IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.1240 OF 1981

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. S.M. Shah, advocate for the petitioners.
Mr. P.V. Hathi, advocate for the respondent.

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

 JUDGEMENT

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

2. The only controversy in the present case is as regards

the service of the statutory notice required under section 12(2) of the Rent act, which is required to be served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

3. The lower appellate court allowed the appeal of the tenant and reversed the judgement and decree of the trial court, whereby decree of eviction had been passed in favour of the landlords.

4. Although the matter has been argued at length, suffice it to state here that the lower appellate court, after appreciating the entire evidence on record, has in the first instance, found that the notice has in fact been served upon the tenant in accordance with, and in the manner prescribed by section 106 of the Transfer of Property Act. However, after recording the said finding, the lower appellate court has moved on further to examine the facts of the case with a view to determine whether the defendant-tenant was aware of the contents of the notice or not. In this context, it then came to the conclusion that although the said notice was legally served, the defendant was not aware of the contents of the notice, and that therefore, the said notice was not binding upon the tenant, and for this reason, no decree for possession ought to have been passed against the tenant.

5. These observations and conclusions of the lower appellate court have been stated at the end of paragraph 10 and in the middle of paragraph 12 of the appellate judgement.

6. It is, therefore, apparent and obvious that the impugned judgement and order of the lower appellate court amounts to a perversity in law, and also suffers from jurisdictional error, since the appellate court, once having found that the statutory notice has been served in accordance with and in the manner prescribed by section 106 of the Transfer of Property Act, had no jurisdiction to go behind the same and to record a finding of fact that the tenant was not aware of the contents of the notice. The impugned judgement of the lower appellate court is, therefore, required to be set aside on this ground alone.

7. In the premises aforesaid, learned counsel for the respective parties submit that no detailed reasons are required to be given for allowing the present revision. Accordingly the present revision is allowed, the judgement and decree of the lower appellate court is quashed and set aside, and the decree of the trial court is restored.

8. At this stage of the matter, learned counsel for the respondent-tenant requests that the tenant be granted

sufficient time to vacate the premises in question, in consonance with the facts and circumstances of the case, as are pointed out by the respective counsel. It is accordingly directed that the tenant is granted time upto 31st May 1998 to vacate the suit premises on condition that the said tenant files an undertaking in this court (through a partner specifically authorised to file such undertaking) on usual terms on or before 22nd December 1995. However, in case such undertaking is not filed as indicated hereinabove, the decree of eviction against the tenant shall become enforceable on 31st May 1996.

9. Rule is made absolute accordingly with no order as to costs.

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