
(2000) 10 GUJ CK 0035

In the Gujarat High Court

Case No : Civil Revision Application No. 1575 of 1986

Vrajlal Ratilal

APPELLANT

Vs

Shah Baluben Talakshi since deceased through her Heir

RESPONDENT

Date of Decision : 13-10-2000

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 12(2), 12(3), 27, 27(2)
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Transfer of Property Act, 1882 — Section 106

Citation : (2001) 1 GLR 584

Hon'ble Judges : Y.B. Bhatt, J

Bench : Single Bench

Advocate : P.M. Thakkar, for the Appellant; S.H. Sanjanwala, for the Respondent

Final Decision : Dismissed

Judgement

Y.B. Bhatt, J.—This is a revision u/s 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, at the instance of the original tenant-defendant who was sued by the respondent-plaintiff-landlord for a decree of eviction on the ground of arrears of rent.

2. Before proceeding with the merits of the matter, it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with revisions arising u/s 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal and Others Vs. Patel Mohanlal Muljibhai (Dead) Through L.Rs., , while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyed Mohmad Mirasaheb Kadri and Others, , held that High Court cannot function as a Court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the Courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the Courts below are on the basis of no

evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

3. Learned Counsel for the tenant submits that the judgment and decree of the trial Court for eviction as confirmed by the lower appellate Court is illegal and bad in law inasmuch as the suit notice issued u/s 12(2) of the Act is illegal, bad in law and void. For this purpose he relies upon the provisions of Section 27 of the Act read with Section 12(2) of the Act and relies upon a decision of this Court.

4. Learned Counsel for the respondent, in the context of the aforesaid submission, raised an objection to the effect that this is a new point being sought to be raised for the first time in the present revision and in fact the said point has not even been raised in the memo of revision.

5. Even if it is conceded that this is a new point urged for the first time in revision, that by itself would not prevent the petitioner from urging the same, inasmuch as according to learned Counsel for the petitioner, this point is a fundamental point going to the root of the matter pertaining to the jurisdiction of the trial Court. According to him, if his contention is accepted, and the suit notice is found to be illegal and bad in law, obviously the trial Court could not have jurisdiction to pass a decree for eviction. When seen from this perspective, I am of the opinion that the objection deserves to be rejected, and the petitioner's contention must be examined on merits.

6. The litigation between the parties has a long history, which however, need not be examined in detail.

6.1 The landlord had filed a suit against the tenant for a decree of eviction on the ground that the tenant was in arrears of rent for more than six months, and since he had failed to meet with the demand made in the statutory notice, Section 12(3)(a) of the Act would apply and that therefore, the trial Court was bound to pass a decree for eviction.

6.2 The trial Court found on the facts of the case and evidence on record that the landlord had proved his case as pleaded in the plaint and therefore passed a decree for eviction.

6.3 The tenant, therefore, preferred an appeal being Civil Appeal No. 32 of 1980, which came to be remanded on the question of whether the plaint was duly signed and verified on the part of the plaintiff.

6.4 After remand the trial Court recorded fresh findings as directed by the order of remand, once again held in favour of the plaintiff and confirmed the decree of eviction u/s 12(3)(a) of the Act.

6.5 The tenant, therefore, once again preferred an appeal being Civil Appeal No. 138 of 1982 which, after hearing on merits, was once again remanded to the trial Court for determination of the standard rent.

6.6 The trial Court, therefore, determined the standard rent and conveyed its conclusions to the appellate Court, and the appellate Court once again confirmed the decree of eviction passed by the trial Court.

7. It is this judgment and decree of the trial Court, as confirmed by the lower appellate Court, which is the subject-matter of the present revision.

