

(1998) 12 GUJ CK 0027

In the Gujarat High Court

Case No : Civil Revision Application No. 1640 of 1982

Shankarlal Maganlal Thakkar

APPELLANT

Vs

Maneklal C. Shah by his heirs

RESPONDENT

Date of Decision : 28-12-1998

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11(1), 11(3), 12, 12(3), 29(2)

Citation : (1999) 2 GLR 243

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Advocate : Nirav K. Majmudar, for P.B. Majmudar, for the Appellant;

Final Decision : Allowed

Judgement

D.C. Srivastava, J.—This is tenant's revision u/s 29(2) of the Bombay Rent Control Act, 1947 (for short "Bombay Rent Act").

2. The brief facts giving rise to this revision are as under.

3. The respondent filed a suit for eviction of the revisionist from the tenanted accommodation on the only ground that the tenant failed to pay the arrears of rent exceeding six months within a month of service of notice of demand. The disputed accommodation was let out to the revisionist by the respondents on monthly rent of Rs.19/besides local taxes. The rent fell due from the revisionist since 13.8.1967 and a sum of Rs.139/- was sent by the revisionist to the respondents after service of notice. In this way Rs.981.50 ps. remained due towards rent and Rs.23/- towards the education cess from the revisionist from 13.8.1967 to 12.7.1972. In spite of demand this amount was not paid by the revisionist. Hence the demand notice was sent on 7.8.1972 which was served on 17.8.1972. This notice remained uncomplied with. Only reply to the demand notice was given by the revisionist. As such suit for eviction was filed.

4. The revisionist resisted the suit on the ground that there was dispute of

standard rent which was raised earlier in Civil Misc.Application No. 573 of 1972. In reply to the notice of demand also dispute of standard rent was raised by the revisionist. In the written statement also same dispute was raised that the standard rent cannot be more than Rs.10/- p.m. It was denied that the revisionist was in arrears of rent for more than six months. He also denied his liability to pay education cess. He alleged payment of Rs.50/- and another sum of Rs.20/- but no receipt was issued by the landlord. Another payment of Rs.216/- was alleged by the revisionist. He further pleaded that he was not in arrears of rent for more than six months. He deposited Rs.319.60 and thereafter money order of Rs. 139.50 was sent which was accepted by the landlord. Validity of notice was also challenged by the revisionist.

5. The Trial Court found that the notice was valid. It further found that the tenant was not in arrears of rent exceeding six months. It also found that there was genuine dispute regarding standard rent and this dispute was resolved at the time of final disposal of the suit for eviction. The Trial Court also took notice of desposit of Rs.1,000/- made by the revisionist before pronouncement of judgment. On these facts the suit was dismissed by the Trial Court.

6. The landlord preferred an appeal which was allowed and decree for eviction was passed by the Appellate Court. It is therefore this revision.

7. The learned Counsel for the revisionist has been heard. List was revised four times but none appeared from the side of the respondents.

8. The only point for consideration is whether non concurrent finding recorded by the Appellate Court on the facts and circumstances of the case can be sustained and whether it is pure finding of fact or lower Appellate Court has committed manifest error of law in decreeing the suit.

9. It seems that the suit was filed for eviction of the tenant u/s 12(3)(b) of the Bombay Rent Act. The lower Appellate Court found that the dispute of standard rent raised by the tenant revisionist was genuine. It was not a malafide dispute. A separate application for fixation of standard rent was moved prior to the service of notice of demand upon revisionist vide Civil Misc. Application No. 513 of 1972. This application remained pending. This application as well as suit were disposed of by common judgment. The Trial Court fixed the standard rent at Rs.10/-p.m. It is not mentioned in the order of the Trial Court that this standard rent is exclusive of taxes. The Appellate Court further found that the tenant was in arrears of rent for a period exceeding six months. This is pure finding of fact which requires no interference in this revision. The lower Appellate Court was justified in ignoring payment which was not evidenced by rent receipts. The payment made by the money order was taken into consideration. It was found that a sum of Rs.790.00 had remained due from the tenant. As against this the tenant had already deposited Rs.1,000/- in the Trial Court before pronouncement of judgment. Of course, the deposit was not made on the first date of hearing nor regular deposits were made as contemplated u/s 12(3)(b) of the Bombay

Rent Act. The question for consideration is whether on these facts the tenant is entitled to statutory protection of section 12(3)(b) of the Rent Act or not.

10. Admittedly, in this case there was genuine dispute of standard rent. For resolving this dispute a separate application was moved by the tenant prior to the receipt of notice of demand vide C.M.A.No. 513 of 1972 That application was not decided by the Trial Court earlier. It was taken up for decision along with the suit. The suit as well as Misc.Application for fixation of standard rent were decided through common judgment. The tenant- revisionist on these facts was certainly prevented from knowing as to what is the standard rent. Once it is found that the dispute of standard rent was genuine the tenant could not have deposited even interim standard rent as has been suggested by the lower Appellate Court. Even if strict compliance of section 12(3)(b) is required in that event the tenant is obliged to deposit the standard rent and not the interim standard rent. Thus, if the tenant did not apply through another application for fixation of interim standard rent, that failure does not amount to depriving the tenant of his statutory protection u/s 12(3)(b) of the Rent Act.

