

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CIVIL REVISION APPLICATION No. 1362 of 1995****For Approval and Signature:****HON'BLE MISS JUSTICE R.M.DOSHIT**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 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 ?
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**SHANTILAL CHHOTALAL SHAH - Petitioner(s)****Versus****MAHENDRA VARDHMAN - Respondent(s)****Appearance :**

MR BD KARIA for Petitioner No(s).: 1.

MS SONALI R DESAI for Respondent No(s).: 1.

**CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT****Date : 28/07/2005****ORAL JUDGMENT**

Feeling aggrieved by the judgment and order dated 16<sup>th</sup> November, 1995 passed by the learned Assistant Judge, Bhavnagar in Regular Civil Appeal No.37/1995, the appellant (plaintiff in Regular Civil Suit No.53/1990) has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, "**the Rent Act**").

The petitioner-plaintiff is the karta of Hindu Undivided Family (HUF) of one Shantilal Chhotalal Shah. The said HUF is the owner of certain shops situated at Botad, District Bhavnagar. Four of the said shops were leased to the predecessor of the respondent-defendant for a monthly rent of Rs.25=00. One more shop also was leased to the predecessor of the defendant on monthly rent of Rs.2=50. The rent was payable by Hindu calendar month. The plaintiff was, thus, entitled to receive monthly rent of Rs.27=50 for the said five shops (hereinafter referred to as, **"the suit shops"**). The defendant had paid the rent up to the Samvat year 2042 (corresponding to the year 1986 A.D.). As the defendant was in arrears of rent since Samvat year 2043 the plaintiff gave notice dated 9<sup>th</sup> December, 1989 (Exh.59) to the defendant and demanded a sum of Rs.955=00 being the amount of rent due for the Samvat years 2043, 2044 and 2045. Since then, the plaintiff gave notice of termination of tenancy on 15<sup>th</sup> February, 1990 (Exh.62) and claimed recovery of possession of the suit shops. As the defendant failed to handover possession of the suit shops the plaintiff instituted Regular Civil Suit No.53/1990 for recovery of possession of the suit shops and for mesne profits from

23<sup>rd</sup> June, 1990 till the date of the recovery of possession of the suit shops. The suit was contested by the defendant vide written statement Exh.14. The defendant denied that he was a tenant in default. That in answer to the notice dated 15<sup>th</sup> February, 1990 he had paid a sum of Rs.1,055=00, the amount of rent then due, by two money orders dated 22<sup>nd</sup> February, 1990. The said amount was received by the advocate of the plaintiff. The defendant also raised dispute as to the standard rent of the suit shops. According to the defendant the annual rent of Rs.300=00 of four of the suit shops was excessive and the standard rent of the said shops was Rs.240=00. The learned Civil Judge, by judgment and order dated 31<sup>st</sup> March, 1994, allowed the suit and passed decree for possession in favour of the plaintiff. The learned Civil Judge was of the opinion that the matter was covered by Section 12(3)(a) of the Rent Act; and that the defendant had failed to pay the rent demanded under notice dated 9<sup>th</sup> December, 1989. The decree for eviction was, therefore, inevitable.

Feeling aggrieved, the defendant preferred Regular Civil Appeal No.37/1994 in the Court of learned District Judge, Bhavnagar. The learned Assistant Judge allowed the

Appeal and set-aside the decree for eviction passed against the defendant by the impugned judgment and order dated 16<sup>th</sup> November, 1994. The lower appellate Court held that the defendant had paid the amount of rent due within one month from the date of the receipt of the legal notice dated 15<sup>th</sup> February, 1990 (Exh.62). No decree for eviction, therefore, could have been passed against the defendant under Section 12(3)(a) of the Rent Act. The lower appellate Court held that the agreed rent of the suit shops was the standard rent. Therefore, the present Revision Application.

