

Shah Dhansukhlal Chhaganlal

Vs

Dalichand Virchand Shroff and Others

Civil Appeal No. 455 of 1965

(J. C. Shah, R. S. Bachawat, G. K. Mitter JJ)

01.03.1968

JUDGMENT

MITTER, J.-

This is an appeal by special leave from a judgment of the High Court of Gujarat passed in a Civil Revision Application arising out of a suit filed by the plaintiff-respondent against the defendant-appellant to recover possession of certain premises situate in Surat.

The facts are as follows. The appellant became a tenant of the respondent under a rent note executed on February 27, 1947 whereby rent was fixed at Rs. 40 per month and the tenancy was to be for a period of one year from 22nd February, 1947. After the expiry of the said period, the appellant continued as a monthly tenant on the same terms and conditions as were to be found in the rent note. He fell into arrears of payment of rent and the respondent sued him for eviction some time in 1951. The suit was eventually compromised by a petition put in court bearing date September 16, 1952. Under the terms of the compromise, the defendant continued as a tenant from September 1, 1952 on the terms and conditions of the rent note dated February 27, 1947 : the original conditions in respect of rent also continued excepting that the rate was lowered from Rs. 40/- - to quote the words of the compromise - to "standard rent of Rs. 27" and "in the matter of taxes and interest also the defendant was to act in accordance with the conditions of the aforesaid rent note." Paragraph 2 of the compromise petition contained an account of payments made by the defendant the final result thereof being that it was agreed between the parties that the defendant had paid Rs. 104-5-3 "which amount was to be reimbursed by the plaintiff of the defendant when accounting the future payment of rent." It should be noted here that according to the rent note of 1947 the tenant had agreed to pay the monthly rent of Rs. 40 together with interest at Rs. 0-12-0 per cent per annum in respect of any balance due for rent. Even after the compromise, the defendant fell in arrears again. The only payments made thereafter up to the institution of the second suit out of which the present proceedings have arisen were a sum of Rs. 250 on July 19, 1954 and Rs. 200 on March 17, 1955. The defendant did not make any payment to the plaintiff in respect of the permitted increases under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 from the 1st of April, 1954; neither did he pay the taxes agreed upon. The plaintiff gave a notice to the defendant on April 18, 1955 demanding the arrears of rent and permitted increases in terms of the said Act and also terminating the tenancy of the defendant with effect from May 31, 1955 in terms of s. 106 of the Transfer of Property Act. The notice was received by the defendant on April 21, 1955. No reply was sent thereto nor was any payment made to the plaintiff. The suit for ejection was filed on March 15, 1956 the ground thereof as laid in the plaint being that the defendant was in arrears of payment of rent and permitted increases and as such not entitled to the protection of the Act. In paragraph 6 of the plaint the dues under various heads were specified showing the arrears of rent, increases

permitted thereon, interest in terms of the rent note and taxes for three years. It was pleaded by the defedent in the written statement that rent at Rs. 27 had been fixed by the court without going into the merits of the case and that standard rent or reasonable rent of the property in suit had to be fixed first and a preliminary issue in that respect should be framed. The defendant did not admit the claim to the the arrears as laid in paragraph 6 of the plaint.

He also pleaded that the notice of ejectment was not a valid one as the tenancy was to be reckoned in terms of the Gujarati calendar and not the Gregorian calender.

The date fixed for settlement of issues was September 3, 1956 which can be taken to be the date of the first hearing of the suit for the purposes of the Act. On that day the defendant deposited in court a sum of Rs. 1,000. Thereafter the defendant made a deposit of a sum of Rs. 150 on February 25, 1957. The suit was decreed by the trial Judge on March 25, 1957. The trial Judge after considering the evidence on record determined the standard rent of the premises at Rs. 27, exclusive of the permitted increases and water tax and sanitary tax, payable by the defendant to the plaintiff. Holding that the defendant had not complied with section 12(3)(b) of the Act he passed a decree for eviction. The defendant went in appeal to the District Judge, Surat. He raised no contention even at the hearing of the appeal either in regard to the standard rent of the premises or in regard to interest on arrears of rent or municipal taxes or permitted increases. The finding of the trial Judge that the standard rent of the premises exclusive of permitted increases and water tax and sanitary tax was Rs. 27/- per month was not challenged by the defendant. Nor was any question raised as to the finding that the defendant was liable to pay the plaintiff a sum of Rs. 123-4-0 as and by way of interest on arrears of rent, a sum of Rs. 81 as and by way of water tax and sanitary tax for a period of three years prior to the date of the suit and a sum of Rs. 2-1-9 per month as and by way of permitted increases from April 1, 1954. The point regarding the validity of the notice of ejectment was however raised in the appeal. According to the judgment of the High Court "the only contention urged before the learned Assistant Judge was, whether the defendant had or had not complied with the requirements of section 12(3)(b) of the Rent Act." The Assistant Judge concluded that there had been no compliance with that section and upheld the decree for eviction.

