was in arrears of rent for six months and that he failed to pay the arrears within one month of the date of the notice.

6. It is, however, urged by the learned counsel for the plaintiff that in fact these contentions were urged and the Court has not considered them because the Court allowed the appeal on a different ground. In that case, the learned Appellate Judge should have observed that as the appeal is being allowed, it is not necessary to consider other contentions of the learned counsel for the defendant. But there is no such observation in the judgment of the appellate Court.

7. (4-12-62). It is urged by the learned counsel for the opponent that in this case all the arrears of rent have been paid before the date of the decree and, that, therefore, in view of the provisions of Section. 12(1) of the Act, the tenant cannot be evicted and he relies on a judgment of the Division Bench of the Gujarat High Court in (1962) 3 Guj. LR 625, *Ambalal v. Babaldas*. In this judgment it is held that in order that the benefit of Section 12(1) may be availed of, the relevant date Would be the date of the suit and not the date of the decree. It is contended that this judgment of the Division Bench is binding on this Court.

8. In my judgment in *Mangalbhai Revabhai v. Kalyanpuri Bahadarpuri Pujari*, Civil Revision Appln. No. 1122 of 1960 I have given detailed reasons in support of my opinion that a judgment of a High Court cannot be binding on another Judge of the High Court and that is only the judgments of the Supreme Court which declare the law that are binding on other Courts. The contention is that the judgment of a Division Bench of one High Court is binding on all other single Judges and Division Bench of two Judges and that it is not binding on a Division Bench of three Judges. If the judgment of the Division Bench of a High Court is binding, I fail to see how it could not be binding on a Division Bench of three Judges hut is binding on a Division Bench of two Judges. If it is binding on a Division Bench of two Judges, it must be binding on a Division Bench of three Judges or a Division Bench of five Judges because a Bench consisting of three Judges or five Judges continues to be a Division Bench under the High Court Charter,

9. In addition to the reasons given by me in my above-mentioned judgment, I might give some additional reasons for holding that a judgment of the High Court cannot be binding on other Division Benches of the High Court or on single Judges of the same High Court but it can be used as an aid to the interpretation of law. For a Judge, to treat a judgment of the same High Court as binding and deciding the case before him in accordance with such a judgment would contravene the provisions of Section 365, Evidence Act and Article 219 of the Constitution. Section 165, Evidence Act, provides that the judgment of a Court should be based on facts which are declared by the Evidence Act to be relevant. For a Judge, to base his judgment upon the judgment of another Judge of the same Court would be to base his judgment on an irrelevant fact, as if is clearly provided in Section 365 of the Evidence Act that the judgment of a Court must be based upon facts declared by Evidence Act to be relevant and duly proved.

10. In the Evidence Act facts are divided into three classes : (1) facts which need not be proved and of which judicial notice is to be taken, (2) facts which cannot be proved there being no provision in the Evidence Act to make them relevant, and (3) facts which can be proved -- there being some provision in the Evidence Act whereby such a fact is relevant.

11. The expression "fact" as used in the Evidence Act includes judgments of Courts and laws. Section 57 of the Evidence Act provides that the Court shall take judicial notice of the following facts and the first type of facts referred "to is "all laws in force in the territory of India". The Evidence Act, therefore, treats "all laws in force in the territory of India" as facts. The definition" of "fact" contained in Section 3 of the Evidence Act is as follows:

"Fact" means and includes--

(1) any thing, state of things, or relation of things capable of being perceived by the senses;

(2) any mental condition of which any person is conscious."

In that definition, the laws in force in the territory of India would be included.

12. u/s 13 of the Evidence Act certain facts are made relevant, namely, certain transactions and their Lordships of the Privy Council held in 29 Ind App 24, Dinomoni Chowdhrani v. Brojo Mohini Chowdhrani that orders passed by Courts would come within Section 33 of the Evidence Act. A judgment of a Court would, therefore, be a fact for the purposes of Section 13 of the Evidence Act.

