Mistry Premjibhai Vithaldas

Vs

Ganeshbhai Keshavji

Civil Appeal No. 217 of 1976

(CJI M.H. Beg, A.C. Gupta, P.S. Kailasam JJ)

14.04.1977

JUDGMENT

BEG, C.J. -

1. This is a landlord's appeal by special leave against the judgment and order of the High Court of Gujarat allowing a revision application of the tenant under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Act').

2. It appears from the statement of facts in the judgment of the High Court that there was no dispute that the monthly rent of the premises was Rs. 30 and that the tenant had also to pay the charges for electricity consumed by him. It was, however, at first disputed whether the tenant had to pay house tax and the education cess also. The landlord had brought at suit for arrears of rent amounting to Rs. 990 from March 6, 1967 to December 5, 1969 and also to recover a sum of Rs. 27.49 paid as house tax and another sum of Rs. 210.18 paid by the landlord for the electricity consumed by the tenant. On January 5, 1970, the landlord had served a notice upon the tenant terminating the tenancy on the ground that dues amounting to Rs. 1227.67 had not been paid. The tenant filed an application for fixation of the standard rent within a month of the service of the above-mentioned notice. He also filed an application for fixation of interim rent on the ground that he, being a poor man, was unable to pay rent and the total amount due at once. On these applications, the interim rent was fixed at Rs. 25 and the applicant was directed "to deposit arrears of rent and future rent at this rate on or before 10th of the next month".

3. Although, the trial Court held the notice terminating the tenancy to be legally valid and the agreed rate of rent to be Rs. 30 p.m., so that the plaintiff was entitled to the decree for arrears of rent from March 6, 1967 to December 5, 1969 and also the amount of Rs. 27.49 as house tax and Rs. 210.18 towards electricity charges, making up the total of Rs. 1227.67, yet, it held that as the defendant-tenant was "ready and willing". To pay the rent to the plaintiff, hence, the suit for ejectment could not be decreed. The appellate Court, on the other hand, held that the unwillingness of the defendant-respondent to pay the rent, which was apparent from the patent facts and admissions and conduct of defendant-respondent, disentitled him for the protection sought. It, therefore, decreed the suit for ejectment.

4. Learned Counsel for the appellant has contended that the High Court had proceeded upon the wrong assumption that the standard rent was fixed in the lower appellate Court for the first time when the appeal was decided. It is very difficult to find the basis for this opinion of the High Court. The application for fixing the standard rent, initiating a separate proceedings, was dismissed, as is admitted on behalf of the tenant-respondent, for non-prosecution. Hence, no standard rent could be

fixed under Section 11. Section 5 sub-section (10) defines standard rent as follows :

5. Definitions. - In this Act unless there is anything repugnant to the subject or context -

> (10) "standard rent" in relation to any premises means -
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> (a) Where the standard rent is fixed by the Court and the Controller respectively under the Bombay Rent Restriction Act, 1939 (Bom. XVI of 1939), or the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1944 (Bombay VII of 1944), such standard rent; or
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> (b) where the standard rent is not so fixed subject to the provisions of Section 11, -
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> (i) the rent at which the premises were let on the first day of September 1940, or
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> (ii) where they were not let on the first day of September 1940, the rent at which they were first let, before that day, or
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> (iii) where they were first let after the first day of September 1940, the rent at which they were first let, or
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> (iv) in any of the case specified in Section 11, the rent fixed by the Court.

5. Both the sides before us are agreed that no question of a standard rent actually and finally fixed under Section 11 of the Act arose in the circumstances of this case. Section 11 of the Act reads as follows :

> 11. Court may fix standard rent and permit increases in certain cases. - (1) In any of the following cases, the Court may, upon an application made to it for that purpose, or in any suit or proceeding, fix the standard rent at such amount as, having regard to the provisions of this Act and the circumstances of the case. The Court deems just -
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> (a) where any premises are first let after the specified date and the rent at which they are so let is in the opinion of the Court excessive; or
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> (b) where the Court is satisfied that there is no sufficient evidence to ascertain the rent at which the premises were let in any one of the cases mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (10) of Section 5; or
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> (c) where by reason of the premises having been let at one time as a whole or in parts and at another time in parts or as a whole, or for any other reasons any difficulty arises in giving effect to this part; or
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> (d) where any premises have been or are let rent-free or at a nominal rent or for some consideration in addition to rent; or
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> (e) where there is any dispute between the landlord and the tenant regarding the amount of standard rent.
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> (2) If there is any dispute between the landlord and the tenant regarding the amount

of permitted increases the Court may determine such amount.

