

(1955) 07 GUJ CK 0002

In the Gujarat High Court

Case No : Civil Revision Application No. 5 of 1955

Trivedi Ratilal Dahyabhai

APPELLANT

Vs

Hasmukhlal Savallal Pandya

RESPONDENT

Date of Decision : 23-07-1955

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28
Saurashtra Rent Control Act, 1951 — Section 12, 12(4), 5
Transfer of Property Act, 1882 — Section 76

Citation : (1955) 07 GUJ CK 0002

Hon'ble Judges : Shah, C.J.;Baxi, J

Bench : Division Bench

Advocate : H.C. Shah and R.C. Mankad, for the Appellant; A.R. Bakshi, General and R. Joshi, Asst. Government Pleader, H.I. Bhatt, for the Respondent

Final Decision : Dismissed

Judgement

Baxi, J.—The revision petition has been preferred against, the order of the Civil Judge, Junior Division, Bhavnagar, ordering the petitioner to deposit Rs. 1,515-15-0 towards arrears of rent u/s 12(4), Saurashtra Rent Control Act, 1951. The revision was heard by Chhatpar J. who referred it to us as it involves important questions of law.

2. The opponent is the mortgagee with possession of the Petitioner's bungalow under a registered deed of mortgage dated 21-1-1950. The mortgage was created for securing the principal of Rs. 16,000 and Interest. On the same day the Petitioner executed a separate rent note in which after reciting the mortgage, the Petitioner admitted that he had delivered possession of the bungalow to the opponent under the mortgage and had taken it on lease from him on an annual rental of Rs. 1,200/- payable at the rate of Rs. 100/- per month at the end of every month. He fell in arrears of rent and therefore the opponent filed this suit (Civil Suit No. 204 of 1954) for recovery of arrears of rent and for eviction on the ground of non-payment of rent.

The cause of action is stated in the plaint to have arisen on the execution of the rent note. The Petitioner filed a written statement contending that the suit was not maintainable until the opponent gave an account of receipts and expenditure u/s 76(b), Transfer of Property Act and the causes of action had been split up. The rest of his defences were based under the Sau-rashtra Rent Control Act, On the date on which the written statement was filed the opponent applied to the Court for an order u/s 12(4) of the Act directing the Petitioner to deposit towards arrears of rent and future rent and prayed that if the Petitioner failed to comply with the order his defense should be ordered to be struck off.

In reply to this application, the Petitioner alleged that the relations between them were those of mortgagee and mortgagor and not of landlord and tenant and consequently no order could be made under the Saurashtra Rent Control Act. Affidavits were filed on behalf of the Petitioner and the Court after hearing the parties, ordered the Petitioner to deposit Rs. 1,515-15-0 towards arrears of rent. The petition is against the above-mentioned order. The Petitioner alleges that the rent was equivalent to interest and this allegation is not denied by the opponent and we must assume for the purpose of this petition that the allegation is correct.

3. The Petitioner's first contention is that an order u/s 12(4) can only be made in a suit arising under the Saurashtra Rent Control Act, i.e., after the relationship of landlord and tenant was first established. It was urged that the opponent " was the Petitioner's mortgagee. The rent note was merely a" formal writing and had "never been acted upon and the relationship of landlord and tenant had not been established thereby.

consequently, the suit was not a suit under the Rent Control Act and no order could be made u/s 12(4). Now the nature of the suit has to be judged by the averments in the plaint and [the Court's Jurisdiction would be prima facie determined by those averments. Moreover an order u/s 12(4) is an interlocutory order as the following words of the Sub-section indicate :

4. Where at any stage of a suit for the recovery of rent, with or without a claim for possession, the Court is satisfied from the pleadings of the parties and affidavits or otherwise....

