

(2010) 10 GUJ CK 0185
In the Gujarat High Court

Case No : Civil Revision Application No. 1182 of 1982

Somchand Mancharam

APPELLANT

Vs

Khimchand Maganlal and Another

RESPONDENT

Date of Decision : 13-10-2010

Acts Referred:

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

Citation : (2011) 1 GLH 309 : (2011) 52 GLR 642

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Suresh M. Shah, for the Appellant; S.H. Sanjanwala, for Opponent
Nos. 1, 2, 2-2-1 and 2-2-2, for the Respondent

Judgement

K.A. Puj, J.—The Petitioner-original Defendant has filed this Civil Revision Application u/s 29(2) of the Bombay Rent Act challenging the judgment and decree passed by the learned Jt. District Judge, Surat in Regular Civil Appeal No. 190 of 1980 on 20-2-1982 allowing the said Appeal and setting aside the judgment and decree passed by the learned Small Causes Court, Surat in Rent Suit No. 675 of 1975 on 4-7-1980.

2. The Civil Revision Application was admitted and rule was issued, and ad-interim relief was granted against the execution and implementation of the order on usual terms on 7-7-1982. The said relief continued till this date.

3. During the pendency of this Civil Revision Application the Respondent No. 2-original Plaintiff No. 2 expired. On 19-7-2005, this Court has passed an order observing therein that despite the opportunity given to the Petitioner, the Petitioner has not joined the heirs and legal representatives of Respondent No. 2 to the proceeding. However, subsequently, Civil Application No. 4348 of 2006 was filed for bringing legal heirs of the Respondent No. 2 on record. This Court has allowed the said application vide its order dated 6-8-2010 and legal heirs of the Respondent No. 2 were brought on record.

4. Heard Mr. Mehul S. Shah, learned Advocate appearing for Mr. S.M. Shah, for the Petitioner and Mr. Karanjit Vadodaria, learned Advocate appearing for Mr. S.H. Sanjanwala, for the Respondents.

5. The brief facts giving rise to the present Civil Revision Application are that, the Petitioner is a tenant in a hut belonging to the Respondents on monthly rent of Rs. 10/-. The tenancy of the Petitioner has been created for a pretty long time and much before the Respondents became the owners of the premises in question. It is the case of the Petitioner that the Respondents are not giving the receipt for payment of rent and taking disadvantage of the said fact the Respondents first issued a notice dated 5-1-1972 upon the Petitioner alleging that the rent is in arrears from July, 1969, but the Respondents did not institute any proceeding in furtherance of the notice regarding possession of the suit premises and received the payment for rent of Rs. 300/- from the Petitioner on different dates. It was also pointed out that the rent was not in arrears as claimed by the Respondents. The Respondents, thereafter, again issued a notice dated 1-7-1974 at Exh. 22 upon the Petitioner alleging that the rent was in arrears from 1-7-1969 despite the fact that the rent was not in arrears and after the first notice the total amount of Rs. 300/- was paid by the Petitioner to the Respondents on different dates. The Petitioner on receipt of the said notice Exh. 22, gave a written reply Exh. 27 disputing the averments made in the notice and denying the arrears of rent and other grounds demanding possession alleged in the notice at Exh. 22 and disputed that the contractual rent of Rs. 10/- was not the standard rent and requested that only standard rent be recovered from the Petitioner.

6. After the aforesaid reply dated 1-10-1974 at Exh. 27, the Respondents understood that there was no case to be prosecuted in the Court of law, and therefore, they did not institute any suit against the Petitioner, but subsequently as late as on 1-7-1976 the Respondents instituted a suit for possession against the Petitioner on three grounds, namely: (1) non-payment of rent u/s 12(3)(a) of the Bombay Rent Act, (2) bona fide requirement of the landlord u/s 13(1)(g) and (3) acquisition of suitable residence by the tenant u/s 13(1)(d). The Petitioner on service of the summons contested the suit on all the three grounds and also disputed that the contractual rent of Rs. 10/- was not the standard rent, and therefore, the standard rent is required to be fixed by the Court and also contended that the Respondents could not be considered to be a landlord for getting a decree for possession on the alleged ground of bona fide requirement in view of the fact that they have acquired their title over the suit property only after 1-1-1964 and also contended that there would be greater hardship to the Petitioner if the decree for possession would be passed.

