IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.2307 OF 1981

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

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Appearance:

Mr. P.S. Chapaneri, advocate for the petitioners.
Mr. Gaurang H. Bhatt, advocate for the respondent.

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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?

CORAM: Y.B. BHATT J.
Date of Decision: 28-11-1995

JUDGEMENT

1. The petitioners have filed this revision application under section 29(2) of the Bombay Rent Act. The petitioners are the original defendants-tenants and the respondent is the original plaintiff-landlord.

2. Before proceeding with the contentions raised in the present revision, it must be kept in mind that the present revision is one under section 29(2) of the Bombay Rents, Hotel

and Lodging House Rates Control Act, 1947. In the context of the powers of the High Court exercisable in such revisions, the ratio laid down by the Supreme court in the case of Helper Girdharbhai (AIR 1987 SC 1782) is most relevant. In the said decision the Supreme Court has observed in substance that in exercising revisional power under section 29(2) the High Court must ensure that the principles of law have been correctly borne in mind by the lower court. Secondly, the facts have been properly appreciated and a decision arrived at taking all material and relevant facts in mind. In order to warrant interference, the decision must be such a decision which no reasonable man could have arrived at. Lastly, such a decision does not lead to a miscarriage of justice. But, in the guise of revision, substitution of one view where two views are possible and the Court of Small Causes has taken a particular view, is not permissible. If a possible view has been taken, the High Court would be exceeding its jurisdiction if it substitutes its own view in place of that of the courts below because it considers it to be a better view. The fact that the High Court would have taken a different view is wholly irrelevant.

2.3 It must also be noted that in the case before the Supreme Court, the findings of the trial court were reversed in appeal, and it was the appellate decision which was before the High Court. The High Court in the revision under section 29(2) reversed the finding. Thus, in the revision before the High Court, it was not a case of concurrent findings of fact.

3. The landlord had filed a suit for a decree of eviction against the tenant in the Rent Court, on the grounds that the tenant was in arrears of rent for more than six months, and that the landlord required the premises reasonably and bonafide for his personal use and occupation.

4. The defendant-tenant filed his written statement in the suit at Exh.14 and denied the various averments made by the landlord in the plaint. The defendant also took up a contention as to standard rent. It is pertinent to note that the tenant had not raised the dispute as to standard rent either by filing an application under section 11(3) of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the said Act'), nor raised such contention in his reply to the statutory notice given by the landlord prior to the suit.

5. It appears that the ground of eviction based on reasonable and bonafide requirement of the landlord was not pressed before the trial court. Thereafter the trial court, after appreciating the evidence on record, held that the contractual rent of Rs.14/- per month is the standard rent of the suit

premises, but dismissed the suit of the plaintiff on the ground that the case was one falling under section 12(3)(b) of the said Act, and on the facts of the case the tenant is entitled to the protection thereof, inasmuch as he has made payment of the arrears in due compliance of the said provision.

6. It may also be noted here that the trial court had come to the conclusion that the case was one falling under section 12(3)(b), and not under section 12(3)(a) of the said Act, inasmuch as the tenant was in arrears of only 4 months' rent, (and not in arrears of 6 months' rent or more). This conclusion was drawn by the trial court on the basis of the appreciation of the evidence on record.

7. The landlord then preferred an appeal before the lower appellate court.

8. It may also be noted here that in the appeal, the contention as regards the legality and validity of the suit notice as also the contention as regards the determination of standard rent, was not pressed. The lower appellate court was, therefore, noted in its judgement that the said issues are not pressed.

9. The main controversy between the parties appears to be whether the tenant was in arrears of rent of more than six months on the date of the suit, or for a smaller period. In fact the trial court had recorded a finding only to the effect that the landlord had failed to establish that the tenant was in arrears of rent for more than six months, but had then failed to consider the consequential question viz. whether the tenant was in arrears of rent for any smaller period i.e. less than six months. This aspect has been very carefully examined by the lower appellate court and on a comprehensive reappreciation of the evidence on record, it came to the conclusion that the tenant was in arrears of rent for 4 months on the date of the suit. This finding is a finding of fact recorded by the lower appellate court, and the same is based on a detailed and reasonable appreciation of the evidence on record, and for this reason I do not propose to interfere with the said finding. Although the lower appellate court has recorded this finding on a preponderance of probabilities, that by itself would not be sufficient to justify any interference by this court in a revision under section 29(2) of the said Act, merely because on a reappreciation of evidence, another view may just be possible. I shall, therefore, examine the ultimate conclusions drawn by the lower appellate court and challenged in the present revision, on the basis of the finding of fact that the tenant was in arrears of rent for 4 months on the date of the suit.