(3) If an application for fixing the standard rent or for determining the permitted increases is made by a tenant who has received a notice from his landlord under sub-section (2) of Section 12 the Court shall make an order directing the tenant to deposit in Court forthwith and thereafter monthly or periodically, such amount of rent or permitted increases as the Court considers to be reasonably due to the landlord pending the final decision of the application, and a copy of such order shall be served upon the landlord. Out of the amount so deposited the Court may make order for the payment of such reasonable sum to the landlord towards payment of rent increases due to him, as it thinks fit. If the tenant fails to deposit such amount, his application shall be dismissed.

(4) Where at any stage a suit for recovery of rent whether with or without a claim for possession of the premises, the Court is satisfied that the tenant is withholding the rent on the ground that the rent is excessive and standard rent should be fixed the Court shall, and in any other case if it appears to the Court that it is just and proper to make such an order the Court may, make an order directing the tenant to deposit in Court forthwith such amount of rent as the Court considers to be reasonably due to the landlord. The Court may further make an order directing the tenant to deposit in Court, monthly or periodically, such amount as it considers proper as interim standard rent during the pendency of the suit. The Court may also direct that if the tenant fails to comply with any such order within such time as may be allowed by it he shall not be entitled to appear in or defendant the suit except with leave of the Court, which leave may be granted subject to such terms and conditions as the Court may specify.

(5) No appeal shall lie from any order of the Court made under sub-section (3) or (4).

(6) An application under this section may be made jointly by all or any of the tenants interested in respect of the premises situated in the same building.

A "fixation" of standard rent can only take place by means of the specified procedure provided for it. There is nothing in the case before us which could be "deemed" a fixation under the Act. Apparently, the High Court thought that the dismissal of an application for fixation of rent meant an automatic "fixation" of it at Rs. 30 p.m.

6. In the face of detailed findings given by the appellate Court, which the High Court could not upset without a good enough legal ground for doing so and did not actually set aside, it is difficult to see how the tenant could be said to be "ready and willing" to pay the rent so as to avoid passing of a decree for eviction against him. On behalf of the landlord-appellant, it is submitted that, in an affidavit dated September 18, 1975, which the respondent himself filed in the High Court, it is admitted that the tenant had not been paying the rent regularly as contemplated by the order of February 3, 1970. Under that order the tenant had to deposit arrears of rent. In addition, he had to deposit future rent at the rate fixed for the "interim rent". The part of the order for future rent could not refer to arrears of rent. However, if the tenant was not quite clear about the meaning of the order, he could have applied to the Court to clarify the order and could have gone on depositing rent at Rs. 25 p.m. after depositing "arrears of rent" so clarified. Learned Counsel for the respondent could only contend that the deposit of future rent on or before the 10th of the next month indicated

that the deposit could be made at any time before the rent was due and could cover subsequent accruals of rent so that it could cover several months if amount deposited was enough for that.

7. Learned Counsel for the appellant points out that the interpretation put forward on behalf of the respondent-tenant is not only an unreasonable one but would not, even if accepted, justify defaults admitted by the respondent-tenant even if an advance deposit could wipe off the effects of some defaults. The High Court had itself not only not set aside the finding relating to the defaults found by the appellate Court, but, after assuming, quite erroneously, that the standard rent was fixed for the first time in the appellate Court, it had condoned all defaults in payment of rent right up to the time of the making of the application before the High Court on September 18, 1975 and the acceptance of an fresh deposit in the High Court itself to cover the arrears. The question is whether the statutory powers of the Court laid down in Section 12 of the Act could be used in this manner.

8. Section 12 of the Act reads as follows :

> 12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases. -
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> (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.
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> (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 increase 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.
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> (3) (a) Where 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.
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> (b) 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 continued 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.
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> (4) Pending the disposal of any such suit, the Court may out of any amount paid to tendered by the tenant pay to the landlord such amount towards payment or rent or permitted increases due to him as the Court thinks fit.
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> 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.