7. The trial Court, thereafter, on the basis of the pleadings of the parties raised necessary issues including the issue as regards the standard rent and hardship and the right of the Respondents to institute suit for possession u/s 13(1)(g) of the Bombay Rent Act. The trial Court, thereafter, recorded the evidence of the

parties and till passing of the final judgment and decree, the trial Court did not decide the issue as to the standard rent separately and had decided the said issue along with other issues at the time of passing the final decree. The trial Court after completion of recording of evidence of the parties and arguments of Counsels passed the final judgment and decree dismissing the suit of the Respondents and therein it was held that the contractual rent was the standard rent and that the Petitioner was not liable to be evicted from the suit premises on any of the three grounds canvassed and that as the Respondents had acquired the title over the suit property only after 1-1-1964 they could not be considered to be landlords within the meaning of Section 13(1)(g) of the Bombay Rent Act and are not entitled to get the decree for possession u/s 13(1)(g) of the Bombay Rent Act. The trial Court also held that though the Petitioner was in arrears of rent as the dispute as to the standard rent was raised in reply to the notice within a month by the Petitioner and also contended the same thing in the written statement and issue as to the standard rent as then was raised in the suit, and therefore, the matter does not fall u/s 12(3)(a) of the Bombay Rent Act and there could not be decree for possession on the ground of non-payment u/s 12(3)(a) of the Bombay Rent Act. As regards Section 12(3)(b), the trial Court took a view that as the issue as to standard rent was not decided earlier and came to be decided only by the final judgment and decree, it was not possible for the Petitioner to comply with the same, and therefore, there could be no decree for possession against him u/s 12(3)(b) of the Bombay Rent Act. The trial Court has also decided the issue regarding bona fide requirement of the Respondents against them and hardship issue was also decided against the Respondents and in favour of the Petitioner.

8. Being aggrieved by the said judgment and decree of the trial Court, the Respondents preferred an Appeal before the District Court. The learned District Judge vide his order and judgment allowed the Appeal and reverse the judgment and decree passed by the trial Court and decreed the suit of the Respondents u/s 12(3)(a) of the Bombay Rent Act as well as u/s 13(1)(g) of the Bombay Rent Act. As regards the standard rent, the learned District Judge held that the contractual rent was the standard rent and on issue of hardship it was held that the Petitioner has failed to establish greater hardship, and therefore, the issue should be decided in favour of the Respondents. As regards Section 13(1)(1) the learned District Judge agreed with the finding given by the trial Court and ultimately allowed the appeal of the Respondents on the grounds provided by Sections 12(3)(a) and 13(1)(g) of the Bombay Rent Act.

9. It is this order which is under challenge in the present Civil Revision Application.

10. Mr. Mehul Shah, learned Advocate appearing for the Petitioner has submitted that the Respondents are not entitled to get the decree for possession of the suit premises u/s 12(3)(a) of the Bombay Rent Act. He has submitted that the Petitioner has already raised a dispute as to the standard rent within one month

from the date of receipt of the demand notice and the said issue was also raised in the written statement and specific issue was raised by the trial Court to that effect. He has submitted that there was no reason to believe that the said dispute was not bona fide dispute. He has further submitted that the Petitioner was ready and willing to pay the rent in arrears and the delayed payment of rent was required to be regularized as the standard rent dispute was decided by the trial Court only at the time of passing the final decree and judgment. In support of this submissions, he relied on the following judgments:

(a) In the case of Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai, reported in 1964 GLR 55, What the tenant has to pay or tender in Court to comply with the conditions of Clause (b) of Sub-section (3) is standard rent and permitted increases, and the Court has under Clause (b) of Sub-section (1) merely the power to fix the date of payment or tender, and not the rate at which the standard rent is to be paid. Power to fix the standard rent of premises is exercisable u/s 11(1) alone. To bring his claim within Section 12(3)(b), the tenant must pay or tender the standard rent and permitted increases on or before the first day of hearing, or on or before such other date as the Court fixes, and also costs of the suit as may be directed by the Court. It may be noticed that the statute imposes upon the tenant obligation to pay or deposit the amount of costs if the Court so directs, and not otherwise.