8. The only contention sought to be urged in this Revision by the learned Counsel for the petitioner-tenant is to the effect that a suit notice (for a decree of eviction on the ground of arrears of rent) must comply with Section 12(2) of the said Act, and unless there is such compliance, even the filing of the suit or at the very least a decree in such a suit would be clearly illegal and bad in law. This contention is based on the Counsel's interpretation of Section 27 of the Act. According to learned Counsel for the petitioner, the demand for arrears of rent made in the suit notice must be based on the British Calendar month as contemplated by Section 27. To substantiate his contention, learned Counsel for the petitioner seeks to place reliance upon a decision of this Court rendered by a single Judge in the case of *Jethanand Dulhanumal Lalvani v. Pratapray Parshoitam*, reported at 1975 GLR 496. I have been taken through this decision meticulously and in great detail by the learned Counsel for the petitioner.

9. On a careful perusal of this decision, I am of the opinion, with all respect to the Hon'ble Judge, that the conclusions drawn and stated in the said decision are plain, whereas the reasoning is not. I am of the opinion that this decision, while interpreting Section 27 of the Rent Act impacts upon Section 12 (though the latter has not been considered specifically), and merely adopts a facile route through dubious logic. As aforesaid, the said decision merely interprets Section 27 of the Act, and does not in any manner consider the how and why of its impact upon Section 12. It comes to a conclusion that (i) if the demand made in the suit notice is not in accordance with the requirements of Section 27, the suit notice is illegal and bad, and consequently the suit of the landlord would not be maintainable (ii) since the recoverability of rent (based on any calendar other than the British Calendar) is barred, even a demand is barred, and consequently a notice for such demand is illegal, and (iii) even the contract for letting the premises, if it requires the tenant to pay rent on the basis of any other calendar, is void. To my mind, the interpretation of Section 27 while standing alone and being the only provision under examination, could not lead to a legitimate conclusion as to its impact upon Section 12(2) unless the latter section is also considered simultaneously. It, therefore, becomes necessary to examine the validity of the conclusions drawn in the said decision. This requires a fresh and dialectic inquiry.

10. In the aforesaid context it becomes necessary to examine the nexus between Section 27 and Section 12(2) of the Act.

11. These provisions must be examined particularly in the context of their field of operation, the ambit of each provision, the object and the limitations in respect

of each. These two provisions also require to be examined in relation to each other, in juxtaposition to each other, and not necessarily as one governing the other on any rationalised or other assumption.

12. Section 27 of the Act reads as under :

"27 (1) Notwithstanding anything contained in any law for the time-being in force or any contract, custom, or local usage to the contrary, rent payable by the month or year or portion of a year shall be recovered according to the British Calendar.

(2) The State Government may prescribe the manner in which rent recoverable according to any other calendar before the coming into operation of this Act shall be calculated and charged in terms of the British Calendar."

Section 12(2) of the Act reads as under :

"12(2) No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882."

13. The basic subject-matter contemplated and dealt with by the Section 27 deals with the recoverability aspect of the rent. On the other hand, Section 12(2) deals with the issuance and service of a notice, the mode of service of such notice and the requirements of such notice, for the purpose of filing a suit for eviction, and that too, on the ground of arrears of rent. An eviction suit on other grounds does not invoke the application of Section 12(2).

14. It requires to be noted that in a money suit for recovery of arrears of rent only, notice u/s 12(2) is not mandatory. Such a suit would not be bad, even if filed without notice u/s 12(2).

14.1 In such a suit, therefore, how could there be any adverse effect if merely the demand for arrears is not in compliance with Section 27 ? In such a suit, when no statutory notice is necessary nor given, how can the demand be said to be illegal when the demand is made only through the suit plaint?

15. As aforesaid, Section 27 deals only with the recoverability aspect. What requires consideration is recoverability of what? A plain reading of this Section reveals that it deals with the recoverability of the rent and nothing else. It does not deal with the recoverability or recovery of possession.

15.1 An illustration will clarify this aspect. In a case where a landlord files a suit for eviction only on the ground of unlawful sub-letting, where no notice u/s 12(2) is obligatory, the landlord may pray for a decree of eviction together with a money decree in respect of the arrears. In the alternative, he may pray for a decree of eviction while reserving his right to sue separately for the money

decree or forsake his claim in respect of the monetary part of his claim.

15.2 It therefore follows, on a question of principle, that not only the claim for eviction but also the ground of eviction, as opposed to a monetary claim, are essentially different claims, and different reliefs. They are required to be considered in that light. Since they are severable claims, either of the claims can be pressed in a suit without prejudice to the other claim (subject to Order 2, Rule 2 C.P.C.).

15.3 The distinction between the validity of a claim and the recoverability (enforceability) can also be illustrated thus :

In a suit by a creditor against a debtor for recovery of the debt, it is open to the defendant-debtor to contend that although the debt is admitted, it is not enforceable. This contention could be raised in a number of circumstances, for example, the suit is barred by limitation, or the debt is not enforceable on account of it being opposed to public policy, e.g. gambling debts, that the debt claimed is on account of an open mutual and current account, or on account of other legitimate reasons. In case, the Court finds that the contention of the defendant requires to be upheld, the net result in law would be that though the debt is admitted, it is not enforceable. In other words, though the recoverability of the debt is affected, the claim in respect of such debt (by the filing of the suit for recovery of such debt) is not affected. In other words, even if the Court refuses to pass a decree in respect of the debt asserted by the plaintiff, the refusal of such decree does not relate back and ipso facto adversely affect the maintainability of the suit.

16. Thus, when eviction is sought on the ground of arrears of rent, the essential criteria is only whether the arrears are proved as claimed (only in terms of months), whether computed by the British calendar or the Samvat calendar or any other calendar. If in a given case, the monetary demand in respect of the arrears of rent claimed and asserted in the statutory notice does not fulfil the requirement of Section 27, the money decree may perhaps be refused, or granted only in terms of the Rules framed u/s 27(2). This situation, however, does not ipso facto demolish the basis of the requirement of Section 12(2) or 12(3) viz. the ground for eviction of arrears of rent.

17. Thus, if the money claim in respect of arrears of rent can be abandoned or not pressed in such a suit, without adversely affecting the claim for eviction, the position would be no different if the monetary claim is hit by Section 27.

18. Naturally, the money claim after the termination of the tenancy by statutory notice, would be on account of mesne profits for use and occupation (in the nature of damages at the rate of undisputed contractual rent/standard rent). This part of the money claim would not be hit by Section 27.

19. Even otherwise, Section 27 does not create an absolute bar against the recoverability of the arrears, even if the claim is based on any month other than

the British calendar month. This provision merely contemplates a recomputation/recalculation or conversion of the money claim from the Samvat Calendar month (or any other Calendar month) to the British Calendar month, by virtue of the Rules framed u/s 27(2). Obviously, this conversion would only affect the quantification of the money claim, and would not affect the validity of the claim on principle.

20. Thus, the substance of Section 27 as discussed hereinabove would also lead to the following conclusions.

20.1 The rent payable under a contract of letting on the basis of any calendar month other than the British Calendar month is not impermissible. The claim for rent based on any other calendar month is not illegal or bad in law. Such contracts or agreements are not void, or illegal, nor rendered unenforceable. This provision only stipulates that recoverability of such rent i.e., computation/calculation, shall be on the basis of the British Calendar month, and in accordance with the rules framed u/s 27(2) of the Act.

20.2 It would therefore follow, that Section 27 comes into operation only when and only to the extent of recoverability of the rent is at issue, and not when recoverability of possession is under consideration.

21. Thus, Section 27 does not have an overriding effect over Section 12(2) or Section 12(3) for the purpose of eviction, and therefore, a quantified demand for arrears of rent which is not in compliance with Section 27, would not render the suit notice u/s 12(2) illegal or bad in law for the limited purpose of an eviction suit. The only essential condition that remains for an eviction suit on the ground of arrears is that notice of demand for possession on the ground of arrears must issue and be served in accordance with Section 106 of T. P. Act.

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23. In the premises aforesaid, this revision fails and is accordingly dismissed. Rule is discharged with no order as to costs.

24. Revision dismissed.