9.1 At this stage, it may also be noted that it is not disputed by the tenant that he was in arrears of rent for a few months. He only disputed that he was in arrears of more than six months. The finding that such arrears were for 4 months, is based on not only the appreciation of evidence on record, but also on the admission of the tenant. This being a finding in favour of the tenant-petitioner, is another reason for non-interferance in the present revision.

10. In the premises aforesaid, it is obvious that section 12(3)(a) of the said Act would have no application since the tenant is not in arrears of rent for six months or more. Obviously, therefore, the case would be covered under section 12(3)(b) of the said Act. This is also the conclusion drawn by the lower appellate court. The next question which would then arise is whether the tenant has deposited in the trial court the standard rent and permitted increases on the first day of the hearing of the suit, or on or before such other date as the court may fix. Even in this context the lower appellate court has recorded a finding to the effect that the tenant has made a complete and total deposit of arrears of rent due till the date of framing of the issues. Furthermore, even till the date of the trial court judgement, the tenant has deposited the appropriate amount (or more than the necessary amount) and that therefore till the stage of the trial court judgement the tenant cannot be faulted.

11. However, when the lower appellate court took up the consideration of the factual aspect as to whether the tenant had continued to make the deposit regularly in the appellate court, in respect of the period of pendency of the appeal, it found that the tenant was in arrears of rent of 2 months, even on the date of the appellate judgement. It was for this reason that the advocate for the tenant had given an application (in the appeal) that he should be granted further time to enable him to make the necessary deposit so as to cover the arrears then due (on the date of the appellate judgement). This application was sought to be substantiated by the submission that if time is granted to enable him to deposit the necessary shortfall, he would then be entitled to the protection of section 12(3)(b) of the said Act, since he could then be considered to be ready and willing to pay the rent, as contemplated by the said provision, in the light of section 12(1) of the said Act.

12. The lower appellate court, apparently did not directly deal with that application since it was given about or on the date of the appellate judgement, but discussed in detail the relevant law applicable to a situation where the tenant has failed to deposit in the appellate court the rent "regularly".

13. After discussing the various decisions placed before it, the lower appellate court, rightly chose not to rely upon a decision of this court in the case of PRAVINCHANDRA VS. SARASWATIBEN (18 GLR 8). This decision has been overruled in a subsequent decision as discussed hereinafter.

14. The lower appellate court thereafter discussed in the correct perspective and drew the appropriate conclusions from the decision of the Supreme Court in the case of GANPAT LADHA VS. SHASHIKANT VISHNU SINDHE (19 GLR 502), and another decision of the Supreme Court in the case of MRUNALINI VS. BAPALAL (19 GLR 1090). These two decisions of the Supreme Court have been followed by this High Court in the decision of VAJUBHAI VASHRAM VS. PARIKH MOHANLAL RANCHHODDAS (19 GLR 1007). It may also be noted that this last decision overrules the earlier decision in the case of Pravinchandra (19 GLR 8) (supra).

15. The net conclusion which has been correctly drawn by the lower appellate court is that the protection of section 12(3)(b) of the said Act is available to the tenant only if the said provision is strictly complied with, and in order that the tenant should not lose the protection of this provision, he should have deposited the arrears of rent and permitted increases as and when they become due, even during the pendency of the appeal. On the facts of the case, the lower appellate court found that till the date of the appellate judgement, the tenant had not made a complete deposit of such rent and permitted increases, due and payable till the date of the appellate judgement, and that therefore he had lost the protection of section 12(3)(b) of the said Act.

15. In view of the well established principles of law laid down by the aforesaid decisions of the Supreme court, the lower appellate court cannot be faulted in drawing the necessary conclusion from the facts established on the record of the case. The lower appellate court, in my opinion, came to the correct conclusion that once it is found that the tenant has failed to make the deposit so as to make up the appropriate amount due and payable till the date of the appellate judgement, the court had no discretion except to pass a decree of eviction against the tenant. On the facts as found on the record of the case, particularly when the tenant was in arrears even on the date of the appellate judgement, the lower appellate court was justified in taking a view that it had no jurisdiction to grant him further time, so that he could then pay up the arrears due on the date of the appellate judgement, and then to come to a conclusion that the tenant was ready and willing to pay the rent within the meaning of

section 12(1) of the said Act.

16. In the premises aforesaid, the judgement and decree passed by the lower appellate court is required to be sustained and the present revision is required to be dismissed. Accordingly rule is discharged with costs. Ad interim relief vacated.

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