13. The Evidence Act deals with the relevancy of facts and as facts include judgments of Courts the relevancy of Judgments is dealt with in Sections 40-43 of the Evidence Act. In Section 43 of the Evidence Act it is provided that judgments, orders or decrees, other than those mentioned in Sections 40 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provisions of this Act. It is also clear from Sections 40. 41 and 42 and Section 43 that the relevancy of judgments is part of the subject dealt with in the Evidence Act. In fact the heading of Sections 40 to 44 is "Judgments of Courts of Justice when relevant". The Evidence Act, therefore, deals with the topic of the relevancy of judgments of Courts of Justice and judgments can be relevant only if held relevant by the provisions of the Evidence Act Ordinarily, a judgment does not come u/s 40 41 and 42. Ordinarily speaking therefore, a judgment which does not come under Sections 40 41 and 42 is clearly irrelevant in view of Section 43 of the Evidence Act.

14. It is also provided in Section 57 of the Evidence Act that on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference. Interpretation of law can be treated as a science or art and the Court may resort for its aid to reports of the rulings of a Court interpreting the law. There is no provision in the Evidence Act

that such books or even reports of rulings referred to in Section 38 are binding. There is nothing in the Constitution of India or in the High Court Charter or in any other law whereby the judgments of the High Court are made binding on other Courts. Even if some regard them as binding they do not regard them as binding if the judgment contain obiter observations. The question of the binding nature of the judgments has been dealt with in the Constitution of India, and it merely makes judgments of the Supreme Court declaring the law as binding. As already observed, there is no provision anywhere in the law to the effect that a judgment of a Division Bench of a High Court is binding on a Division Bench of two Judges but not binding on a Division Bench of three Judges. It is not open to the Courts to create or add to the law of the land because Courts are not law-makers or lawgivers. They only interpret the law.

15. At the same time, if there is a judgment of a Division Bench of the same High Court and a case comes up before another Division Bench which is not inclined to agree with that view, the Division Bench may request the Hon'ble the Chief Justice to refer the entire case to another Division Bench and the Hon'ble the Chief Justice may transfer the case to another Division Bench. But the Division Bench in (1962) 3 Guj LR 625, dealt with the interpretation of Section 12(1). That question has already been decided by the Supreme Court. When there is a judgment of the Supreme Court as to the interpretation of Section 12(1), it is "not open to the Indian Courts to refer to judgments of other High Courts. The law as declared by the Supreme Court is binding on all Courts. In *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha*, their Lordships of the Supreme Court have observed at page 1597 as follows:

"Section 12(1) contained in Part II of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 enacts a rule of decision, and it says that a landlord is not entitled to possession if the tenant pays or shows his readiness and willingness to pay standard rent and to observe the other conditions of the tenancy. The word tenant is defined in the Act to include not only a tenant, whose tenancy subsists but also any person remaining, after the determination of the lease, in possession with or without the assent of the landlord. Thus, a statutory tenant is within the rule enacted by Section 12(1) and entitled to its protection.

Sub-section (1) of Section 12 contained in Part II of the Act applies from the date on which Part II of the Act is extended to the particular area by a notification issued u/s 6. The Sub-section says that a landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready and willing to pay the standard rent, etc. and observes and performs the other conditions of the tenancy. In other words, no decree can be passed granting possession to the landlord, if the tenant fulfils the conditions above mentioned. The point of time when the Sub-section will operate is when the decree for recovery of possession will have to be passed. Thus, the language of the Sub-section applies equally to suits pending when Part II comes into force and those

to be filed subsequently. The contention that the operation of Section 12(1) is limited to suits filed after the Act comes into force in a particular area cannot be accepted."

