

(1995) 07 GUJ CK 0023
In the Gujarat High Court

Santokbai Narbheram Barot

APPELLANT

Vs

Ramdas Dwarkadas

RESPONDENT

Date of Decision : 10-07-1995

Acts Referred:

Bombay Rent Act, 1947 — Section 13(1)(k), 29(2)
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(3)(a), 29(2)

Citation : (1996) 2 GLR 80

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

Bench : Single Bench

Judgement

J.N. Bhatt, J.—The petitioner is the original defendant-tenant who has questioned the legality and validity of eviction decree passed in Regular Civil Suit No. 7 of 1978 on 29-4-1981 and confirmed in Regular Civil Appeal No. 95 of 1981 by resorting to the provisions of Section 29(2) of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Act).

2. The respondent is the original-plaintiff who is the owner of the suit property situated in Khambhalia and the petitioner original-defendant is the tenant in respect of the said property at a monthly rent of Rs. 3/- as per the English Calendar month. The parties are hereinafter referred to as landlord and tenant for the sake of convenience and brevity.

3. The landlord served the defendant-tenant with a notice on the ground of non-payment of rent and non-user of the demise premises. The notice was not replied nor complied. Therefore, the suit was filed for eviction on the ground of non-payment of rent u/s 12(3)(a) and on the ground of non-user u/s 13(1)(k) of the Bombay Rent Act.

4. The defendant-tenant appeared and resisted the suit by filing written statement Ex. 20. It was inter alia contended that she is ready and willing to pay the rent and that on account of her ill-health, she was staying at Bombay and therefore, there was reasonable cause for not residing in the demise premises.

5. Considering the Facts and circumstances and the pleadings of the parties, the trial Court settled the issues at Ex. 21. On appreciation of the facts and circumstances, the trial Court found that the defendant-tenant is in arrears of rent for more than six months and she is not ready and willing to pay the rent. The trial Court also found that the suit premises are not used as residence for many years and therefore, the tenant is liable to be evicted. The trial Court, therefore, passed ejectment decree on both the grounds on 29-4-1981.

6. The tenant carried the matter in appeal before District Court at Jamanagar challenging the legality and validity of the judgment and decree of the trial Court. She lost in appeal also. Hence this revision.

7. In fact, the powers of this Court in a revision u/s 29(2) of the Bombay Rent Act are very much circumscribed. The main anxiety of the Court in such a case is to see as to whether the impugned judgment and decree rendered is according to law or not. Having examined the facts and circumstances, it cannot be said that there is a fit case for interference in revision u/s 29(2) of the Bombay Rent Act.

8. The following facts are not disputed. Suit notice Ex. 59 was received by the tenant wherein rent was demanded from 1-1-1975 to 30-9-1977. Thus, demand was made for 33 months' rent at the rate of Rs. 3/- per month. An amount of Rs. 99/- was demanded in the notice u/s 12(2) which was received by the tenant on 23rd August, 1977. It is an admitted fact that the notice was not replied. It is also an admitted position that dispute of standard rent was not raised within one month thereafter.

9. It is a settled proposition of law that the tenant is liable for ejectment u/s 12(3)(a) of the Bombay Rent Act if the following requirements are established:

- (1) That the rent is payable by month;
- (2) Amount of the standard rent and permitted increases is not disputed;
- (3) Standard rent or permitted increases are unpaid for six months or more;
- (4) That the tenant has received notice u/s 12(2); and
- (5) Tenant has neglected to pay the standard rent and permitted increases for such period within a period of one month after receipt of the notice u/s 12(2) of the Bombay Rent Act.

10. the aforesaid requirements are not disputed. With the result, the tenant is liable for ejectment on the ground of non-payment of rent u/s 12(3)(a) of the Bombay Rent Act. The Courts below have rightly passed decree for ejectment u/s 12(3)(a) of the Bombay Rent Act against the petitioner-tenant.

11. The contention that the mode of payment and the arrangement of recovery of the rent was not fixed and therefore, the tenant should be held to be ready and willing to make payment of arrears of rent cannot be accepted. It is rightly

not accepted by the trial Court as well as the appellate Court. Apart from that, this is a finding of fact which cannot be re-examined and re-appreciated as per the settled proposition of law. Eviction decree is also recorded by both the Courts below on the ground of Section 13(1)(k) of the Bombay Rent Act.

12. Under the provisions of Section 13(1)(k), the tenant is liable for ejectment if the landlord proves that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of more than six months immediately preceding to the suit. No doubt, the Court must be satisfied that the tenant had no reasonable cause. The tenant advanced a plea that on account of her illness, the demise premises could not be used for the purpose of residence. The trial Court has not accepted this plea on appreciation of the facts and circumstances and the evidence on record. It is found by the trial Court that there was no reasonable cause for non-user. This is a finding of fact which is again confirmed by the appellate Court. Thus, both the Courts have consistently and concurrently held that the plaintiff-landlord is entitled to and the defendant-tenant is liable to eviction on both the grounds. Nothing has been successfully shown from the record which would warrant interference of this Court while exercising the revisional powers u/s 29(2) of the Bombay Rent Act. This Court has no hesitation in finding that the present revision is meritless and is required to be dismissed.

13. At this stage, learned Advocate Mr. Raval while appearing for the petitioner-tenant states that the tenant may be given three years' time for eviction. This submission is strongly opposed on behalf of the plaintiff- landlord. This is not only a case of eviction on the ground of non-payment of rent. The eviction decree passed by the trial Court and confirmed by the appellate Court which is being affirmed by this Court is also on the ground of non-user of the premises. A person who is not using the premises for long cannot be granted time for eviction as it would adversely affect the interest of prospective tenant. In the circumstances, the request to grant time for the purpose of eviction is not found reasonable and therefore, it is rejected.

14. Having regard to the facts and circumstances and considering the aforesaid aspects, this revision is dismissed with no order as to costs. Rule discharged. Interim relief shall stand obviously vacated forthwith. However, the learned Counsel Mr. Kyada appearing for the respondent original plaintiff-landlord states that decree for possession will not be executed for a period of sixty days.