
(1979) 05 GUJ CK 0008
In the Gujarat High Court

Rasiklal Narmadashanker Trivedi

APPELLANT

Vs

Dilipkumar Vasantbhai Kotak and Another

RESPONDENT

Date of Decision : 09-05-1979

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(3)(a), 12(3)(a), 12(3)(b), 12(3)(b)

Citation : (1980) 21 GLR 741

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Judgement

S.H. Sheth, J.—The plaintiffs filed the present suit against the defendant for recovering possession of the suit premises on the ground that the defendant had been in arrears of rent. Indisputably he had been in arrears of rent for more than six months. The defendant in his defence denied the plaintiffs' claim. The learned trial Judge held that the plaintiffs' claim was governed by Section 12(3) (a) of the Bombay Rent Act and that the defendant was not ready and willing to pay the arrears of rent because he had not paid to the plaintiffs the arrears of rent within the time stipulated by Section 12(3)(a). He, therefore, passed against the defendant decree for possession.

2. The defendant challenged that decree in the District Court. The learned appellate Judge held that Section 12(3)(a) of the Bombay Rent Act did not govern the present suit because education cess which was a part of the rent was not payable monthly. He, therefore, took the view that the plaintiffs' claim was governed by Section 12(3)(b) of the Bombay Rent Act. However, he held that the defendant had not complied with the terms of Section 12(3)(b) and that, therefore, he had rendered himself liable for eviction. In that view of the matter he dismissed the appeal. It is that appellate decree which is challenged before me by the defendant.

3. The only question which has been raised by Mr. S.M. Shah who appears on behalf of the defendant is whether the defendant had qualified for protection u/s

12(3)(b) of the Bombay Rent Act. In *Ganpat Ladha v. Sashikant Vishnu* (1978) 19 G.L.R. 502, it has been laid down by the Supreme Court that the tenant must comply with the conditions set out in Section 12(3)(b) in order to defeat the landlord's claim for eviction. If he does not fulfil the conditions set out in Section 12(3)(b), he cannot claim the protection of that section and, in that event, there being no other protection available to him, a decree for eviction must be passed against him. It has also been laid down in that decision that Section 12(3)(b) of the Bombay Rent Act does not create any discretionary jurisdiction for the Court. It provides protection to the tenant on certain conditions and those conditions must be strictly observed by the tenant who seeks the benefit of the section. Lastly it has been observed that if the statutory provisions do not go far enough to relieve the hardship of the tenant the remedy lies with the legislature and not with the Courts.

4. Bearing in mind the principles laid down by the Supreme Court in that decision it is necessary to turn to Section 12(3)(b) which inter alia provides that no decree for eviction shall be passed in any suit if, on the first date 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 due until then and thereafter continues to pay and tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays the costs of the suit as directed by the Court. In f-e instant case 4th July 1973 was the first date of hearing of the suit. The learned appellate Judge has found that on that date the defendant had been in arrears of rent and had not paid or deposited in Court all arrears due until then. It appears that the plaintiff made thereafter an application, Exhibit 19, on 17th November 1973 in which he complained to the learned trial Judge that the defendant had not been paying or depositing in Court accumulated arrears. The learned trial Judge therefore directed the defendant to pay all arrears of rent at the rate of Rs. 50/- per month and also future rent. It has been found that he did not comply with these conditions. Obviously, therefore, the defendant did not qualify for protection u/s 12(3)(b) of the Bombay Rent Act.

5. It has been argued by Mr. Shah that in the instant case it was not possible for the defendant to comply with the conditions set out in Section 12(3)(b) firstly because he had raised in his written statement a plea for fixing the standard rent and secondly because standard rent was not fixed. According to him since the standard rent was not fixed, it was not possible for the defendant to comply with the conditions set out in Section 12(3)(b). He has further argued that even if the order made on Exhibit 19 is considered to be an order directing the defendant to pay interim rent, the defendant was not bound to comply with it because interim rent is not the standard rent. The argument which Mr. Shah has raised squarely hits the defendant himself-his client. He tried to be smart in distinguishing the Supreme Court decision referred to above. Can it be contended on behalf of the defendant that though he did not comply with the conditions set out in Section 12(3)(b), for any reasons whatsoever, he is entitled to protection under it?

Section 12(3)(b) is a protective provision and not a penal provision. One who seeks its protection must qualify for it by satisfying the conditions set out therein. If conditions are not satisfied, no protection is available. If statutory protection is thus not available, the decree for eviction must be parsed against him. The question of protecting a person, even if he has not complied with statutory conditions, may arise in case of a penal statute. It is not open to a tenant to contend that, even though he has not complied with the statutory conditions, he is entitled to statutory protection. This is an absurd proposition and is against basic principles of jurisprudence and rule of law. If he does not want to avail himself of the protection of Section 12(3)(b) he is always at liberty to forgo it. If he does so, he faces the consequences which flow from law minus the protective statute.

6. Now, I am not able to find any provision of law which states that even though the tenant is not entitled to the statutory protection of any provision under the Bombay Rent Act, he shall not be evicted merely because he contends that it is difficult for him to qualify for the protection available to him under the provisions of the Bombay Rent Act. The argument raised by Mr. Shah is totally misconceived. He tries to verge on smartness which has boomeranged upon his client. Mr. Shah has invited my attention to the decision of Supreme Court in *Vora Abbasbhai v. Haji Gulamnabi* (1964) 5 G.L.R. 55. He has cited this decision in order to show that interim rent is not the standard rent. That is not the issue which arises in this case. That decision has no application to the facts of this case. It must also be stated that several decisions have been rendered by the Supreme Court subsequently on the subject. They have brought about metamorphosis in law.

In the result this Civil Revision Application fails and is dismissed. Rule is discharged with costs.

7. Mr. Shah who appears on behalf of the defendant applies for time to enable him to vacate the suit premises. According to him eighteen months' time should be granted to the defendant. Mr. Gandhi who appears on behalf of the plaintiffs states that not more than three months' time should be given to the defendant. It is, therefore, directed that the decree for possession passed herein shall not be executed until 31st October 1979 on conditions that the defendant deposits in the trial Court on or before 30th June 1979, for payment to the plaintiffs, all arrears of rent due until then, goes on paying from month to month thereafter the rent in respect of the suit premises as and when it becomes due and payable before the 10th day of every month and files an undertaking in the trial Court on or before 30th June 1979 stating that he shall not part with the possession of the suit premises to anyone else and that he shall deliver vacant and peaceful possession thereof to the plaintiff before the expiry of 31st October 1979. If the conditions subject 10 which the execution of the has been stayed are not complied with, the decree shall become executable forthwith.