Therefore at an interlocutory stage, and particularly as in this case where the suit has made no progress beyond filing of the written statement and the framing of issues, the allegations in the plaint alone must be looked into for the purpose of determining the jurisdiction of the Court." In "Govindram v. Dharampal AIR 1951 Horn 390 V38) (A) it was held that where in a suit for eviction the plaintiff alleged that the Defendant was a licensee of the suit premises from the Plaintiff the suit was held to be within the jurisdiction of the High Court and its jurisdiction could not be taken away by the Defendant pleading that it was the Plaintiff's, tenant and the suit was theirs to exclusively cognizable "by the" Small Cause Court u/s 28, Bombay Rent Control Act. " In the present case,

the Plaintiff alleged In Ills plaint that the Petitioner was his tenant, He claim-ed arrears of rent and sought eviction on the ground of non-payment of rent. Therefore prima facie the suit is completely covered by Section 12, Saurashtra Rent Control Act and the Court could make an order u/s 12(4). The jurisdiction to make the order cannot be taken away by the Petitioner denying the tenancy and by pleading that lie stands towards the opponent in the position of a mortgagor.

Moreover, the terms "landlord" and "tenant" have been defined by Section 5 of the Rent Act as meaning respectively any person who is for the time being receiving or entitled to receive rent and any person by whom or on whose account rent is payable for any premises.

The Petitioner having agreed in express terms to pay rent, it cannot be contended against the terms of the rent note, that prima facie the suit is not between a landlord and his tenant, though it may be that after a consideration of the evidence the Court may at the end of the trial, hold that the relationship is not established. However for the purpose of Section 12(4) the present suit, must be taken to be under the Saurashtra Rent Control Act and the trial Court had jurisdiction to make the order.

(4) The next contention on behalf of the Petitioner was that the terms of the Sub-section did not authorize the Court to order the Defendant's , defense to be struck off in case of non-compliance with an order of payment towards arrears of rent. Mr. H.C. Shah argued that the Act was intended for the benefit of the tenant and an order to arrears might handicap the tenant in his defense, if he was unable, by poverty or other good cause, to comply with the order and such could not be the intention of the Legislature. In order to understand the above argument we reproduce below Sub-section (4, of Section 12:

Where at any stage of a suit for the recovery of rent, with or without a claim for possession, the Court is satisfied from the pleadings of the parties and affidavits or otherwise that, the tenant is withholding the rent on the ground that the rent is excessive and standard rent should be fixed, the Court shall, and in any other case, where it appears to the Court, that it is just and proper to pass such an order, it may pass an order, directing the tenant to forthwith deposit, in the Court such amount of rent as the Court believes to be reasonably due to the landlord.

The Court may also order him to deposit In Court monthly or periodically such amount as it considers proper, against rent which may become due during the pendency of the suit. The Court may further order that if the tenant falls to come ply with such order within such time as may be granted by the Court, he shall not appear or de-fund the suit unless he obtains leave from the Court so as to appear or defend. Such leave shall be in the discretion of Court and may be granted on such terms and conditions as the Court deems fit.

The first paragraph of the Sub-section relates to an order for deposit towards arrears of rent and the second paragraph to an order of deposit towards rent accruing after the order for future rent. ill. was argued on behalf of the petitioner

that the two paragraphs were distinct and should be read separately and the fact that the penal clause appears in the second paragraph clearly shows that it was Intended to apply to an order under that paragraph and not to an order to make a deposit towards arrears under the first paragraph.

This argument appears to be impressive at first sight but a closer scrutiny will show that it is without substance. The opening words of the first paragraph show that the satisfaction of the Court that the tenant is withholding the rent on the grounds mentioned in the paragraph is a condition precedent to the making of an order under fact Para.

Judged by the test enunciated by Mr. Shah, and if the condition is to govern an order under the first para only, this condition having been bracketed with the order to deposit towards arrears, it cannot govern an order under the second paragraph and the Court can make an order for (deposit towards future rent without troubling to satisfy itself that the tenant has been withholding rent on the grounds mentioned in the first "paragraph.

Such a construction would be against the intention of the Legislature for it cannot be supposed for an instant that the Legislature intended that the Court should make an order for deposit of future rent whether the rent was withheld or not and without examining the grounds on which the rent was withheld. Thus, if the opening words of para 1 govern orders in both the paras the closing words of the second para prescribing the penalty should be construed as applying to orders in both the paras.

The Sub-section could no doubt have been drafted with greater clarity, but there is no difficulty in construing the Sub-section or in holding that the Legislature's intention was to attach the penalty to non-compliance with orders under both these paragraphs. We, therefore, reject the Petitioner's contention that the penal clause is intended to apply to an order to deposit towards (future rent only and not to an order to deposit towards arrears of rent. In our view the Legislature's intention is to attach the penalty to noncompliance with both kinds of orders.

5. The next contention of Mr. Shah was that penalty clause in the Sub-section was unconstitutional and ultra Vires of the Saurashtra Legislature as it introduced a repugnancy with the provisions of the CPC in item No. 13 of the Concurrent Legislative List in the Constitution, He urged that the repugnancy lay in the authority conferred upon Courts to close the defence.

This argument was to the effect that the scheme of the CPC is to give an unrestricted right of defence to the Defendant and the provision in that Code for striking off the defence is made in very exceptional cases such as non-compliance with an order for discovery under Order 11 Rule 21. By providing for striking off the defence for non-compliance with an order u/s 12(4), the Saurashtra Legislature introduced a rule, which was inconsistent with the provision of the CPC which was therefore void under Article 254(1) of the Constitution.

Now the object of the Act Is to control rents in respect of certain premises are to give protection to tenants against being charged exorbitant rents by landlords and against eviction of tenants. Section 27 confers Jurisdiction on Courts mentioned therein to entertain and try suite for the recovery of rent or possession of premises and to decide applications under the Act and to deal with any obtain or question arising out of the Act or any of its provisions.

It makes a departure from the normal provisions of appeal under the CPC by giving a right of appeal against not only a decree but against every order, passed by the Court exercising Jurisdiction under the Act, to the District Judge, except against an order passed u/s 12(4) and a right of second appeal to the High Court. Section 30 provides that the prescribed procedure in trying and hearing suits etc., shall be followed by Courts. The primary scope of the Act is to provide for control of rents and evictions by landlords and the procedural matters are ancillary or incidental.

6. We shall now consider the question whether the impugned penal clause is in any way repugnant to the provisions of the Code of Procedure Code The tests of repugnancy were laid down by the Federal Court in "Megh Raj v. Allah Rakhia AIR1942 PC 27 (AIR V29) (B). In that case the Punjab Restitution of Mortgaged Lands Act was challenged, inter ail on the ground of repugnancy with the provisions of Code of Civil Procedure. The impugned Act purported to make provisions in respect of certain kinds of possessor mortgages.

Their Lordships considered the question from two stand-points, namely (1) whether the subject matter of the impugned Act was wholly with-in the Provincial Legislative List or the Act covered to any extent matters enumerated In this Concurrent Legislative List, and (ii) whether any and ,if so, which of the provisions of the impugned Act were repugnant to any provisions of an "existing Indian Law" with respect to one of the" matters enumerated in the Concurrent Legislative List.

After examining the provisions of the impugned Act, their Lordships came to the conclusion¹ that the subject matter of the impugned Act wan wholly within the Provincial Legislative List and the question of repugnancy with any item in the Concurrent List did not arise. They further held that even if the Act contained provision?, which covered the field occupied by the Code of Civil Procedure, there was no repugnancy, because Section 4(1), CPC saved special forms of procedure prescribed by any other law for the time being in force.

Their Lord³hips also observed that in order to hold that there was repugnancy between the" two provisions the inconsistency alleged must be such that one must be taken to repeal the other by necessary implication.

