

(1986) 09 GUJ CK 0003

In the Gujarat High Court

Case No : Civil Revision Application No. 900 of 1979

Oza Kumbhar Naran Ala

APPELLANT

Vs

Meta Nanalal Jethabhai and Others

RESPONDENT

Date of Decision : 16-09-1986

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(2)
Evidence Act, 1872 — Section 114
General Clauses Act, 1897 — Section 27
Transfer of Property Act, 1882 — Section 106

Citation : AIR 1988 Guj 5 : (1987) 1 GLR 473

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

Bench : Single Bench

Advocate : Y.S. Mankad, for the Appellant; P.J. Vyas, for the Respondent

Judgement

1. This Civil Revision Application u/s 29(2) of the Bombay Rent Act is directed against a decree for possession passed by the lower appellate court on the ground of arrears of rent.

2. The trial court had held that there was no proof of service of notice under Sec 12(2) and, therefore, the decree for possession on the ground of years of rent was refused. The lower appellate Court held that the defendant had refused to accept the notice by registered post and, therefore, the notice was deemed to have been served and as the tenant had failed to deposit the arrears of rent exceeding six months. he was liable to be vacated.

3. The learned Counsel for the petitioner defendant has submitted that this finding regarding deemed service of notice and refusal to accept is perverse and contrary to the evidence on record. The learned Counsel for "the opponent-plaintiff has submitted that refusal is a question of fact to be decided on appreciation of evidence and there is no case for interference in this revision application.

4. The plaintiffs obviously have no personal knowledge about the service of

notice. The plaintiffs have examined the postman and the princely States were subject to the paramount of the British Crown, they were considered to be foreign States by the Brn the cross-examination, he has stated that on 31-3-1975, he was new in Anjor and had not seen the defendant Oza Kurnbliar Naran Ala, prior to it and the man who was present in the house had refused to accept the same. He has further stated that the person who was in the house had stated that he was Naran Ala, but the postman was not knowing him personally. In view of this evidence, there is," no satisfactory proof that the person who refused to accept the notice was the defendant himself. The defendant in his deposition has categorically stated that not only he had not refused to accept the notice, but he was not in the town in those (days and he was at A hand. His evidence is also support yet evidence of Gabha Dachu, Ex.77.

5. The evidence regarding refusal of notice must be very clear and convincing. The reason is that there are very drastic consequences of such deemed service of notice. It is not unknown or unusual where these kinds of endorsements have been got made by the postman without proper care and sometimes deliberately false. The tenant would not know about such notice at all and would become liable for eviction with no defense " if such deemed service is accepted. Having regard to the very drakes consequence and the easiness with which such endorsement., refused" may be available, it becomes the Duty of the Court to see that the is very clear and convincing evidence about the service of deemed notice by fiction. In such case, there is no dispute that there is no actual- service and, therefore, the tenant is, not in a position to comply with such notice. If by nicer deeming, fiction, such service is Required to be and deemed to be a good service, the consequences would be very 1drastic for the said tenant. Therefore, the Court has to be extra careful in accepting the evidence regarding refusal and deemed service.

6. In the present case, the tenant has damped on oath that he had not refused the service of notice and lie was not in the town at the time when lie is alleged to have refused the service of notice. The postman who has made the endorsement admits that lie does not know the defendant. No attempt was made in the Court to see that the postman identifies the defendant as the per-soil to whom he had tried to serve the notice. In view of such state of evidence on record, the lower appellate court could not have come to the conclusion that the notice is deemed to have been served.

7. It is also stated that the notice was also Inset under a certificate of posting and that also is deemed to have been served. It is not possible to accept this Contention. In the case of Mahant Madhavragji v. Ambalal Nagarji Naik 1985 Guj LH 361, it has been held as follows :-

"The notice sent under certificate of posting, though presumed to have reached the defendant-tenant cannot be said to be a legal and valid service as contemplated by Section 12(2) of the Rent Act read with Section 106 of the Transfer of Property Act read with Section 27 of the General Clauses Act. The

learned District Judge rightly reached the conclusion that the notice was not a legal and valid one on this ground. When the notice as contemplated by Section 12(2) is not found to be a legal and valid notice; then it is obvious that the plaintiffs are not entitled to recover possession of the suit property on the strength of such a notice. There cannot be any dispute with this proposition of law because unless a legal and valid notice as required by Section 12(2) of the Bombay Rent Act is served either in fact or by presumption, the plaintiffs could not have filed the suit for possession on the ground of non-payment of rent."

8. In, view of the above discussion, it is clear the "Alt the opponent-landlord has not complied\\with the conditions of Section 12(2) and, therefore, he is not entitled to the possession \\under Section 12(3)(a) of the Rent Act. There is I no dispute that the requirements of Section 12(3)(b) have been complied with by deposit of rent to appropriate times.

9. In the result, the revision application succeeds and the decree for possession passed by the lower appellate court is quashed and reversed and the suit of the plaintiff stands dismissed. Rule made absolute with no order as to costs.

10. Revision allowed.