

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2073 of 1982

with

CIVIL APPLICATION No 2912 of 1988

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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 concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DAYABHAI DESAIBHAI

Versus

FATMABIBI NURMOHMAD

Appearance:

1. Civil Revision Application No. 2073 of 1982
MR GM AMIN for the Petitioners
MR ASPI M.KAPADIA for the Respondent
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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 30/09/2002

ORAL JUDGEMENT

It may be mentioned at the outset that the learned advocate Mr.G.M.Amin who has entered appearance on behalf of the petitioners is not present before the Court. Learned advocate Mr.Bharat M.Prajapati has appeared on behalf of Mr.Amin. Mr.Prajapati has submitted that Mr.Amin has retired from this matter. He has also shown a letter sent by Mr.Amin to the petitioner no.1/3.

Be it noted that Mr.Amin has not sought permission of the Court to retire from the matter. I am of the opinion that no advocate can walk out of the matter without seeking permission of the Court. Moreover, no advocate should be permitted to retire when the matter comes up for hearing after some 20 years. I, therefore, proceed with the matter.

This Revision Application preferred under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Act') arises from the judgment and order dated 21st September, 1982 passed by the learned Joint District Judge, Vadodara in Civil Appeal No.298/1980. The petitioner before this Court is the appellant - defendant.

The respondent herein is the owner of the suit shop situated at Bakrawadi, Vadodara. The suit shop was leased to the defendant for a monthly rent of Rs.25=00. The defendant was in arrears of rent since 7th October, 1970. The respondent, on 8th February, 1975, gave a notice demanding the arrears of rent for the period from 7th October, 1970 to 6th April, 1974 (i.e. for 54 months) and terminating the tenancy of the petitioner. The said notice was not responded to by the petitioner. The respondent instituted Rent Suit No.2858/1975 in the Court of Small Causes, Vadodara. The plaintiff prayed, inter alia, for recovery of possession of the suit shop and the arrears of rent.

The suit was contested by the defendant by filing written statement (Ex.35). The defendant claimed that the agreed rent was excessive and that the standard rent of the suit shop was Rs.10=00 per month. The defendant also claimed that over and above the agreed rent, the defendant was liable to pay municipal taxes and education cess as well. The learned trial Judge was pleased to decree the suit under the judgment and order dated 30th June, 1979. The learned trial Judge disbelieved that in addition to the agreed rent the defendant was liable to pay municipal taxes and education cess. The learned Judge fixed the standard rent of the suit shop to be

Rs.25=00 per month. The learned Judge held that on the date of the suit notice the defendant was in arrears of rent for six months and more; that the rent was payable by the month; that defendant neglected to pay the arrears of rent within one month from the date of the receipt of the suit notice; and that the defendant did not raise the dispute as to the standard rent within one month from the date of the receipt of the suit notice. He, therefore, passed decree for possession as envisaged under Section 12(3)(a) of the Rent Act.

Feeling aggrieved, the defendant preferred Civil Appeal No.298/1980 in the District Court, Vadodara. The learned Joint District Judge, Vadodara, under the impugned judgment and order dated 21st September, 1982, dismissed the said appeal. Feeling aggrieved, the defendant has preferred the present Revision Application.

The question arises is, whether the defendant was liable to be evicted as envisaged under Section 12(3)(a) of the Rent Act or was the defendant entitled to protection under Section 12(3)(b) of the Rent Act. The defendant tried to avail of the protection conferred under Section 12(3)(b) of the Rent Act by pleading that in addition to the agreed rent the defendant had to pay municipal taxes and the education cess (such taxes and the education cess being not payable by month, part of the rent was not payable by month) and, by raising dispute as to the standard rent in the written statement.

As far as the municipal taxes and education cess are concerned, both the Courts below have recorded finding against the defendant i.e. the defendant has failed to prove that he was liable to pay such taxes and the cess.

As far as the dispute as to the standard rent is concerned, it is well settled that such dispute should be existing on the date of the suit notice or shall be raised within one month from the date of the receipt of the suit notice. Indisputably, in the present case, such dispute was not existing on the date of the suit notice, nor was it raised until the date the defendant filed written statement on 2nd February, 1979 i.e. years after the expiry of the period of one month from the date of the receipt of the suit notice. Raising such dispute at a belated stage is of no consequence and no protection under Section 12(3)(b) of the Rent Act can be availed of in such cases.

In my view, both the Courts below have rightly

held the case to be governed by Section 12(3)(a) of the Rent Act. It is also rightly held that all the conditions mentioned in Section 12(3)(a) of the Rent Act did exist. The decree for eviction should, therefore, necessarily follow.

No interference is warranted. The Revision Application is dismissed with costs. Rule is discharged. Interim stay is vacated.

Civil Application No.2912/1988 is rejected as not pressed.

(Ms. R.M. Doshit, J.)

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