
(2012) 07 GUJ CK 0033

In the Gujarat High Court

Case No : Civil Revision Application No. 1210 of 1998

Umar Abdul Memon

APPELLANT

Vs

Mahamadbhai Kasambhai Sheikh

RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

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

Citation : (2012) 3 GLH 535

Hon'ble Judges : M. R. Shah, J

Bench : Single Bench

Advocate : Nilesh A. Pandya, for the Appellant; S. K. Bukhari, for the Respondent

Judgement

Mr. M. R. Shah, J.—The present Civil Revision Application under 29(2) of the Bombay Rent Act has been preferred by the applicant-original plaintiff to quash and set aside the impugned judgment and order passed by the learned appellate Court-learned Assistant Judge, Vadodara dated 23/06/1998 in Regular Civil Appeal No. 26/1997 by which the learned appellate Court has allowed the said appeal preferred by the respondent-original defendant-tenant by quashing and setting aside the judgment and decree passed by the learned trial Court-learned Additional Judge, Small Causes Court at Vadodara dated 17/06/1996 in Rent Suit No. 510/1998 by which the learned trial Court passed the eviction decree against the respondent-original defendant tenant on the ground of arrears of rent for more than six months i.e. u/s 12(3)(a) of the Bombay Rent Act. The applicant-original plaintiff instituted Rent Suit No. 510/1988 against the respondent-original defendant-tenant in the Small Cause Court, Vadodara for recovery of possession/eviction decree on the ground that the respondent original defendant-tenant is in arrears of rent for more than six months and the case would fall u/s 12(3)(a) of the Bombay Rent Act. It was the case on behalf of the applicant original plaintiff that the respondent-original defendant-tenant was in arrears of rent at the rate of Rs. 70/- per month from 01/06/1985 to 31/08/1988. It was

the case on behalf of the applicant-original plaintiff that despite the fact that the applicant-original plaintiff issued statutory notice u/s 12(2) of the Bombay Rent Act on dated 16/08/1988 the respondent-original defendant-tenant did not raise the dispute with respect to standard rent within one month by filing separate application and even did not deposit the entire arrears of rent and, therefore, the respondent-original defendant-tenant was in arrears of rent for more than six months and, therefore, it was requested to pass the eviction decree. Considering the documentary evidence on record, the learned trial Court by impugned judgment and decree dated 17/06/1996 decreed the suit and passed the eviction decree against the respondent-original defendant-tenant u/s 12(3)(a) of the Bombay Rent Act by observing that the respondent-original defendant-tenant has not raised the dispute with respect to standard rent within a period of one month and as such the dispute with respect to standard rent was raised for the first time on 02/12/1989 by submitting separate application u/s 11 of the Bombay Rent Act. The learned trial Court also held that the respondent-original defendant-tenant has not deposited the entire arrears of rent within one month from the date of receipt of the statutory notice u/s 12(2) of the Bombay Rent Act and, therefore, the case would fall u/s 12(3)(a) of the Bombay Rent Act and, therefore, passed the eviction decree.

1.1. Being aggrieved and dissatisfied with the impugned judgment and decree passed by the learned Small Cause Court at Vadodara in Rent Suit No. 510/1988 in decreeing the suit and passing the eviction decree u/s 12(3)(a) of the Bombay Rent Act the respondent-original defendant-tenant preferred Regular Civil Appeal No. 26/1997 before the learned appellate Court and the learned Assistant Judge, Vadodara by impugned judgment and order dated 23/ 06/1998 has allowed the said appeal by quashing and setting aside the judgment and decree passed by the learned trial Court.

1.2. Being aggrieved and dissatisfied with the impugned judgment and order passed by the learned appellate Court in allowing the appeal preferred by the respondent-original defendant-tenant and quashing and setting aside the judgment and decree passed by the learned trial Court, the applicant original plaintiff-landlord has preferred the present Civil Revision Application u/s 29 of the Bombay Rent Act.

2. Shri Nilesh Pandya, learned Advocate appearing on behalf of the applicant-original plaintiff-landlord has vehemently submitted that the learned appellate Court has materially erred in quashing and setting aside the judgment and decree passed by the learned trial Court by which the learned trial Court passed the eviction decree against the respondent-original defendant-tenant u/s 12(3) (a) of the Bombay Rent Act.

2.1. It is further submitted by Shri Pandya, learned Advocate appearing on behalf of the applicant-original plaintiff that as the respondent-original defendant-tenant did not raise the dispute with respect to standard rent within a period of one month from the date of receipt of the statutory notice u/s 12(2) of the Bombay

Rent Act by filing separate application for determination of the standard rent and did not deposit the entire arrears of rent within a period of one month, the case would fall u/s 12(3)(a) of the Bombay Rent Act and, therefore, the learned appellate Court has materially erred in holding that the case would not fall u/s 12(3)(a) of the Bombay Rent Act.

