

(1995) 08 GUJ CK 0017
In the Gujarat High Court

Valimahmod Kamalbhai

APPELLANT

Vs

Prajapati Motilal Virabhai and Another

RESPONDENT

Date of Decision : 08-08-1995

Acts Referred:

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

Citation : (1996) 1 GLR 566

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

Bench : Single Bench

Judgement

J.N. Bhatt, J.—Could a tenant be said to be protected by the provisions of Bombay Rent Act who is unable to pay arrears of rent owing to want of means, but is otherwise ready and willing, is the sole, but a significant question which has come up for consideration and adjudication in this revision at the instance of an unsuccessful tenant by invoking the provisions of Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Act).

Respondent No. 1 is the original plaintiff who instituted a regular civil suit No. 207 of 1975 against the petitioner and respondent No. 2 and one other defendant. The suit was filed for possession of the suit premises on the ground of non-payment of rent by the petitioner tenant. The suit was decreed for possession on the ground of non-payment of rent u/s 12(3)(a) of the Bombay Rent Act, by the trial Court, on 28th February, 1979. The tenant carried the matter in appeal before the District Court by filing Regular Civil Appeal No. 55 of 1979. The appeal was partially allowed. The District Court, however, was pleased to confirm the decree for possession of the demise premises. Hence this revision.

2. The contention is raised on behalf of the petitioner that the petitioner tenant could not pay die arrears of rent as he was detained under the Maintenance of Internal Security Act (MISA) during the relevant period. It was, therefore, submitted that the tenant could not be said to be negligent. In other words, it is

propounded that in the circumstances, he could be said to be ready and willing to pay rent.

3. The aforesaid submission may appear to be captivating, but not convincing. In the circumstances of the case and considering the purport and philosophy of the provisions of Section 12 of the Bombay Rent Act, the expression "ready and willing to pay" employed in Section 12 undoubtedly signifies that the tenant must be in a position to pay the arrears of rent when demanded by the landlord by notice u/s 12(2) of the Bombay Rent Act. The readiness and willingness of the tenant to pay rent could be found only if he had complied with the provisions of the Act. There cannot be any doubt that the Bombay Rent Act does not cover the case of a person who is unable to pay the rent owing to want of means, but is otherwise ready and willing to pay rent. In fact, the words "tenant neglecting to pay arrears" do not mean that the tenant must have made a wilful default. What is required to be considered is the readiness and willingness of the tenant to pay the rent. That could be found only if he has complied with the material conditions of the provisions of Section 12(3)(a) or Section 12(3)(b) as the case may be. Section 12, as such, does not admit inability to pay an excuse from the rigours of eviction. Such a case is no doubt a hard one. But unfortunately, it does not empower the Court to make a special law for such hard cases which undoubtedly fall outside the statutory protection. This view is also fully reinforced by the ratio of the decision of the Apex Court in *Premjibhai Vithaldas v. Ganeshbhai* (1977) XVIII GLR 790(SC).

4. In *Premjibhai* 's case (supra) the tenant was a carpenter who could not pay the rent. It was, therefore, observed that if the tenant is unable to find the means to pay the rent, the Court cannot dismiss the suit for eviction on the ground of non-payment of rent. The disability on the part of the tenant or illness could not come to the rescue of the tenant from saving him from the rigours of eviction decree. In the circumstances, the aforesaid contention is legally unsustainable.

5. There is no dispute about the fact that the tenant was in arrears of rent for more than 6 months at the time of service of notice u/s 12(2) of the Bombay Rent Act. No dispute of standard rent was raised by filing an application for fixation of standard rent u/s 11(3) of the Bombay Rent Act. Dispute of standard rent was raised for the first time in the written statement. The contention that the tenant was under detention under the provisions of MISA when the suit notice was issued to him and therefore, non-payment of rent or filing of an application u/s 11 (3) within one month should be excused was raised before the Trial Court and it was rightly rejected. Apart from the aforesaid legal difficulty to accept the aforesaid contention, factually also, the said contention is of no avail to the petitioner. The notice demanding arrears of rent u/s 12(2) was served on the defendants Nos. 1 and 2 who are the tenants. Defendant No. 1 was under detention when the suit notice was served. Defendant No. 1 tenant has also admitted in his evidence that his wife used to see him in the jail during the

