

GUJARAT HIGH COURT

Parubai Manilal Brahmin

Vs.

Baldevdas Zaverbhai Tapodhan

Civil Revision Application No. 467 of 1960

(P.N. Bhagwati, J.)

22.04.1963

JUDGMENT

P.N. Bhagwati, J.

1. This Revision Application arises out of a suit filed by the plaintiff against the original defendant to recover possession of certain premises situate at Palanpur. The premises consist of a Dela and since many years the original defendant was a tenant of the premises from the plaintiff at the contractual rent of Rs. 21/- per month. It appears that the original defendant fell in arrears of payment of rent sometime in 1955 and the plaintiff was therefore constrained to file a suit against the original defendant for recovery of arrears of rent. The suit was numbered 90 of 1955. A consent decree was passed in the suit on 15th February 1956 fixing the standard rent of the premises at Rs. 18 month. Even after the determination of the standard rent by the consent decree the original defendant again fell in arrears of payment of rent and rent remained unpaid by the original defendant to the plaintiff from 1st May 1957. The plaintiff ultimately gave a notice to the original defendant terminating the tenancy of the original defendant from 31 March 1958 and calling upon the original defendant to pay up the arrears of rent to the plaintiff. As the original defendant did not pay any heed to the notice the plaintiff filed the present suit against the original defendant on 14th April 1958 claiming to evict the original defendant from the premises and to recover arrears of rent from the original defendant. The summons was issued on 6th May 1958 but before the summons could be served on the original defendant the original defendant died on 11th May 1958. The plaintiff thereupon made an application for bringing the present defendants on record as heirs of the original defendant and the application was granted by the learned trial Judge on 25th June 1958. The defendants were thereafter served and they filed their written statement in reply to the suit and deposited a sum of Rs. 245-31 nP in Court on 7th October 1958. It was common ground between the parties that at the date when this amount was deposited by the defendants in Court the arrears of rent calculated on the basis of Rs. 18/per month which was the standard rent fixed by the consent decree passed in Suit No. 90 of 1955

came to Rs. 313/with the result that this amount deposited by the defendants in Court was not sufficient to meet the arrears of rent as also costs of the suit. The main contention urged on behalf of the defendants was that on the death of the original defendant the defendants became statutory tenants under Section 5 of the Bombay Rents Hotel and Lodging House Rates Control Act 1947 (hereinafter referred to as the Rent Act) and that the plaintiff was therefore not entitled to evict them unless the plaintiff gave a fresh notice to them under Section 12(2) of the Rent Act. The defendants urged that being statutory tenants in their own right under Section 5(U)(c) of the Rent Act they were liable for rent only in respect of the period of their own statutory tenancy and were not liable for rent which became due and payable by the original defendant to the plaintiff. The defendants contended that to far as their own liability for payment of rent was concerned they were not in arrears of rent at the date when they were impleaded and that even if they were they had already deposited the sum of Rs. 245-31 nP. in Court which was more than sufficient to cover the liability for the period subsequent to the death of the original defendants for their liability to pay rent as statutory tenants commenced only on the death of the original defendant. This contention was negated by the learned trial Judge. The learned trial Judge held that the original defendant was in arrears of rent from 1st May 1957 and that at the date of the notice under Section 12(2) of the Rent Act given by the plaintiff to the original defendant the original defendant was in arrears of rent for a period of more than six months and that in spite of such notice having been given by the plaintiff to the original defendant the original defendant had failed to pay up the arrears of rent within a period of one month from the date of service of such notice upon him and even upto the date of the filing of the suit. The learned trial Judge accordingly took the view that the case was governed by Section 12(3)(a) of the Rent Act and he accordingly passed a decree for eviction against the defendants. The defendants being aggrieved by the decree for eviction passed against them preferred an appeal in the Court of the District Judge Banaskantha. The learned District Judge who heard the appeal agreed with the conclusion reached by the learned trial Judge and finding that there was no substance in the contention urged on behalf of the defendants that they had become statutory tenants in their own right on the death of the original defendant and were therefore entitled to a fresh notice under Section 12(2) of the Rent Act before they could be evicted by the plaintiff the learned District Judge confirmed the decree passed by the learned trial Judge with the modification that the defendants should hand over vacant possession of the premises to the plaintiff within three months. Time for three months was granted by the learned District Judge to the defendants to vacate the premises since the defendants were carrying on business in the premises. The defendants were dissatisfied with the decree for eviction passed against them by the learned District Judge and they accordingly preferred the present Revision Application in this Court.