Mr.Karia has submitted that it is not in dispute that the defendant was the tenant in the suit shops for more than 60 years; that the agreed rent of the suit shops was Rs.27=50; that the rent was payable by month; and that the defendant was in arrears of rent since Samvat year 2043 as alleged. He has submitted that it is also not in dispute that on receipt of the legal notice dated 15<sup>th</sup> February, 1990 (Exh.62) the defendant did tender a sum of Rs.1,055=00, the amount of rent then due. He has, however, submitted that the defendant was under obligation to pay the amount of rent due within one month from the date of the receipt of the notice of demand

given under Section 12(2) of the Rent Act. In the present case, such notice of demand was given by the plaintiff on 9<sup>th</sup> December, 1989 (Exh.59) and was sent to the defendant on 26<sup>th</sup> December, 1989. Under the said notice the plaintiff had demanded the rent for the Samvat years 2043, 2044 and 2045. In answer to the said notice the defendant had paid the sum of Rs.955=00 on 3<sup>rd</sup> February, 1990 i.e. after expiry of the period of one month from the date of the receipt of the said notice. As the defendant failed to pay the amount of rent due within the statutory period of one month from the date of the receipt of the notice of demand, the plaintiff did not accept the said amount. The plaintiff gave notice of termination of tenancy on 15<sup>th</sup> February, 1990 (Exh.62) as envisaged by Section 106 of the Transfer of Property Act, 1882. The remittance of amount of rent due within one month of the said notice Exh.62 would not take the matter out of the purview of Section 12(3)(a) of the Rent Act. He has submitted that in case the defendant had failed to pay the rent within one month from the date of the notice Exh.62, in absence of the notice Exh.59, a suit for eviction against the defendant would not have been maintainable. He has submitted that the notice Exh.62 was the notice of termination of tenancy and was not a notice

of demand as envisaged by Section 12(2) of the Rent Act. In absence of demand made in the notice Exh.62 no suit for eviction could have been based on the said notice. In the submission of Mr.Karia the lower appellate Court has erred in holding that the notice Exh.62 was the notice of demand as envisaged by Section 12(2) of the Rent Act and that the defendant having paid the amount of rent due within one month from the date of the receipt of the notice Exh.62 no decree for eviction could be passed against the defendant. In support thereof, he has relied upon the judgments in the matters of **V.Dhanapal Chettiar v/s. Yesodai Ammal** [AIR 1979 SC 1745]; of **Pradesh Kumar Bajpaie v/s. Benod Behari Sarkar (dead) by L.Rs.** [AIR 1980 SC 1214]; of **Labhabhai Vithaldas v/s. Laxmidas Vithaldas** [4 GLR 567]; of **Vasumati Gaurishanker Bhatt v/s. Naviram Manchharam Vora and others** [4 GLR 969]; of **Vora Abbasbhai Alimahomed v/s. Haji Gulamnabi Haji Safibhai** [5 GLR 55]; of **Sarabhai Jeshingbhai Chokshy v/s. Babulal @ Chandulal Lallubhai Darji** [13 GLR 870]; of **Bapulal Kalidas, (Since deceased by his heirs) and others v/s. Bai Kashiben Wd/o Chimanlal Chhaganlal** [18 GLR 77]; of **Khimji Bhimji Majithia v/s. Taraben Lalji Soni** [23(2) GLR 114]; of **Rambhai Jhenidas Panchal v/s. Lalitaben Wd/o Ramanlal Panchal** [23(2) GLR 545] and of **Shah Ashokkumar**

**Manilal v/s. Gandhi Vrajlal Gabhrulal** [36(1) GLR 767].

The matter at issue does not require a great deliberation. It is by now well-settled by the above referred judgments and many a more judgment that in order to get a decree for eviction against a tenant under any State Rent Control Act it is not necessary to give notice under Section 106 of the Transfer of Property Act. Such notice is unnecessary and a mere surplusage. What is necessary is to make out a case for eviction under the Rent Act. The notice envisaged by Section 12(2) of the Rent Act should be clear and unambiguous and shall raise a precise demand of the amount of rent due or in a manner by which the amount demanded is definitely ascertainable. In a case which is covered by Section 12(3)(a) of the Rent Act if the tenant fails to pay the amount of rent demanded within one month from the date of the receipt of the notice of demand given under Section 12(2) of the Rent Act a decree for eviction shall necessarily follow.