In "Lakhl Narayan Das v. Province of Bihar AIR 1950 PC 59 (V37) (C) the question was whether the provisions of Section 21, Bihar Maintenance of Public Order Ordinance (4 of. 1949), which authorized the police to arrest without warrant any person suspected of having committed an offence punishable under

the Ordinance, was held not to be repugnant to Section 54, Code of Criminal Procedure inasmuch as the subject matter of the Ordinance was within the Provincial Legislative List and therefore Section 1(2), Code of Criminal Procedure which contains a provision similar to provision of the saving clause in Section 4(1), CPC saved the provisions of the Ordinance. The Federal Court further observed as follows:

To ascertain the class to which a particular enactment really belongs, we are to look to the "primary matter dealt with by it, its subject-matter and essential legislative feature. Once the true nature and character of a legislation determine its place in a particular list, the fact that it deals incidentally with matters appertaining to other lists is immaterial.

The Judicial Committee made it perfectly for in the case mentioned above that the extent "of invasion by a Provincial Act into subjects enumerated in other lists is an important matter not because the validity of an Act can be determined by discriminating between degrees of invasion but for determining what is the "pith and substance" of the Act.

See also "Kedarnath Gupta v. Nagindra Narayan AIR 1954 Pat 97 (V41) (D). Judging by these tests it would appear that the impugned penal clause cannot be challenged on the ground that it introduces repugnancy with any provision of the CPC Section 12(4) imposes upon tenants the obligation to deposit in Court such amount as may appear to the Court to be reasonably due as arrears and to continue to pay future rent.

The pith and substance of the Act is within the State's legislative competence and is listed as item 3 in the State List. This provision is in the interest of the landlord and its validity has not been questioned before us nor can it be questioned. A tenant who seeks to obtain the protection under a special law has to fulfill the obligation which that law imposes upon him.

The impugned clause as well as other procedural provisions should be regarded as an adjunct to the primary object of the Act and within the legislative competence of the State Legislature as they are merely incidental and intended to give effect to the primary object, Assuming however that the impugned clause covers to some extent the field, occupied by the CPC Code, it has to be shown that it is inconsistent with some "specific provision of that Code.

Now there is no provision in the Code of Civil Procedure, which forbids the Court in express terms to striking off the defense in the case of non-compliance with an interlocutory order. The provision for striking of the defense in Order 11 Rule 21 to which Mr. Shah referred, is only an instance of the exercise of that power by the Court.

But that is by no means declared to be the only instance in which the power can be exercised nor are the provisions of Order 11 Rule 21 CPC exhaustive. The impugned penal clause is therefore saved by Section 4(1), CPC and no exception

can be taken to it on the ground that it is repugnant to any of the provisions of the CPC and is hit by Article 254(1) of the Constitution.

7. It was finally contended that the impugned clause was discriminatory inasmuch as a Defendant in a Suit under the Rent Control Act was put under a special disability, while Defendants in ordinary suits did not suffer from the same disability. This argument has no merit at all.

It is now well established that equality before the law means that amongst equals the law should (be equal and should be equally administered and that the like should be (treated alike. The State has the power of what is known as "classification" on a basis of rational (distinction relevant to the . particular subjects "dealt with see "Chitaley"s Constitution Note 1 to Article 14 where all decisions on the point have been noticed and digested.

In *Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay*,), the Supreme Court held by a majority that while Article 14 forbids class legislation it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely (i) that classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from Ors. who are left out of the Group, (ii) that the classification must have a rational relation to the object sought to be achieved by the Act.

What is necessary is that there must be a nexus between the basis of classification and the object of the Act. See also "*Jayantilal Mohanlal Shah v. State* AIR 1956 Sau 54 (S) v. 43) (FV The impugned penal clause fulfils these conditions, The Act makes no distinction between tenants as defined by the Act and the various procedural provisions including the classification bear a reasonable relation to the object of the Act. Article 14 has therefore no application.

8. In the result the petition fails and is ordered to be dismissed. In the special circumstances of the case, we make no order as to costs.

Shah, C.J.

9. I agree.