(b) In the case of Nanji Pancha v. Daulal Naraindas, reported in 1970 GLR 285, this Court has 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. The Court would in such cases on 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 up or tender the standard rent so fixed on or before the date so specified. The tenant has two opportunities either to comply with the explanation by getting interim rent fixed by moving the Court for the said purpose or he may move the Court for resolving this dispute at the earlier date to enable him to make the necessary payment for complying with this statutory provision. Such an application might be made by the tenant or the landlord or even the Court could suo motu extend the date after the date of the first hearing.

(c) In the case of Gangaben Poonjabhai Amin v. Narayan Sonia reported in 1974 GLR 310, it is held that where there is a dispute about the 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. In the absence of the Court acting suo motu to regularise payments or for fixing some other date for payment, the tenant would never be able to claim protection u/s 12(3)(b) as the first date of hearing had already gone and the subsequent payments could only be made under the order of the Court. When the benefit of Section 12(3)(b) could be only availed of if the Court fixes the amount of standard rent, it becomes the mandatory duty of the Court to exercise the above said power suo motu so that the benefit of Section 12(3)(b) is not rendered illusory. Even at the stage of appeal or revision, the Court would have suo motu to exercise power to give time to the tenant to pay up the dues before passing any decree for eviction. It is thus, obvious that a duty is cast upon the Court to fix the amount of standard rent in cases where the dispute of standard rent is raised by the tenant, and that unless this duty is performed by the Court, the tenant cannot be held liable for eviction on the ground that he has not complied with the provisions contained in Clause (b) of Section 12(3) of the Bombay Rent Control Act.

(d) In the case of *Ramniklal Dwarkadas Modi v. Mohanlal Laxmichand* reported in 1977 GLR 32, it is held that (a) If the tenant files an application to the Court u/s 11(3) of the Bombay Rent Control Act within the period of one month of the receipt of the notice referred to in Section 12(2) of the Act, he shall be deemed to be ready and willing to pay the rent and permitted increases specified in the order made by the Court as per provisions of Section 12 read with the Explanation; (b) The tenant can also establish his readiness and willingness to pay the rent due by any other mode than the one indicated in the Explanation read with Section 12 of the Act, as for example, by tendering the demanded amount of rent in cash within one month of the receipt of the notice referred to in Section 12(2) of the Act. This illustration regarding payment in cash is merely illustrative and not exhaustive; (c) The tenant can also claim protection from the operation of Section 12(3)(a) of the Act by raising a dispute as to the standard rent either prior to the notice u/s 12(2) of the Act or by reply to the notice, but in this case the tenant must do so within one month from the receipt of the notice referred to in Section 12(2) of the Act.

(e) In the case of *Rasiklal J. Shukla (Decd.) Through His Heirs v. Bharat Dave (Minor) Through Natural Guardian V.M. Dave* reported in 2000 (3) GLR 2137, it is held that if the case is not covered by Section 12(3)(a), but falls u/s 12(3)(b), the Courts would be under a duty to grant time to the tenant to pay arrears, if a contention regarding standard rent is raised not necessarily by a separate application for fixation of standard rent, but in the written statement.

(f) In the case of *Vasant Ganesh Damle Vs. Shrikant Trimbak Datar and Another*, the Apex Court held that but for the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 the Appellant tenant had no right to resist the claim of the landlords for his eviction after termination of the tenancy.

The Rent Control Act is a social welfare legislation meant to protect and safeguard the interests of the tenant, which does not confer unfettered powers on the tenant to remain in the possession of the leased premises without the compliance with directions of the Court or the provisions of the statute. The Act is intended to protect the bona fide tenants in possession.

11. Mr. Shah further submitted that the issue as to hardship as wrongly decided by the learned District Judge as he has shifted the burden on the Petitioner and in the event of his failure to discharge the said burden, the issue was decided against the Petitioner. By doing this, the finding recorded by the lower Court was shifted.

