

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.68 OF 1982

THE HON'BLE MR. JUSTICE Y.B. BHATT:

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Appearance:

Mr. D.D. Vyas, advocate for the petitioner.
Mr. S.N. Shelat, advocate for the respondents.

CORAM: Y.B. BHATT J.
Date of Decision: 29-11-1995

JUDGEMENT

1. The present revision is filed by the original defendant-tenant against the opponents-landlords under section 29(2) of the Bombay Rent Act (the said Act for short).
2. The present revision raises only a short question of law as to whether the case would be covered under section

12(3)(a) or 12(3)(b) of the said Act, in view of the facts and circumstances of the case.

3. It is an admitted position that the tenant had filed a standard rent application being No.143/75 within a period of 30 days of receipt of the statutory notice in relation to the present suit. The tenant, therefore, contended that the case would be governed by section 12(3)(b) of the said Act. Both the courts below took the view that merely filing a standard rent application under section 11(3) of the said Act would not be sufficient to take the case out of the ambit of section 12(3)(a) of the said Act, unless such dispute is reasonable and bonafide. In other words, both the courts held, on the facts of the case, that merely raising a frivolous dispute, or by filing a standard rent application for the sake of creating a dispute would not be sufficient to take the case out of the purview of section 12(3)(a) of the said Act.

4. This finding was recorded on the basis of certain facts found to have been established on the record of the case. Both the courts acted on Exh.27, which is a consent decree passed in earlier proceedings between the landlord and the tenant viz. Regular Civil Suit No.1038/64. This consent decree fixes the standard rent between the parties at Rs.14.50, which was the contractual rent. The courts below, therefore, held that since the standard rent between the parties had already been determined in earlier proceedings, merely by filing a standard rent application in the context of the present suit, would not be sufficient to take the case out of the purview of section 12(3)(a) of the said Act.

5. However, the learned counsel for the petitioner-tenant relied upon a decision of the Supreme Court in the case of DEVKARAN NENSHI TANNA VS. MANHARLAL NENSHI (AIR 1994 SC 2747). The substance of the said decision is to the effect that there is no need for a pre-existing dispute to subsist before invoking the jurisdiction of the court under section 11(1)(e) of the said Act, and filing an application for determination of the standard rent itself is a dispute entitling the tenant to take the benefit of section 12(3)(a) of the said Act. Such dispute may arise in diverse forms. This decision further goes on to state that where the standard rent was fixed solely on the basis of a compromise between the parties recorded earlier, it would not preclude a tenant from making a second application for fixation of standard rent. Thus, it appears that the courts below were not justified in taking a view on the facts of the present case that merely because the standard rent was determined by the aforesaid consent decree, the standard rent application in the present suit was not tenable and/or not maintainable, and/or would amount to a frivolous dispute which was not a genuine dispute.

6. While it is true that the courts below have not dismissed the standard rent application outright on the grounds of res judicata, and have also examined the tenant's contentions on merits to the effect that he is entitled to a diminution in the standard rent fixed earlier under the consent decree, I am satisfied that the attention of the lower appellate court was not focused on this aspect of the matter, particularly in the light of another Supreme court decision discussed hereinafter. In this context, note must be taken of another decision of the Supreme Court in the case of MISTRY PREMJI BHAI VITHALDAS VS. GANESHBHAI (AIR 1977 SC 1707). In the said decision the Supreme Court laid down that where a tenant does not prosecute an application for fixation of standard rent and deliberately permits it to be dismissed for non-prosecution, it could be reasonably inferred that it was not a bona fide application at all. Non-prosecution of the application for standard rent indicated that there was no real dispute regarding the standard rent or permitted increases. In such a case if the provisions of section 12(3)(a) are not shown to be complied with, the court is bound to pass a decree for eviction.

7. Thus, when the facts of the case are sought to be examined, in the light of the relevant law stated hereinabove, it is found that the facts and circumstances pertaining to the disposal of the earlier standard rent application, and the facts pertaining to the fixation of the standard rent in the earlier suit, can only be evidenced by Exh.36 and Exh.27. This is the only evidence on record pertaining to this limited question. Obviously, this evidence is insufficient to enable this court to come to a definite finding as to whether the earlier consent decree which also determines the standard rent, was based only on the consent terms and the rent court blindly passed a decree in terms of the consent terms, or whether such consent decree was passed by the trial court after application of mind to the consent terms in the context of the pleadings of the respective parties and in the context of the dispute between them.

8. In the premises aforesaid, it is not possible for this court, on the basis of the evidence available on the record of the case, to determine whether this is a case covered under section 12(3)(a) or 12(3)(b) of the said Act.

9. The judgement and decree of the lower appellate court is, therefore, quashed and set aside, and the matter is remanded for rehearing of the entire appeal, and specifically on the question as to whether the case is covered under section 12(3)(a) or 12(3)(b) of the said Act, in the light of the decisions discussed hereinabove, and in the light of such

other decisions that may be pointed out by the parties. It would be desirable for the lower appellate court to permit the respective parties to tender additional evidence by placing on record the consent terms and the pleadings of the earlier suit between the parties viz. Regular Civil Suit No.1038/64, as also in Standard Rent Application No.432/64, and/or such other evidence as the parties may wish to lead, on the limited question as to whether the earlier determination of the standard rent was passed merely on the consent terms or was the determination by the court after due application of mind on the controversy between the parties.

10. If the lower appellate court, after examining the entire evidence on record, together with such additional evidence that may be tendered by the parties, comes to the conclusion that the earlier standard rent application was not abandoned by the tenant, or that the standard rent fixed under the earlier consent decree was not based upon the complete application of mind, the lower appellate court shall then deal with the matter as one falling under section 12(3)(a) or section 12(3)(b) of the said Act as the case may be. It is further clarified that in case the matter is required to be considered under section 12(3)(b) of the said Act, the lower appellate court shall give due regard to the fact that the trial court has dealt with the case as one falling under section 12(3)(a) of the said Act, and that, therefore, the trial court had not considered whether the tenant was ready and willing to pay the rent within the meaning of section 12(1) of the said Act, read with section 12(3)(b) and the Explanation thereto.

11. It is further clarified that in case the lower appellate court comes to the conclusion, in the light of the aforesaid discussion, that the tenant would be entitled to reargue the question of standard rent, in the application No.143/75, the appellate court may consider afresh the contentions raised in the said application and to decide the same on merits.

12. Since the appeal is an old one, the lower appellate court is directed to give due priority to the disposal of the same, and the same shall be disposed of as expeditiously as possible, and preferably before 30th June 1996.

13. Accordingly the judgement and decree of the lower appellate court is set aside and the matter is remanded to the lower appellate court in the light of the aforesaid observations. Rule is made partly absolute with no order as to costs.

14. It is understood that the interim relief granted in

the present petition shall continue to operate for the duration of the appeal subject to usual terms and conditions.

15. The registry is directed to transmit the record and proceedings back to the lower appellate court forthwith together with a copy of this judgement.