2. The only contention urged by Mr. P.M. Raval learned advocate appearing on behalf of the defendants in support of the Revision Application was that the defendants became statutory tenants in their own right on the death of the original defendant under Section 5(1)(c) of the Rent Act and that they were therefore entitled to fresh notice under Section 12(2) of the Rent Act before any decree for eviction could be passed against them. Mr. P.M. Raval frankly stated that if

this contention of his was not well-founded it was not possible for him to assail the decree for eviction passed against the defendants on any other ground. The reason for this concession was obvious. It was manifest from the record that the original defendant was in arrears of rent from 1st May 1957 and that rent was therefore in arrears for a period of more than six months at the date when the notice under Section 12(2)1 of the Rent Act was given by the plaintiff to the original defendant. It was equally manifest from the record that even though the notice under Section 12(2) of the Rent Act was given by the plaintiff to the original defendant the original defendant did not pay up the arrears of rent within a period of one month from the date of service of such notice upon him nor did he pay up the arrears of rent even before the filing of the suit. The requirements of Section 12(3)(a) of the Rent Act were therefore clearly satisfied and it could not be disputed that apart from the contention based on the provisions of Section 5(11)(c) of the Rent Act the decree for eviction was rightly passed against the defendants. Mr. P.M. Raval therefore staked his entire case on the contention based on the provisions of Section 5(11)(c) of the Rent Act. Now the suit premises were let out by the plaintiff to the original defendant for the purpose of his firewood business and right upto the time of his death the original defendant used the suit premises for the purpose of the said business and even after his death the present defendants have been using the suit premises for the purpose of the said business. The original defendant did not at any time reside in the suit premises or use the suit premises for a residential purpose and at the time of his death the original defendant was admittedly not residing in the suit premises. The question which therefore requires to be considered is:- does Section 5(11)(c) of the Rent Act apply to premises which are used for a non-residential purpose and in which the tenant was not residing at the time of his death? If Section 5(11)(c) applies to such premises it is clear that the defendants being members of the family of the original defendant residing with him at the time of his death though not in the suit premises would fall within the terms of Section 5(11)(c) and would be entitled to claim the status of statutory tenants in respect of the suit premises even though the suit premises were used for the purpose of business and the original defendant did not at any time reside in the suit premises. But if Section 5(11)(c) does not apply to such premises equally clearly the defendants would not be entitled to claim the status of statutory tenants in respect of the suit premises and in that event obviously they would have to vacate the suit premises and hand over vacant possession of the suit premises to the plaintiff. The question which thus arises for determination is a question of interpretation of Section 5(11)(c) of the Rent Act.

3. The definition of a tenant is contained in Section 5(11) and Clause (c) of that section includes within the definition of a tenant any member of the tenants family residing with him at the time of his death as may be decided in default of agreement by the Court. Now the Rent Act is an Act enacted for the benefit of tenants and under it certain benefits are conferred on the tenant. One of such benefits is the protection of irremovability which is conferred on the tenant by Section 12 so long as he pays or is ready and willing to pay the standard rent and permitted increases and observes and performs the other conditions of the tenancy in so far as they are consistent with the provisions of the Rent Act. This protection of irremovability is extended to any member of the