12. For considering the issue regarding hardship, a reliance is placed on the decision of this Court in the case of Kasturbhai Ramchand Panchal and Brothers and Others Vs. Firm of Mohanlal Nathubhai and Others, wherein it is held that u/s 13(1)(g) of the Bombay Rent Control Act, one of the most important factors is, whether reasonable accommodation is available for the landlord or the tenant. The Court would have to put in the scale other circumstances which would tilt the balance of hardship on either side, including the financial position, both of the landlord and the tenant, the financial means available to them for securing alternative accommodation either by purchase or by hiring one, the nature and the extent of the business or their requirement of residential accommodation, as the case may be, and the hardship that would be caused not only to the landlord and the tenant personally but even to their family members, dependents or persons residing with them as one unit, so that the hardship of those persons would really amount to the hardship of the landlord or the tenant. The whole process of weighing of hardship is a delicate process where various factors have to be thrown into the scales and the Court has to examine how each factor tilts the balance on either side, and thereafter, it has to find out the final balance of hardship. Once this question is determined, keeping in mind that the burden proving greater hardship is on the tenant, the Court would have to find out the resultant hardship on this statutory balance-sheet.

13. Mr. Shah further submitted that the Respondents are landlords and they could file the suit for possession u/s 13(1)(g) of the Bombay Rent Act. There is no dispute about the fact that the Respondents acquired the title of the suit property after 1-1-1964, and hence, it is not permissible for them to raise the ground regarding bona fide requirement of the suit premises u/s 13(1)(g) of the Act.

14. Mr. Shah further submitted that there was no evidence on record which supports the contention raised on behalf of the Respondents that the Petitioner acquired the alternative accommodation. It was further submitted that the Petitioner in his deposition has clearly stated and it has been admitted by the Respondent No. 1 in his evidence that Shri Panachand is not related to the Petitioner and this basic fact was wrongly considered, by the learned District Judge. Because of this wrong approach the matter could not be decided by the

learned District Judge in proper perspective. He has further submitted that there was no threat of eviction by giving notice, and hence, it is not open for the Respondent No. 1 to contend and seek the decree for possession on the ground covered by bona fide requirement by pointing out that he requires the suit premises to be occupied by himself despite the fact that he had been already accommodated in the house belonging to one Shri Panachand. He has further submitted that simply because the Petitioner's mother has got the property it cannot be said that the property was acquired by the Petitioner. He has also denied that even the evidence regarding income of the parties is also available on the record. This was not a guiding factor to decide the issue regarding hardship. He has further submitted that there is already an evidence on record of the maternal uncle of Respondent, namely, Hiralal Dahyabhai, who said in his deposition that Shri Panachand in whose house the Appellant was staying was not in any way related to him or that the Respondent No. 2 stays at Bombay and the Respondent No. 1 has also clearly admitted in his deposition the said fact. He stated that the Respondent No. 2 stayed at Bombay with his family and Shri Panachand in whose house he was staying with his family was not in any way related to him and that the said Shri Panachand has not given any notice or writing for vacating the premises occupied by him, and hence, it cannot be said that there was any requirement of the Respondent for getting vacant possession of the suit premises, much less, bona fide requirement so as to pass the decree u/s 13(1)(g) of the Bombay Rent Act. Mr. Shah, has therefore, submitted that the judgment and decree passed by the learned District Judge deserves to be set aside and judgment and order passed by the trial Court deserves to be upheld. In support of this submission, Mr. Shah relied on the decision of this Court in the case of Panchal Manilal Chhaganlal and Another Vs. Mulshanker Chhotelal, wherein it is held that the word "require" has a stronger connotation than mere "desire" and this requirement has to be both reasonable and bona fide. In absence of evidence that the alleged requirement is a real pressing requirement, it cannot be said to be reasonable and bona fide requirement.

15. Mr. Vadodaria, on the other hand, supported the decision of the District Judge and submitted that it requires no interference by this Court while exercising its revisional powers u/s 29(2) of the Bombay Rent Act. He has further submitted that the learned District Judge had raised several issues for deciding the Appeal filed before him. Out of all these issues, on three issues the Appeal was decided in favour of the Respondents. The learned District Judge has held that the original Plaintiffs-present Respondents proved that the property was required by the landlord bona fide and reasonably for their personal use and occupation. He has also held that the original Defendant-present Appellant was in arrears of rent for a period of more than six months and lastly the learned District Judge has also held that the original Plaintiffs-present Respondents proved the ground for eviction on account of the defaults. He has further submitted that the learned District Judge has given a specific finding that looking to the evidence in its entirety he was satisfied that there was nothing to doubt