In revision three contentions were raised before the High Court, namely, (1) as to the validity of the notice of ejectment; (2) whether s. 12(3)(a) or 12(3)(b) of the Act applied; and (3) whether the defendant was entitled to protection under s. 12(1) of the Act. The High Court held that it was not open to the tenant to raise the question of the validity of the notice in a revision application. Moreover, there was no substance in it as the compromise petition expressly recorded that the tenancy in terms of it should commence on September 1, 1952. With regard to the section question the High Court held that "it was common ground between the parties before the Assistant Judge that the case of the defendant fell within section 12(3)(b) of the Rent Act." The learned Judge of the High Court noted :

- (a) The trial Judge turned down the applicability of s. 12(3)(a) of the Act holding that the defendant had disputed the municipal taxes and permitted increases;
- (b) The conditions under s. 12(3)(b) of the Act were not fulfilled;
- (c) No contention about the applicability of 12(3)(a) was raised before the Assistant Judge in appeal and he therefore did not go into the question at all; and
- (d) The conditions necessary for the applicability of s. 12(3)(a) were not present, as

besides the amount of Rs. 27 mentioned in the compromise petition, the tenant had to pay other sums not due from him every month.

The High Court further found that after the first date of hearing of the suit on September 3, 1956 rent of the premises which fell due on 1st October 1956, 1st November 1956, 1st December 1956, 1st January 1957, 1st February 1957 and 1st March, 1957 remained unpaid on March 25, 1957 when the suit was disposed of. As the defendant did not pay or deposit in court regularly the amount of standard rent which became due on the aforesaid dates barring the 1st of March 1957 (taking into account the deposit of Rs. 150 on February 25, 1957) there was default on the part of the defendant attracting the operation of s. 12(3)(b) of the Act.

The High Court turned down the contention based on s. 12(1) of the Act.

At the hearing of the appeal before us, learned counsel for the appellant raised two points, namely:

- (1) The provisions of s. 12(1) of the Act were applicable throughout the hearing of the suit and down to the date of the final hearing. If at that stage it was found that the defendant had paid up all arrears due from him he could not be ejected.
- (2) Even applying s. 12(3)(b) there was no default on the part of the defendant which would render him liable to eviction.

In order to appreciate the first contention it is necessary to set out section 12 of the Act as it stood at the relevant time :

"12(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3)(a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the Court may pass a decree for eviction in any such suit for recovery of possession.

(b) In any other case, no decree for eviction shall be passed in any 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 regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the court.

(4) Pending the disposal of any such suit, the Court may out of any amount paid or tendered by the tenant pay to the landlord such amount towards payment of rent or permitted increases due to him as the Court thinks fit.

Explanation. - In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the Court under sub-section (3) of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court."

Learned counsel drew our attention to a judgment of this Court in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha* [[1962] 2 S.C.R. 159.]. There the landlord had filed a suit for possession of the premises on April 25, 1957, the period of tenancy fixed under the rent note having expired on March 14, 1957. Under s. 6 of the Act a notification was issued applying Part II of the Act to the area where the property was situate. The appellants claimed protection of s. 12 of the Act and the main question which engaged the attention of this Court was, whether by virtue of the first proviso to s. 50 of the Act, all the provisions in Part II including s. 12 were made expressly applicable to all suits; and secondly, whether by virtue of s. 12(1) of the Act the suit was rendered incompetent. This Court turned down the contention of the respondent that the operation of s. 12(1) was limited to suits filed after it came into force in a particular area and observed that under s. 12(1) the landlord was not to be entitled to recover possession and the point of time when the sub-section would operate was when the decree for recovery of possession would have to be passed.