11. The Apex Court in Vora Abbasbhai Alimahomed Vs. Haji Qulamnabi Haji Safibhai 1964 GLR 55 observed that section 12(3)(b) of the Act requires the tenant to pay the standard rent and not the interim rent, and for the purpose of that clause the expression "standard rent" may not be equated with "interim rent" specified u/s 11(3). Compliance with an order for payment of interim rent is made by the Explanation to section 12. Conclusive evidence of the readiness and willingness to pay the standard rent, but that by itself is not a ground for holding that the interim rent which may be specified under sub-section (3) of section 11 is the standard rent fixed u/s 11(1) of the Act. The Apex Court in this case further observed that where there is a dispute as to the standard rent, the tenant would not be in a position to pay or tender the standard rent, on the first day of hearing and fixing of another date by the Court for payment or tender would be ineffectual, until the standard rent is fixed. The Court would in such a case on the application of the tenant, take up the dispute as to the standard rent in the first instance and having fixed the standard rent, call upon the tenant to pay or tender such standard rent so fixed, on or before a date fixed. If the tenant pays the standard rent fixed, on or before the date specified, and continues to pay or tender it regularly till the suit is finally decided, he qualifies for the protection of clause 3(b).

12. This mandate of the Apex Court was not kept in mind either by the Trial Court or by the Appellate Court. It was the duty of the Trial Court, in my view, to take up the application for fixation of standard rent first and after disposal of this application the suit for eviction should have been taken up for final disposal. Unless the standard rent was fixed the tenant could not have deposited the standard rent and arrears calculated at the rate of standard rent on the first date of hearing nor he could have deposited or continued to deposit the same regularly till disposal of the suit.

13. A Division Bench of this Court in the case of Nanji Pancha Vs. Daulal Naraindas 1970 GLR 285 held 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, and fixing another date by the Court for payment or tender would be ineffectual until the standard rent is fixed. 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 infructuous until the standard rent was fixed on resolving the dispute in the final judgment.

14. The Division Bench further observed that the Court even suo motu could have extended the date to enable the tenant to make necessary compliance after fixing the standard rent. It further observed that the Court could have acted suo motu to regularise payments made till date of fixation of standard rent or give the tenant some time after the fixation of standard rent to make up the deficit while paying arrears. In the absence of the Court acting suo motu to regularise payments or for fixing some other date for payment, the tenant would not be able to claim protection u/s 12(3)(b) of the Act. The view taken by the Division Bench in this case was not at all kept in mind by the lower Appellate Court in as much as it was not considered firstly that no time was given after fixing the standard rent to the revisionist to deposit deficit in rent if any. Moreover, there was no deficit because before pronouncement of judgment by the Trial Court the tenant had already deposited Rs.1,000/- as against sum of Rs.790/- actually due from him after adjusting the payment.

15. In the case of Champaben Vs. Gopinath 1980 GLR 709, the tenant had deposited the amount in Court which was not only sufficient to cover the arrears of rent till the date of Trial Court's decree but even till the date of the Appellate Court's decree. It was held that the tenant could not be said to have not complied with the provisions of section 12(3)(b) of the Rent Act and it cannot be said that the tenant had forfeited its protection. In this case no interim rent was fixed by the Trial Court. In the case under consideration before me no interim standard rent was fixed by the Trial Court. It was further observed in this case that short payment on the date of framing of issues cannot be considered for the simple reason that the issue of standard rent was not taken up as a preliminary issue. The case of Nanji Pancha Vs. Daulal Naraindas (Supra) was relied upon in this case. It was held that the tenant could not be said to have not complied with the provisions of section 12(3)(b) and it cannot be said that the tenant had forfeited its protection.

16. The case of Naranbhai Nathabhai Koli Vs. Modhia Panalal Maganlal, is not directly on the point. In this case it was considered that even in a case where section 12(3)(b) does not apply the dispute of standard rent already raised can be taken into consideration for the purposes of section 12(3)(b) of the Act, and

there must be a clear adjudication either earlier or in the proceeding itself about what the standard rent is. It was thus observed that absence of the dispute of standard rent for the purpose of section 12(3)(a) has got a different connotation from the term "existence of a dispute" for the purposes of section 12(3)(a) of the Act. It was further observed that section 12(3)(b) is not as stringent as section 12(3)(a) and the tenant would be able to save his skin if section 12(3)(b) is attracted. The case of Nanji Pancha Vs. Daulal Naraindas (Supra) was relied upon in this case.

17. The lower Appellate Court has relied upon the Apex Court's verdict in Mranalini B.Shah & Another Vs. Bapalal Mohanlal Shah 1978 GLR 1090 and also another case of this Court in Vajubhai Vashram Vs.Parikh Mohanlal Ranchhoddas 1978 GLR 1007. The rule of strict compliance of section 12(3)(b) in this case was enunciated but the rule of strict compliance in the facts and circumstances of the case before me cannot be applied for the obvious reason that once it is held that the tenant had raised bonafide dispute of standard rent not only within a month of service of notice of demand but also prior to that by moving separate application for fixing the standard rent, he could not have known what was the actual standard rent which he was required to pay in compliance of the notice of demand or to deposit the same in strict compliance of section 12(3)(b) of the Act. Since, this dispute was resolved only at the time of final adjudication of the suit the tenant could not have any opportunity to deposit the standard rent on the first date of hearing nor he could have deposited the same regularly in the Trial Court after it became due. Readiness and willingness of the tenant to pay the arrears of rent cannot be doubted inasmuch as in spite of being faced with uncertainty about the quantum of standard rent he deposited the amount in excess of the amount due viz. Rs.1000/- as against the net claim of Rs.790/-.

18. In view of the aforesaid discussions, the tenant could not be deprived of statutory protection of section 12(3)(b) of the Act, hence the view to the contrary taken by the lower Appellate Court is erroneous. Reversal of the judgment and decree of the Trial Court by the lower Appellate Court, therefore, suffers from manifest error of law. The revision has therefore to be allowed and is hereby allowed. The judgment and decree of the lower Appellate Court are set aside and that of the Trial Court restored. No order as to costs.