the bona fide and reasonableness of the Plaintiffs to occupy the property. The learned District Judge, therefore, held that the greater hardship could be caused to the Plaintiffs if the decree for eviction of the Defendant were not passed. He has discussed the evidence at length on this issue. In his evidence at Exh. 43, the Defendant has submitted that it was not possible for him to get the premises on rent. On this count, he has himself in his evidence stated that he was serving in Mill earning Rs. 500/- p.m. He has a son, who is earning but he is not properly earning and not contributing to the family. He has also said that he was staying with his mother, but about 20 years back, as there was a dispute with the mother he has separated. The learned District Judge has also considered the evidence of the Plaintiff and came to the conclusion that the Plaintiff has established his bona fide requirement. Not only that but there was positive evidence about the availability of the alternative accommodation to the Defendant and if the decree was not passed, greater hardship would be caused to the Plaintiff in a sense that he has to continue to live at the mercy of others and incur obligations and stay in a room with no privacy. In support of this submission, Mr. Vadodaria relied on the following judgments:

(a) In the case of *Baba Kashinath Bhinge v. Samast Lingayat Gavali*, reported 1996 (1) All IRCJ 107, while considering bona fide requirement, the Apex Court has held that where need is available at the time of filing petition but at the time of granting decree it may not continue to subsist decree for eviction could not be made. Similarly, pending appeal or revision or writ petition need may become very acute. The Court will have to take into account all subsequent events to mould the relief. The Court held that the finding conclusively establishes bona fide need on part of landlord trust for seeking eviction of Appellant.

(b) In the case of *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*, the Apex Court held that wherever another residential accommodation is shown to exist as available than the Court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the Court that the alternate residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say, that an alternate accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the Court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.

(c) In the case of *Seshambal (dead) through L.Rs. Vs. Chelur Corporation Chelur Building and Others*, the Apex Court has held that while it is true that the right to relief must be judged by reference to the date on which suit or the legal proceedings were instituted, it is equally true that if subsequent to the filing of

the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent events cannot be shut out from consideration. What the Court in such a situation is expected to do so is to examine the impact of the said subsequent development on the right to relief claimed by a party, and if necessary, mould the relief suitably so that the same is tailored to the situation that obtains on the date the relief is actually granted. The Court further held that in a case of bona fide requirement, it is necessary to establish that the landlord needs the premises and the need subsists till a decree is passed in his favour. In a case where such need is available at the time of the filing of the petition but becomes extinct by the time the matter attains finality in appeal or revision, no decree will be justified. For that purpose, the Court should take all the subsequent events into consideration and mould the relief accordingly. The Court further held that the requirement pleaded in the eviction petition by the original Petitioners was their own personal requirement and not the requirement of the members of their family whether dependant or otherwise.

(d) Mr. Vadodaria further relied on the decision of the Apex Court in the case of M.L. Prabhakar Vs. Rajiv Singal, wherein it is held that the suitability of alternative accommodation has to be seen from the convenience of the landlord and his family members and on the basis of the totality of the circumstances including their profession, vocation, style of living, habits and background. The Court further held that if the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself tightly into lesser premises protecting the tenant's occupancy.

(e) Mr. Vadodaria further relied on the decision of this Court in the case of Narhari Somabhai Kachiya v. Vithaldas Parshottam Das reported in 1992 (20) All IRCJ 314, wherein it is held that initially, it is for the landlord to establish that he requires the premises let out to the tenant for his bona fide use. Word "bona fide" means not "mala fide". It is for the landlord to establish that he requires premises reasonably for his bona fide use or for bona fide use of the members of his family. If bona fide requirement of the landlord is established then the Court has to compare relative hardship to the tenant and landlord and as contemplated in Sub-section (2) of Section 13(1)(g) of the Act. While comparing such hardship, the Court has to consider entire evidence adduced by the landlord and tenant and then it should form opinion as to who will suffer greater hardship in case decree for eviction is passed or is refused. Likewise, if the Court feels and is satisfied that no hardship will be caused either to the landlord or to the tenant by passing the decree for eviction in respect of a portion of the accommodation, decree for eviction shall be passed by the Court in respect of such portion of the tenanted accommodation.