In the present case, under letter Exh.59 the plaintiff informed the defendant that he was in arrears of rent since Samvat year 2043 and that a sum of Rs.955=00 was then due from him. He also called upon the

defendant to remit the said amount to the plaintiff at Mumbai either in cash or by money order as was the past practice. The letter (Exh.59) thus answered the requirement of Section 12(2) of the Rent Act i.e. the plaintiff had, under the said letter, informed the defendant that he was a tenant in default; that he was in arrears of rent since Samvat year 2043 and that a total sum of Rs.955=00 was then due. The plaintiff had also called upon the defendant to remit the said amount. The notice (Exh.62) was given through a lawyer. In the said notice the concerned lawyer had referred to the history of tenancy i.e. the description of the suit shops, the amount of rent; period of tenancy, etc. The advocate also referred to the amount of rent then due and the fact that the defendant did not pay the amount of arrears of rent in spite of the letters dated 14<sup>th</sup> September, 1988 and the letter Exh.59. The defendant was also informed that in answer to the letter Exh.59 received by him on 28<sup>th</sup> December, 1989 the defendant had failed to pay the arrears of rent demanded and that he was liable to handover the vacant possession of the suit shops. It was further stated that it was not mandatory to give the notice of termination of tenancy. The said notice of termination of tenancy was given by abundant caution. By



the said notice the tenancy was terminated on expiry of the tenancy month after 15 days from the date of the receipt of the said notice. Thus, it is apparent that the notice Exh.62 was the one for termination of tenancy as envisaged by Section 106 of the Transfer of Property Act. The said notice did not contain a word demanding remittance of the amount of arrears of rent. By no stretch of imagination the notice Exh.62 answered the requirement of a notice of demand as envisaged by Section 12(2) of the Rent Act. In my view, therefore, the notice Exh.62 could not be said to be a notice of demand as envisaged by Section 12(2) of the Rent Act. The matter can be examined from another angle. Suppose there were no notice in the nature of letter Exh.59 and the defendant had not paid the amount of rent due after the receipt of the notice Exh.62, would a suit for eviction be maintainable. The answer should be in the negative. As the notice Exh.62 did not contain a demand for the amount of arrears of rent the suit for eviction would not have been maintainable.

In view of the above discussion, I am of the opinion that it was the letter Exh.59 which was the notice of demand as envisaged by Section 12(2) of the Rent Act and

the defendant was under an obligation to pay the amount demanded within one month from the date of the receipt of the said letter. It is proved that the said letter was received by the defendant on 28<sup>th</sup> December, 1989. The defendant was, therefore, required to pay the amount of rent demanded within one month i.e. by 28<sup>th</sup> January, 1990. Admittedly, the defendant did not pay the rent within that period. What emerges from the above discussion is that the plaintiff was the owner of the suit shops; that the defendant was the tenant in the suit shops; that the rent was payable by month; that the tenant was in arrears of rent for more than six months; that there was no dispute as to the standard rent of the suit shops; that the tenant did not pay the amount of rent demanded within one month from the date of the receipt of the notice of demand nor did the tenant raise dispute as to the standard rent of the suit shops within one month from the date of the receipt of the notice of demand. The decree for eviction was, therefore, inevitable.

For the aforesaid reasons the Revision Application is allowed. The impugned judgment and order dated 16<sup>th</sup> November, 1994 passed by the learned Assistant Judge in Regular Civil Appeal No.37/1994 is quashed and set-aside.

The decree for eviction passed by the learned Civil Judge (J.D.), Botad in Regular Civil Suit No.53/1990 is restored. Rule is made absolute. The defendant shall bear the cost throughout.

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

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