IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.586 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. N.C. Nayak, advocate for the petitioner.
Mr. K.B. Padia, advocate for the respondents.

CORAM: Y.B. BHATT J.
Date of Decision: 30-11-1995

JUDGEMENT

1. The present revision application is one under section 29(2) of the Bombay Rent Act (the said Act for short), filed by the original defendant-tenant, wherein the respondents are original plaintiffs-landlords.

2. The landlords had filed a suit against the tenant for

recovery of possession on various grounds inter alia (i) that they require the suit premises reasonably and bonafide for their personal requirement, (ii) that the tenant had acquired vacant possession of the suitable residence after coming into operation of the Bombay Rent act, (iii) that the tenant had unlawfully sublet or transferred the suit premises, (iv) that the tenant had erected permanent structure on the suit premises without the landlords' consent in writing, and (v) that the tenant was in arrears of rent for more than six months.

3. The defendant-tenant contested the suit by filing his written statement at Exh.14 where he took up various contentions disputing the averments made by the landlords in the plaint, and also raised a dispute as regards the standard rent of the suit premises.

4. It is pertinent to note at this stage that the tenant had raised a dispute as regards the standard rent only in his written statement, and had not raised any dispute at any prior stage. There is nothing on record to indicate that he had raised such a dispute within 30 days of receipt of the statutory notice by him, by filing an application under section 11(3) of the said Act.

5. The trial court raised the necessary and appropriate issues at Exh.30 and after consideration of the entire evidence on record, dismissed the suit of the landlords on all the grounds. The landlords, therefore, preferred an appeal under section 29(1) of the said Act.

6. The lower appellate court, after hearing the parties, recorded findings of fact to the effect that although the landlords required the suit premises reasonably and bonafide for occupation by themselves, they were not entitled to a decree for eviction of the tenant on the ground that such a decree would cause greater hardship to the tenant than the hardship which the landlord would suffer in case the decree is refused. The lower appellate court also held in favour of the tenant to the effect that the landlord has failed to prove that the tenant has acquired vacant possession of a suitable residence after coming into operation of the Rent act, that the landlord has failed to prove that the tenant has unlawfully sublet or transferred the suit premises, and that the landlord had failed to prove that the tenant had erected permanent structure on the suit premises without the written consent of the landlord. However, the lower appellate court held that the statutory notice was legal and valid. The lower appellate court, however, passed a decree for eviction against the tenant and in favour of the landlord by reversing the

finding of the trial court, by recording a finding that the tenant was in arrears of rent for more than six months, and in view of the facts and circumstances of the case he could not be protected under section 12(3)(b) of the said Act.

7. It is under these circumstances that the petitioner-tenant has challenged the decree of eviction passed against him by the lower appellate court.

8. In the present revision I am not required to consider the findings of fact recorded in favour of the tenant, but only those against the tenant on the basis of which a decree of eviction has been passed by the appellate court.

9. The lower appellate court has treated the case as one falling under section 12(3)(b) of the said Act, by merely observing in a casual manner as under:

> "The case would fall under section 12(3)(b) of the Bombay Rent Act admittedly".

There is no indication whatsoever, how and in what manner the lower appellate court concluded that this was an admitted position. For the purpose of ascertaining how such an admission came to be presumed by the lower appellate court, the trial court judgement has been carefully scrutinised as also the record and proceedings of the case. Inspite of the careful scrutiny, no material is available to show or even to infer that this was an admitted position.

10. Under the circumstances this court can only assume that both the trial court as also the lower appellate court have acted on the assumption that since the defendant has raised a dispute as to standard rent in the written statement, that would ipso facto take the case out of the purview of section 12(3)(a), and consequently the case would be covered under section 12(3)(b) of the said Act.

11. In fairness to the courts below, it must be noted that the trial court's judgement is dated 21st August 1978 and as on that date the appropriate decision of the Supreme Court may not have been pointed out to the trial court. The lower appellate court may have proceeded on the basis that the application of section 12(3)(b) of the said Act, is not disputed by either side.

12. However, on the application of the correct principles laid down by the Supreme Court in a number of decisions, the significant and relevant one being discussed hereinafter, it appears that the approach of the lower appellate court was erroneous. However, this would not affect the outcome of the

matter inasmuch as the lower appellate court has, in my opinion, ultimately given the correct and reasonable finding of fact in favour of the landlord. In other words, although the lower appellate court has treated the case as one falling under section 12(3)(b) of the said Act, it has recorded a finding of fact on the basis of the evidence on record that the tenant is not entitled to the protection of section 12(3)(b) of the said Act. Since this is a finding of fact, well supported and justified by the evidence on record, I do not propose to deal with the same extensively. Even otherwise, had the case been covered by section 12(3)(b) of the said Act, I would have had to uphold this finding of fact.

13. However, the position of law is different. The Supreme Court has clearly laid down the principles under which a tenant can obtain the protection of section 12(3)(b) of the said Act. Obviously section 12(3)(b) would apply only where section 12(3)(a) is excluded. On a plain reading of section 12(3)(a) it becomes obvious that its operation would be excluded, if there is a dispute as to standard rent raised by the tenant. It is in this context that the Supreme court has laid down in the case of HARBANSLAL VS. PRABHUDAS, reported in AIR 1976 SC 2005, and particularly in paragraphs 19 to 24 thereof, the principle that the tenant, in order to avoid the operation of section 12(3)(a), and to avail of the protection of section 12(3)(b), must have raised a dispute as to standard rent within 30 days of receipt of the statutory notice by him by filing an application under section 11(3) of the said Act, and that merely raising such a dispute by taking up a contention in the written statement would not be sufficient to take the case out of the operation of section 12(3)(a) of the said Act.

14. On a plain reading of the trial court's judgement, as also that of the lower appellate court, it becomes obvious that this position of law has escaped their attention.

15. When this principle is applied to the facts of the case, it is found that the tenant had merely raised a contention as to standard rent by incorporating the same in his written statement, and had not raised this dispute by any application under section 11(3) of the said Act. Clearly, therefore, the tenant could not escape the operation of section 12(3)(a) of the said Act, at least on the ground that there was a dispute as to standard rent. Other conditions governing the applicability of section 12(3)(a) are complied with as is clear from the record.

In other words, it is established that the rent is payable by the month, and that such rent is in arrears for a period of more than six months, and further that the tenant

has neglected to make payment thereof within one month of receipt of the statutory notice.

16. In the premises aforesaid, section 12(3)(a) of the said Act applies with full force, and therefore, the Rent Court had no jurisdiction except to pass a decree for eviction.

17. As already discussed hereinabove, although the lower appellate court has passed a decree under section 12(3)(b) of the said Act, I have not discussed in detail the justification for doing so, although in my opinion, such a decree would be otherwise sustainable on facts. Even otherwise, on a correct application of the legal principles, as laid down by the Supreme court, the decree ought to have been passed under section 12(3)(a) of the said Act. Since the ultimate conclusion is the same viz. that the decree of eviction passed by the lower appellate court, is fully justified and sustainable, I see no purpose in remanding the matter back to the lower appellate court for reconsideration of the facts so as to examine in the perspective of section 12(3)(a) of the said Act, particularly since there is sufficient and adequate material on record to show that the other conditions of section 12(3)(a) are fully met.

18. In the premises aforesaid, the judgement and decree of the lower appellate court is upheld and the present revision is dismissed. Accordingly rule is discharged with no order as to costs. Ad interim stay vacated.

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