16. Mr. Vadodaria further submitted that even on the ground of rent default the learned District Judge has passed a decree in favour of the original Plaintiffs-present Respondents. The learned District Judge took the view that the dispute regarding the standard rent raised by the original Defendant-present Appellant

could not be said to be bona fide in view of the fact that even after receipt of the notice he had not tendered the amount due within one month nor has he applied for fixation of standard rent. The dispute was raised in the written statement and it has been resolved ultimately in the judgment fixing an amount of Rs. 10/- contractual one as a standard rent, meaning thereby to say that the Defendant has not attempted even to prove its rent to be excessive from the evidence of the Municipal record or any other mode. After considering the request the learned District Judge has held that in order to show the readiness and willingness to comply with the Explanation to Section 12 of the Rent Act even the payment of rent in the Court at a convenient time to the Defendant could not be considered to be a regular payment in the trial Court and the regularizing of the default by the trial Court on the ground that there was a sufficient and bona fide dispute was also not a proper course. He has, therefore, submitted that the learned District Judge has rightly come to the conclusion that it is a fit case to pass a decree for eviction on the ground of rent default, and hence, the provisions of Section 12(3)(a) of the Bombay Rent Act is squarely applying as the dispute regarding the standard rent not being bona fide it is a case wherein there is no dispute regarding the standard rent and even if the provisions contained in Section 12(3)(b) of the Bombay Rent Act are made applicable then also the tenant cannot be said to have shown his readiness and willingness to pay the rent amount. He has, therefore, submitted that the learned District Judge has rightly come to the conclusion that the original Plaintiffs are entitled to recover vacant possession of the premises from the Defendant on or after 31-8-1982 and that the Petitioner is required to hand over vacant possession of the suit premises.

17. In support of his submission Mr. Vadodaria relied on the decision of the Apex Court in the case of *Shah Dhansukhlal Chhaganlal v. Dalichand Virchand Shroff* (Decd.) by His Legal Heirs, reported in 1968 GLR 759, wherein it is held that Section 12(1) of the Bombay Rent Control Act must be read with the Explanation and so read it means that a tenant can only be considered "to be ready and willing to pay", 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 by the Court. Where a suit is filed on the ground that the tenant was in arrears of a period of more than 6 months and although raising a dispute as to the standard rent or permitted increases recoverable under the Act, the tenant makes no application in terms of Section 11(3) he cannot claim the protection of Section 12(1) by merely offering to pay or even paying all arrears dues from him when the Court is about to pass a decree against him. The Court further held that if Sub-section (3)(a) of Section 12 is not attracted, the tenant, if he is in arrears, cannot be sit quiet and offer to pay all the amount due from him at the time of the hearing of the suit so as to get the protection of Section 12(1).

18. Based on the above decision, Mr. Vadodaria has submitted that the Civil

Revision Application filed by the Petitioner deserves to be dismissed.

19. Having heard the learned Counsels appearing for the parties and having carefully considered the rival submissions made by them keeping in mind the judgments and orders passed by the Courts below and statutory provisions contained in the Bombay Rent Control Act and judicial pronouncements on the subject, the Court is of the view that the judgment and decree of eviction passed by the lower appellate Court on the grounds provided under Sections 12(3)(a) and 13(1)(g) of the Act, after reversing the judgment and decree passed by the trial Court, does not call for any interference by this Court, while exercising its revisional jurisdiction u/s 29(2) of the Act.

20. So far as defence u/s 12(3)(a) of the Act is concerned, it is true that the Appellant-tenant had raised the defence of standard rent in his reply to the notice, within 30 days from the date of receipt of the notice, and it is equally true that this Court in the case of *Ramniklal Dwarkadas Modi v. Mohanlal Laxmichand* (supra), has enumerated three circumstances under which the tenant can claim protection from the operation of Section 12(3)(a) of the Act, one of which is raising of a dispute as to the standard rent either prior to the notice u/s 12(2) of the Act or by reply to the notice within one month the date of receipt of the notice. However, the question as to whether the dispute regarding standard rent raised by the tenant is bona fide and genuine can certainly be gone into in any of these three circumstances. The lower Appellate Court, after raising the point as to whether there is a bona fide dispute regarding the standard rent, had held that the dispute could not be said to be bona fide in view of the fact that even after receipt of the said notice, the Appellant-tenant had not tendered the entire amount due within one month nor had he applied for fixation of the standard rent. The dispute had been again raised in the written statement and it was resolved ultimately in the judgment fixing an amount of Rs. 10/- a contractual one as a standard rent, meaning thereby, the Appellant-tenant had not attempted even to prove this rent to be excessive from the evidence of the Municipal record or any other mode. This finding of fact arrived at by the lower appellate Court, after appreciating the oral as well as documentary evidence on record, cannot be assailed in a Civil Revision Application filed u/s 29(2) of the Act. The lower Appellate Court has rightly held that though there is a dispute regarding the standard rent, the payment in the Court at a convenient time to the present Appellant could not be considered to be even a regular payment in the trial Court and the regularizing of the default by the trial Court on the ground that there was a sufficient and bona fide dispute was also not a proper course. The lower Appellate Court, thereafter, had come to the definite conclusion that it was a case to pass a decree for eviction on the ground of rent defaults. The lower appellate Court further recorded the finding that Section 12(3)(a) of the Act would apply to the facts of the present case as the dispute regarding standard rent was not bona fide. The Court further held that even if the provisions contained in Section 13(1)(b) are made applicable, then also the tenant could not be said to have shown his readiness and willingness to pay the