2.2. Shri Pandya, learned Advocate appearing on behalf of the applicant-original plaintiff has submitted that for getting the benefit u/s 12(3)(a) of the Bombay Rent Act the respondent-original defendant-tenant was as such required to raise the dispute with respect to standard rent by submitting separate application before the Court for determination of the standard rent and in the present case admittedly no separate application was submitted by the respondent-original defendant-tenant within a period of one month from the date of receipt of the statutory notice and the dispute with respect to standard rent was raised by submitting an application u/s 11 of the Bombay Rent Act before the learned trial Court for the first time on 02/12/ 1989 i.e. beyond the period of one month from the date of receipt of the notice u/s 12(2) of the Bombay : Rent Act and, therefore, it is submitted that the case would fall u/s 12(3)(a) of the Bombay Rent Act and not u/s 12(3)(b)(sic) the Bombay Rent Act as contended on behalf: of the respondent-original defendant-tenant as well as held by the learned appellate Court and, therefore, it is requested to allow the present Civil Revision Application. No other submissions have been made.

3. The present Civil Revision Application is opposed by Shri S.K. Bukhari, learned Advocate appearing on behalf of the respondent-original defendant-tenant. It is submitted that it is an admitted position that the respondent-original defendant tenant raised the dispute with respect to standard rent in reply to the statutory notice u/s 12(2) of the Bombay Rent Act. It is submitted that once the dispute with respect to standard rent is raised within a period of one month from the date of receipt of the statutory notice u/s 12(2) of the Bombay Rent Act in reply to the statutory notice there is no requirement u/s 12(3)(a) of the Bombay Rent Act that such a dispute with respect to standard rent must be raised by filing a separate application in the Court as required u/s 11 of the Bombay Rent Act and, therefore, it is submitted that as such no illegality has been committed by the learned appellate Court by holding that once the dispute with respect to the standard rent has been raised in reply to the statutory notice u/s 12(2) of the Bombay Rent Act within a period of one month, the case would not fall u/s 12(3) (a) of the Bombay Rent Act and, therefore, no illegality has been committed by the learned appellate Court in allowing the appeal and quashing and setting aside the judgment and decree passed by the learned trial Court passing the eviction decree u/s 12(3)(a) of the Bombay Rent Act. Making the above submission it is requested to dismiss the present Civil Revision Application. No other submissions have been made.

4. Heard the learned Advocates appearing on behalf of the respective parties at length. At the outset, it is required to be noted that the applicant-original plaintiff-

landlord served the statutory notice u/s 12(2) of the Bombay Rent Act upon the respondent-original defendant-tenant on 16/08/1988 claiming arrears of rent for the period from 01/06/1985 to 31/08/ 1988 at the rate of Rs. 70/- per month. It is not in dispute that the respondent-original defendant-tenant replied to the said statutory notice u/s 12(2) of the Bombay Rent Act by reply dated 22/08/1988(Exh. 63). Considering the reply to the statutory notice (Exh. 63) it also cannot be disputed that in the said reply the respondent-original defendant-tenant did raise the dispute with respect to standard rent and, therefore, as such, the respondent- origin at defendant-tenant did raise the dispute with respect to standard rent within a period of one month from the date of receipt of the statutory notice u/s 12(2) of the Bombay Rent Act. However, it is the case on behalf of the applicant-original plaintiff that as the dispute with respect to standard rent was not raised within a period of one month from the date of receipt of the statutory notice u/s 12(2) of the Bombay Rent Act by filing separate application before the Court as required u/s 11 of the Bombay Rent Act, the case would fall u/s 12(3)(a) of the Bombay Rent Act. The aforesaid has no substance. On fair reading of Section 12 of the Bombay Rent Act it appears that only in a case where it is found that the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases within a period of one month from the date of receipt of the statutory notice u/s 12(2) of the Bombay Rent Act and the tenant neglects to make payment and/or deposit the entire arrears of rent and he is found to be in arrears of rent for more than six months then and then only the case would fall u/s 12(3)(a) of the Bombay Rent Act. Hence, there is no requirement that such a dispute with respect to standard rent must be raised by filing a substantive application u/s 11 of the Bombay Rent Act within a period of one month. The moment it is found that the tenant has raised the dispute with respect to standard rent within one month even in reply to the statutory notice, the case would be out of the purview of Section 12(3)(a) of the Bombay Rent Act. Under the circumstances, in the present case as the dispute with respect standard rent has been raised within a period of one month from the date of receipt of the notice u/s 12(2) of the Bombay Rent Act in reply to the statutory notice and, therefore, no illegality has been committed by the learned appellate Court in holding that the case would not fall u/s 12(3)(a) of the Bombay Rent Act considering the fact that the dispute with respect to standard rent was resolved by the learned trial Court while deciding the suit and till then the respondent-original defendant-tenant was not aware with respect to standard rent to be paid by him, no illegality has been committed by the learned appellate Court in allowing the appeal and quashing and setting aside the judgment and decree passed by the learned trial Court, which was passed u/s 12(3)(a) of the Bombay Rent Act. In view of the above and for the reasons stated hereinabove, the present Civil Revision Application fails and the same deserves to be dismissed and is accordingly dismissed. Rule is discharged. No costs.