It appears to us that there is no substance in the contention put forward on behalf of the appellant. Section 12(1) must be read with the Explanation and so read it means that a tenant can only be considered "to be ready and willing to pay" if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the court under sub-s. (3) of section 11 and thereafter pays or tenders the amount of rent or permitted increases specified by the court. We have already noted that the tenant made no payment within the period of one month of the notice of ejection and although in his written statement he raised a dispute about the standard rent he made no application in terms of s. 11(3) of the Act. The readiness and willingness to pay has therefore to be judged in the light of the facts of the case. Where as here a suit is filed on the ground that the tenant was in arrears for a period of more than 6 months and although raising a dispute as to the standard rent or permitted increases recoverable under the Act, the tenant makes no application in terms of s. 11(3) he cannot claim the protection of s. 12(1) by merely offering to pay or even paying all arrears due from him when the court is about to pass a decree against him. In *Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai* [[1964] 5 S.C.R. 157.] it was pointed out that s. 12(1) of the Act applied to a tenant who continued to remain in occupation even after the expiry of the contractual tenancy so long as he paid or was ready and willing to pay the amount of the standard rent and permitted increases. The protection was howsoever available to a tenant subject to the provisions of s. 13 and to the limitations contained in s. 12(2) and s. 12(3)(a) of the Act.

In *Mrs. Manorama Masurekar v. Mrs. Dhanlaxmi G. Shah and another* [[1967] 1 S.C.R. 135] rent was in arrears for a period of more than six months and the tenant neglected to make payment of the same within one month of the notice under s. 12(2). There the rent was payable by the month and there was no dispute regarding the amount of the rent. It was held that if the conditions of sub-s.

(3)(a) of s. 12 were satisfied the tenant could not claim any protection from eviction by tendering the arrears of rent after the expiry of one month from the service of notice under sub-s. (2). It was observed :

"It is immaterial whether the tender was made before or after the institution of the suit. In a case falling within sub-s. (3)(a), the tenant must be dealt with under the special provisions of sub-s. (3)(a), and he cannot claim any protection from eviction under the general provisions of sub-s. (1)."

As already noted, if sub-s. (3)(a) is not attracted, the tenant, if he is in arrears, cannot sit quiet and offer to pay all the amount due from him at the time of the hearing of the suit so as to get the protection of s. 12(1). To be within the protection of sub-s. (1) where he raises a dispute about the standard rent payable, he must make an application to the court under sub-s. (3) of s. 11 and thereafter pay or tender the amount of rent and permitted increases, if any, specified in the order made by the Court. If he does not approach the court under s. 11(3), it is not open to him thereafter to claim the protection of s. 12(1).

The case clearly does not come within s. 12(3)(b). To be within the protection of that provision, the tenant must not only pay all the arrears due from him on the first day of hearing of the suit, but he must thereafter continue to pay or tender in court regularly the rent and the permitted increases till the suit is finally decided. Before the date of the suit, the appellant was entitled to a credit of Rs. 104-5-3; the total payments up to the date of the first hearing including the sum of Rs. 1,000 come to Rs. 1,554-5-3. The amounts due from him up to that date were :

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(a) rent at the rate of Rs. 27 per month for 48 months. Rs. 1296-0-0

(b) permitted increases from 1-4-54 to 1-9-56. 61-3-9

(c) taxes. 81-0-0

(d) Interest on arrears at 9% p.a. 123-3-0

making a total of

Rs. 1561-6-9

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Moreover, there was failure on the part of the appellant to pay or tender in court the amounts which fell due from the 1st of October 1956 to the 1st of March, 1957. Thus, leaving out of consideration the question of costs awarded against him under the decree, the appellant cannot get the protection under s. 12(3)(b) of the Act. A faint attempt was made to raise the point about the invalidity of the notice of ejection on the plea that the same had to comply with s. 12(2) of the Act. This is clearly fallacious as the said section merely lays down the manner in which a notice of demand of standard rent and permitted increases has to be made.

The contentions raised on behalf of the appellants are therefore without any merits and the appeal is dismissed with costs.

# Appeal dismissed.##

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