9. In Vora Abbarsbhai Alimahomed v. Haji Gulamnabi Haji Safibhai (1964) 5 SCR 157 : AIR 1964 SC 1341), it was held that, according to Section 12(3)(a) of the Act, the Court was bound to pass the decree for eviction if statutory terms are not complied with. The answer given on behalf of the respondent-tenant was that the case before us is governed by the provisions of Section 12(3)(b) of the Act. But, this section applies only to cases where either on the date of first hearing of the suit or on such other dates as the Court may fix for the purpose, the tenant pays or tenders in Court the standard rent with permitted increases. It was laid down in Abbasbhai's case that the explanation to Section 12 introduces only a rule of evidence.

10. It appears to us that where a tenant does not prosecute an application for fixation of standard rent and deliberately permits it to be dismissed for non-prosecution it could be reasonably inferred that it was not a bona fide application at all. In the case before us, it being admitted that the agreed rent was Rs. 30 p.m., that would be the "standard rent" as defined by Section 5(10) of the Act. That was the rate at which rent was payable. Non-prosecution of the application for standard rent indicated that there was no real dispute regarding the standard rent or permitted increases. In such cases, if the provisions of Section 12(3)(a) are not shown to be complied with, the Court is bound to pass a decree for eviction.

11. The statutory protection can only be given in accordance with the terms on which it is permissible. The Act certainly does not confer a power upon the Court to excuse a violation of the provisions of the Act by making wrong assumptions or on compassionate grounds. The Court should not, therefore, exercise what would be, in effect, a power to condone infringement of the provisions of the Act.

12. In Shah Dhansukhlal Chhaganlal v. Dalichand Virchand Shroff (1968) 3 SCR 346 : AIR 1968 SC 1109 : (1968) 2 SCJ 687) this Court explained the provisions of Section 12 of the Act and laid down that a failure to deposit the rent required by the Act will take the case out of the provisions of Section 12(3)(b). On facts found, there was such a failure to deposit in the case before us. The High Court appears to have condoned the defaults by accepting the version of the defendant-respondent that his defaults was due to his difficulty in finding money to pay up the rent. Hence, on the admission of the defendant-respondent also, it seems a clear case of defaults which deprives the defendant-respondent of the protection of Section 12 of the Act.

13. Learned Counsel for the plaintiff-appellant has, very rightly, pointed out that the High Court had not set aside the findings of the fact arrived at by the appellate Court which took the case of the defendant-respondent clearly outside the protection conferred by the Act. The High Court seems to have accepted the erroneous view that standard rent was actually fixed by the appellate Court for the first time whereas what had happened was that the application for fixation of standard rent had been dismissed for non-prosecution. This was not "fixation" of standard rent, as already pointed out. Hence, no question of giving time to pay up arrears after a "fixation" of standard rent arose here. We think that the case is clearly outside the protection conferred upon tenants under the Act.

14. The readiness and the willingness of the tenant to pay could be found only if he had complied with the provisions of the Act. The Act does not cover the case of a person who is unable to pay owing to want of means but is otherwise "ready and willing". Such a case is no doubt a hard one,

but, unfortunately, it does not enable Courts to make a special law for such hard cases which fall outside the statutory protection.

15. We understand that the defendant-respondent is a Carpenter. If he is unable to find means to pay rent we cannot dismiss the suit for his eviction on the ground of non-payment of rent. In view of his disability, on account of alleged illness, we propose to modify the decree of the appellate Court to the extent that he will have four months' time from April 5, 1977, before the eviction order can be executed against him provided he deposits within a month from today all the arrears due and goes on depositing Rs. 30 p.m. regularly, in advance, before the 5th of each month on which his tenancy begins. He must, however vacate the premises before August 5, 1977, and may leave it earlier if he is unable to pay the required rent regularly in advance. The decree for eviction will become executable on breach of the conditions laid down, or, after August 5, 1977.

16. The result is that we set aside the judgment and order of the High Court and restore the decree of the appellate Court subject to the modification indicated above. The parties will bear their own costs.

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