period of detention. His brother also used to visit him in the jail. The receipt of the notice u/s 12(2) itself is signed by the defendant tenant on 23-9-1975. The notice was issued on 19-9-1975. A copy of the notice was produced at Ex. 28. The receipt of notice is admitted by the tenant. Therefore, factually also, the detention in jail cannot be said to be a sufficient cause to prevent the tenant from the replying to the notice or complying with the demand made in the notice. The tenant was in a position to instruct his wife or his brother to take further actions after receipt of the notice from the landlord u/s 12(2) of the Bombay Rent Act. In fact the dispute of standard rent could also have been raised in reply to the notice or by filing an application u/s 11(3). It is also an admitted fact that the amount of rent in arrears could have been sent by money order. Nothing has been shown by and on behalf of the tenant. In the circumstances, even factually, it cannot be said that it was beyond his control and he should be excused from the rigours of eviction on the ground of inability to pay the rent though he was ready and willing. Therefore, factually, the Courts below have rightly observed that the tenant has neglected to pay the rent within one month after the receipt of the suit notice u/s 12(2) of the Bombay Rent Act. No application for fixation of standard rent was filed. No dispute of standard rent was raised even by sending reply to notice of demand. The rent was admittedly due for more than six months at the time of service of notice. There is no evidence to indicate that the tenant was ready and willing to pay the rent. The dispute of standard rent came to be raised for the first time in the written statement.

6. Apart from the aforesaid circumstances, it is also clear from the record that the rent from 1-8-1973 at the agreed rate of rent of Rs. 14/- per month was not paid by the tenant till 12-10-1977. Notice u/s 12(2) dated 19-9-1975 was received by the tenant personally on 23-9-1975. Suit was filed on 12-11-1975. The tenant did not care to pay the arrears of rent even two years after filing of the suit. For the first time, an amount of Rs. 800/- came to be paid deposited on 12-10-1977 in the Court. Thereafter, on 20-3-1979. Rs. 84/- came to be deposited. The tenant had, thereafter, deposited an amount of Rs. 295/- on 13-10-1980 and an amount of Rs. 84/- was again found due on 3-4-1981. The suit was decided on 28-2-1979. The tenant had not deposited the rent regularly in the Court during the pendency of the suit. The tenant was released from detention under MIS A in August 1976. Even after his release from detention, he did not care to deposit the rent for more than a year. Though he was released in August 1976, he had deposited the rent on 12-10-1977. Thereafter also, there was no regular payment during the pendency of the suit and also in the appeal. The Appellate Court has, therefore, rightly observed that it is a clear case of gross neglect on the part of the tenant. It may be noted that wilful neglect or default is not contemplated under the Act.

7. What is contemplated is the neglect. The landlord is obliged to show only that the tenant has neglected to pay the arrears of rent. In the present case not only that the landlord has successfully shown that there is neglect to pay arrears of

rent on the part of the tenant, but the evidence disclosed that there had been wilful default and wanton negligence on the part of the tenant to pay the arrears of rent for more than six months. Therefore, factually also, the tenant is liable for eviction decree on the ground of non-payment of rent.

8. In the light of the facts and circumstances, this Court has no hesitation in finding that this is a fit case of eviction u/s 12(3)(a) of the Bombay Rent Act. Section 12(3)(a) prescribes certain conditions. The provisions of Section 12(3)(a), undoubtedly, requires the following conditions to be complied with before eviction decree is passed against the tenant thereunder. The requirements of Section 12(3)(a) are as follows:

- (1) That the rent is payable by month;
- (2) That the amount of standard rent and permitted increases is not disputed;
- (3) That the standard rent or permitted increases are unpaid for six months or more;
- (4) That the tenant has received notice u/s 12(2);
- (5) That the 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.

9. The aforesaid five conditions must co-exist. If all the conditions are satisfied, the Court has no option and it is mandatory for the Court to pass decree for eviction on the ground of non-payment of rent u/s 12(3)(a) of the Bombay Rent Act. This Court has no hesitation in finding from the aforesaid facts and circumstances that all the aforesaid five conditions are satisfied and the tenant has failed to comply with the material conditions so as to claim statutory umbrella from eviction. In the result, the tenant is liable to be evicted under a decree of the Court on the ground of non-payment of rent u/s 12(3)(a) of the Bombay Rent Act. The decree for eviction passed by the Trial Court and confirmed by the Appellate Court is quite justified and requires no interference. In the circumstances, this revision is dismissed with costs. Rule discharged. In the facts and circumstances, the tenant is granted time to vacate the demise premises till 31st December, 1995 on his executing an undertaking which, inter alia, shall include that the original defendants tenants shall not sublet, transfer or assign the interest in the demise premises in any manner to anyone and that vacant and peaceful possession shall be handed over to the original plaintiff before the aforesaid date and that the arrears of rent shall be paid within four weeks from today and mesne profit shall be paid regularly to the landlord. Four weeks time is granted to file the undertaking.