amount. The regularizing of the defaults of the tenant, was therefore, not proper in view of the facts and circumstances of the case. Such findings recorded and conclusions drawn cannot be said to be perverse or based on non-application of mind, which requires an interference by this Court u/s 29(2) of the Act.

21. The next issue on which the decree and judgment of the trial Court was set aside, is the bona fide and reasonable requirement of the landlords of the suit premises for their personal use and occupation. It is also an established position in law that while considering bona fide requirement, the Court is duty-bound to take into account all subsequent events to mould the relief. The Courts have also taken the view that while considering the totality of the circumstances, the Court should keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they have come. Convenience and safety of the landlord and his family members would certainly be considered as relevant factors. When circumstances of the case do not warrant to make any distinction between the requirement and desire, the landlord's claim for suit premises for his bona fide and reasonable use and occupation, should not be denied on the ground that it is merely a desire and not requirement. The lower Appellate Court, after raising a point for its determination as to whether Plaintiffs proved that the property was required bona fide and reasonably for their personal use and occupation, discussed at great length this issue and observed that the Plaintiff No. 1 was residing in the property not belonging to him. Initially, he took shelter at the house of the maternal uncle and subsequently because of expansion of his family, he shifted to the premises of one Mr. Panachand. The said Mr. Panachand is the relative of the Plaintiffs and hence it is nothing but to accommodate a person by relative. In such a situation, it is too much to hold that unless the notice is given by the said Mr. Panachand for vacating the premises, there is no bona fide requirement of the Plaintiff No. 1 to occupy his own property. The lower Appellate Court is, therefore, right in drawing a presumption on the basis of evidence available on record that when a person is taking a shelter at the mercy of others, he is certainly believed to be in bona fide and reasonable need of his own property for his use and occupation.

22. The point regarding hardship was also addressed by the lower Appellate Court. The Court considered an issue as to whether the hardship would be caused to the Plaintiff No. 1 who is staying at the mercy of others or it would be caused to a person who will have a premises wherein he could stay as a matter of right. While discussing the evidence on record, the lower Appellate Court did not find itself in agreement with the finding recorded by the trial Court inasmuch as the tenant admitted that the Plaintiff was residing with Mr. Panachand and in absence of any documentary evidence worth its name regarding the charging of rent and especially when the said Mr. Panachand had denied the same, there is no reason to believe that there was no monetary consideration between them. The lower Appellate Court also took into consideration the provisions contained in Section 17 of the Bombay Rent Control Act, which provide for the restitution of the property to the tenant in the event of its non-occupation for a personal use

or re-letting within one year coupled with the penal consequence.

23. Considering all aspects of the matter, the lower Appellate Court took the view that the Plaintiff established his bona fide requirement. Not only this, but, it also found positive evidence about the availability of the alternative accommodation to the tenant, and hence, it is held that if the decree of eviction were not passed, greater hardship would be caused to the Plaintiff in the sense that he has to continue to live at the mercy of others and incur obligations and stay in a room where there is no privacy. The lower Appellate Court, therefore, rightly passed the decree of eviction on the ground of bona fide requirement of the landlord, which requires no interference by this Court in this Civil Revision Application filed u/s 29(2) of the Act.

24. In view of the above discussion, the present Civil Revision Application is rejected. Interim relief, if any, stands vacated. The Appellant-tenant is hereby directed to hand over the possession of the suit premises to the opponent-landlord within one month from today. There shall be no order as to costs.