tenants family residing with him at the time of his death by virtue of the inclusion of such member within the definition of a tenant in Section 5(11)(c) of the Rent Act. This provision extending the meaning of the word tenant to include any member of the tenants family residing with him at the time of his death is intended to cover a situation which might arise on the death of a tenant. If a tenant is a contractual tenant no difficulty may arise since the contractual tenancy being a heritable asset it would be inherited by the heirs of the tenant but if a tenant is a statutory tenant, the statutory tenancy would come to an end with his death and the members of his family who might be residing with him at the time of his death would not be entitled to resist the claim of the landlord for recovery of possession of the premises and would be thrown on the street. The Legislature therefore enacted Section 5(11)(c) for the purpose of protecting the members of the tenants family residing with him at the time of his death by providing that one of them should on the death of the tenant be regarded as a statutory tenant entitled inter alia to the protection of Section 12 of the Rent Act. This protection was not extended to any and every member of the tenants family but only to such member of the tenants family who was residing with him at the time of his death. This requirement that the member of the tenants family must be residing with him at the time of his death is an important requirement which throws considerable light on the true interpretation to be put upon the provisions of Section 5(11)(c). It is manifest from this requirement that the intention of the legislature was to protect the member of the tenants family residing with him at the time of his death from being thrown out of the premises in which he was residing. This requirement clearly has reference to the premises which were occupied by the tenant and in which the member of the tenants family was residing with the tenant at the time of his death. Section 5(11)(c) cannot possibly apply to the case of premises which were used by the tenant as business premises and in respect of which it could not be said that the member of the tenants family was residing with the tenant at the time of his death. It is difficult to appreciate why if the Legislature wanted to protect a member of the tenants family in respect of business premises the Legislature should have prescribed the requirement that the member should be residing with the tenant at the time of his death. There is no nexus between the requirement of residence of the tenants family with the tenant at the time of his death and the creation of a statutory tenancy in respect of business premises in favour of such member. I could have well-appreciated in case of business premises a requirement such as that the member of the tenants family must be carrying on business with the tenant at the time of his death. But I certainly cannot see why the Legislature should have prescribed the requirement that the member of the tenants family must be residing with the tenant at the time of his death. It may also be noticed that by extending the definition of tenant in Section 5(11)(c) protection has been conferred on a member of the tenants family residing with him at the time of his death and not on a person associated with the tenant in the carrying on of business in the business premises. The emphasis on the requirement that the person claiming the status of a tenant under Section 5(11)(c) must be a member of the tenants family also shows that what was intended to be protected was possession of premises in which the tenant was residing for ordinarily the tenant would be residing with the members of his family and on the death of the tenant the members of his family should not be allowed to be thrown out of the premises but protection should be accorded to them. The

members of the tenants family residing with him at the time of his death may agree amongst themselves as to which of them should be tenant under Section 5(11)(c) and if they do not agree the Court may decide as to which of them should be such tenant and the possession of such person would be protected with the result that the members of the tenants family would not be liable to be thrown out of the premises. These considerations inevitably lead to the conclusion that Section 5(11)(c) applies only to premises in which the tenant was residing at the time of his death and does not extend to premises which were not used by the tenant for a residential purpose and in which he was not residing at the time of his death.

4. Of course this construction which I am placing upon Section 5 would have the effect of rendering statutory tenancies in respect of business premises devoid of protection since on the view I am taking on the death of a statutory tenant in respect of business premises the statutory tenancy would come to an end and neither the heirs nor the members of the family of the statutory tenant would be entitled to resist the landlords claim for recovery of possession of the premises. They would not have any protection under the provisions of the Rent Act but that cannot be helped for as I construe the section the Legislature has not conferred any such protection on them. As a matter of fact but for the enactment of Section 5(11)(c) even the members of the family of a statutory tenant in respect of residential premises would not have had any protection and they would have been liable to be thrown out on the death of the statutory tenant. But realizing the difficulty which might arise by reason of the members of the statutory tenants family being thrown out of the premises the Legislature enacted Section 5 and conferred protection on them. This protection has obviously not been conferred on the heirs or members of the family of a statutory tenant in respect of business premises. It must therefore be concluded that even if the defendants in the present case were members of the family of the original defendant who were residing with the original defendant at the time of his death they cannot claim to be tenants in respect of the premises in question under Section 5(11)(c) of the Rent Act since the said premises were business premises and the original defendant was not residing in the said premises at the time of his death. This contention of Mr. P.M. Raval must therefore be rejected. In this view of the matter the Revision Application fails and will be dismissed. There will be no order as to costs of the Revision Application.

Application dismissed.