Their Lordships of the Supreme Court clearly observed that the point of time when Sub-section (1) would operate is when the decree for recovery of possession will have to be passed. They have also observed that Sub-section (1) applies equally to suits pending when Part II comes into force and those to be filed subsequently. By observing that the Sub-section applies equally to suits pending when Part II of the Act comes into force they have repeated their view that the relevant time is when the decree for recovery of possession will have to be passed. Therefore, according to Their Lordships, if at the time of the decree Part II has come into force although it was not in force at the time of the suit, Sub-section (1) of Section 12 will have to be considered. In the face of very clear and unambiguous statement of law contained in the judgment of Their Lordships of the Supreme Court it would not be proper to refer to a judgment of the High Court on the question of interpretation of Section 12(1) and on the question whether the relevant time for applying the provisions of Sub-section (1) is the time of the decree or the time of the suit. If the relevant time was the time of suit in the case before Their Lordships, Part II of the Act came into force after the suit was filed and Their Lordships would not have made the observations that Part II of the Act having come into force while the suit was pending, the relevant time would be the time of the decree. In the face of this clear observation on the question of law as to the period of time when Sub-section (1) of Section 12 is to be applied, it is not open to the Courts in India to refer to the judgments of High Courts. In this view, it is not necessary to request the Hon'ble Chief Justice to refer this case to another Division Bench.

16. The contention of the learned counsel for the opponent is that Section 12(1) overrides subsection (3) (a) and that even if the tenant is in arrears of rent, as provided by Section 12(1), if he pays up all the arrears on the date of the decree, then no decree for possession could be passed.

17. The scheme of Section 12 of the Act appears to be this. Although under the ordinary law a land-owner may be entitled to the recovery of possession on the determination of the tenancy of his tenant, Sub-section (1) of Section 12 provides that a landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays," or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

18. If the interpretation of this Sub-section (1) of Section 12 is that a landlord would not be entitled to recovery of possession if the tenant pays all the arrears on or before the date of decree, then there was no point in the Legislature enacting Sub-sections (3) (a) and (3) (b). It is provided in subsection (3)(b) that no decree for eviction can be passed if on the first day of the hearing of the suit,

the tenant pays the standard rent etc. If to avoid a decree for eviction it is sufficient for the tenant under Sub-section (1) to pay all the arrears of rent as late as the date of the decree, then there was no point in the Legislature providing that if he pays much earlier than the date of the decree, namely, on the first day of the hearing of the suit, then no decree for eviction can be passed. Reading Sub-section (1) and Sub-section (3)(b) of Section 12 together it is clear that Sub-section (3)(b) is a sort of proviso to Sub-section (1). Sub-section (1) is a general Sub-section and deals generally with all the conditions of the tenancy whereas subsections (3) (a) and (3) (b) deal with a particular condition of the tenancy, namely, the payment of rent and standard rent and permitted increases. If the view contended for by the learned counsel for the opponent is accepted, then Sub-section (1) would be inconsistent with Sub-section (3)(a) because if under Sub-section (1) a decree for eviction can be avoided by payment on the date of decree of the arrears of six months or twelve months of 48 months" rent then the provision in Sub-section (3)(a) that if the rent is in arrears for a period of six months or more and if the arrears are not paid, the landlord shall be entitled to decree for eviction, will be absolutely repugnant to the provision contained in Sub-section (1). The effect of Sub-section (I), therefore, is not to permit the tenant to avoid a decree for eviction by paying the arrears of rent whether the amount of 48 months" rent is in arrears or 72 months" rent is in arrears. The learned counsel for the opponent contends that even if the rent is in arrears for a period of six months or mote, the tenant can avoid a decree for eviction merely by payment of the arrears on or before the date of the decree. The contention is, therefore, opposed to the language of the entire section including Sub-section (1). In fact subsection (3)(a) has been enacted by the Legislature afterwards. The Legislature knew the provisions of Sub-section (4) of Section 12 when it enacted Sub-section (3)(a) of Section 12 by Bombay Act No. 61 of 1953. The intention of the Legislature was, therefore, to regard Sub-section (3)(a) as a sort of proviso to Sub-section (1) of Section 12, If She tenant is in arrears for a period of six months and the other conditions of Sub-section (3) (a) are satisfied, the Court has no discretion but to pass a decree for eviction. This is also the view taken fey Their Lordships of the Supreme Court in Bhaiya Punjalal Bhagwanddin Vs. Dave Bhagwatprasad Prabhuprasad, which was an appeal from the judgment of the High Court of Gujarat. Their Lordships have observed as follows:

"The second contention that, the appellant"s having paid the arrears of rent within 2 months of the institution of the suit, there would be no forfeiture of the tenancy has no force in view of the provisions of Section 12 of the Act. Sub-section (2) permits the landlord to institute a suit for the eviction of a tenant on the ground of non-payment of rent after the expiration of one month from the service of the notice demanding the arrears of rent. and Clause (a) of Sub-section (3) empowers the Court to pass a decree in case the rent had been payable by a month, there was no" dispute about the amount of standard rent, the arrears of rent bad been for a period of six months and the tenant had

neglected to make the payment within a month of the service of the notice of demand. The tenant's paying the arrears of rent after the institution of the suit therefore does not affect his liability to eviction and the Court's power to pass a decree for eviction. It is true that the expression used in Clause (a) of Sub-section (3) is "the Court may pass a decree for eviction in any such suit for recovery of possession", but this does not mean as contended for the appellant, that the Court has discretion to pass or not to pass a decree for eviction in case the other conditions mentioned in that clause are satisfied. The landlord became entitled to recover possession when the tenant failed to pay rent and this right in him is not taken away by any other provision in the Act. The Court is therefore bound in law to pass the decree when the requirements of Sub-section (2) of Section 12 are satisfied. This is also clear from a comparison of the language used in Clause (a) with the language used in Clause (b) of Sub-section (3) which deals with a suit for eviction which does not come within Clause (a) and provides that no decree for eviction shall be passed in such a suit if on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent then due and thereafter continues to pay or tender in Court regularly such rent till the suit is finally decided and also pays costs of the suit as directed by the Court. It is clear that where the legislature intended to give some benefit to the tenant on account of the payment of the arrears during the pendency of the suit, it made a specific provision. In the circumstances, we are of opinion that the Court has no discretion and has to pass a decree for eviction if the other conditions of Sub-section (2) of Section 12 of the Act are satisfied."

19. It is also contended by the learned counsel for the opponent that the Money Orders sent by the tenant to the landlord were refused by the landlord and so he must be deemed to have paid the rent. But it is an admitted fact that the Money Orders were not sent for rent of full months rent although they were termed as rent for a full period of months. On 27-12-56 a Money Order of Rs. 73-14-0 was sent as rent for three months whereas the rent of the full period of three months would amount to Rs. 75/-. On 2-1-57 a Money Order of Rs. 99-6-0 was sent by way of rent for four months whereas the rent for four months would amount to Rs. 100/-. The tenant sent another Money Order of Rs. 150/- for the rent of eight months but he deducted Rs. 50/- towards expenses incurred by him in carrying out repairs to the suit house. The rent for eight months would amount to Rs. 200/-. All these three Money Orders were refused by the landlord. If he had accepted the Money Orders, it would mean that the rent for three months was Rs. 73-14-0, the rent for four months was Rs. 99-6-0, the rent for eight months was Rs. 150/-. The learned Appellate Judge himself observed that willingness to pay part of the rent is not readiness and willingness to pay rent. It was observed by Their Lordships of the Privy Council in AIR 1922 PC 347, *Narain Das v. Abinash Chandar*, as follows:

"If the tender is accompanied by a condition which prevented it being a perfect and complete tender, the other parties are under no obligation to accept it; it

follows therefore that that cannot be regarded as the equivalent of payment."

20. It is contended by the learned counsel for the opponent that mere failure to pay six months' arrears would not amount to "neglect" within the meaning of Section 12(3)(a) of the Act. This contention cannot be accepted because even after the notice requiring the tenant to pay six months' arrears, the tenant did not do so even for a period of one month. Such a conduct would naturally constitute "neglect" within the meaning of Section 12(3)(a) of the Act. For the purpose of Sub-section (3)(a) no distinction can be made between the word "failure" and the word "neglect".

21. In view of the concurrent finding of both the Courts below that the tenant was in arrears for six months on the date of the notice and that he failed to pay the arrears within one month of after the notice and that the suit was filed after giving the requisite notice under Sub-section (2) of Section 12, there was no discretion left to the Court but to pass a decree for eviction as provided in Sub-section 3(a) of the Act.

22. The revision application is, therefore, allowed with costs. The decree of the Appellate Court is set aside and the decree of the trial Court is restored.