

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1536 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
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 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

ISMAILBHAI HUSEINBHAI BAIG

Versus

AKBARBHAI FATUBHAI CHAUHAN

Appearance:

MR MH BAREJIA for Petitioner

MR SK BUKHARI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 30/06/98

ORAL JUDGEMENT

This is tenant's revision under section 29(2) of the Bombay Rent Control Act.

The brief facts are that the respondent landlord filed suit for eviction of the tenant revisionist on the ground that the tenant did not pay the rent since 1.11.1967 inspite of service of notice of demand.

Arrears of rent, mesne profits were also claimed in addition to decree for eviction.

The defendant-revisionist contested the suit on the ground that the contractual rate of rent at Rs.60/p.m. is excessive and standard rent should be fixed. He also denied that he is in arrears of rent since 1.11.1967. He showed his readiness and willingness to pay the arrears.

The Trial Court fixed the standard rent at Rs.60/- p.m. plus municipal taxes and education cess to be paid by the tenant. Holding that the tenant did not pay the arrears of rent and also was not ready and willing to pay rent decree for eviction, arrears of rent and mesne profit was passed.

An appeal was preferred. The Appellate Court dismissed the appeal. Hence this revision.

Learned Counsel for the respondent has rightly contended that the revisionist was not ready and willing to pay the arrears and he also failed to pay the same despite service of notice of demand, hence there is no merit in this revision.

It appears from the judgment of the two Courts below that there was dispute regarding standard rent and standard rent was fixed at Rs.60/- p.m. Besides this municipal taxes and education cess was to be paid by the tenant.

On the application of the landlord the defence of the revisionist was struck off under section 11(4) of the Bombay Rent Act because he failed to deposit the amount of Rs.3300/- on 5.12.1977 as directed by the Trial Court. An appeal was preferred against the order striking off the defence. In the said Appeal No.112/78 the tenant revisionist promised that he would deposit Rs. 2340/within four weeks. On this assurance he was permitted to defend the suit still he backed out from his promise and did not deposit the amount within four weeks in the Trial Court. The suit was then decided by the Trial Court against the revisionist.

The lower Appellate Court found that since municipal taxes and education cess are not payable from month to month, hence section 12(3)(a) of the Bombay Rent Act does not apply. However, it found that the tenant revisionist could not be granted benefit under section 12(3)(b) of the Bombay Rent Act because he did not

deposit of the arrears of rent despite sufficient opportunity having been given to him and also despite his promise made in Appeal No.112/78.

The revisionist also pleaded that as against total dues amounting to Rs.11,651.98 ps. he had deposited Rs.3,654/- and was ready and willing to pay the remaining amount. It was also his case that he paid Rs.5,000/- to the plaintiff's father as deposit and also paid Rs.1500/- as rent in 1968 to the plaintiff's brother Imamuddin. However, in absence of any documentary evidence on record to prove these payments the lower Appellate Court as well as Trial Court rejected the tenant's version on payment of Rs.6500/-. Consequently under section 12(3)(b) of the Bombay Rent Act, the decree for eviction was confirmed by the Appellate Court.

Section 12(3)(b) of the Act provides that in any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court such rent and permitted increases till the suit is finally decided and pays costs of the suit as directed by the Court.

Words in any other case in this sub-section have also reference to a case where the tenant is in arrears of rent though technically the rent may not be payable monthly because the taxes are not payable monthly. Huge amount of rent was due from the revisionist since 1.11.1967. In spite of sufficient indulgence granted to him he did not deposit the same on the first date of hearing of the suit and also on subsequent dates on which indulgence was granted to him by the Appellate Court, hearing appeal against the order striking off defence. Likewise he did not pay or tender in Court subsequent rent as well as cost of the suit. On these facts, section 12(3)(b) of the Act was rightly pressed in service by the lower Appellate Court.

There is thus no error in the judgment and decree passed by the lower Appellate Court. Revision is thus without merit and is liable to fail. Revision is accordingly dismissed. Parties to bear their own costs.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt