GUJARAT HIGH COURT

Ratilal Balabhai Nazar

Vs.

Ranchhodbhai Shankerbhai Patel

Special Civil Appln. No. 947 of 1965

(P.N. Bhagwati and A.R. Bakshi, JJ.)

26.04.1967

JUDGMENT

Bhagwati, J.

1. This litigation has had a checkered history and it is necessary to set out briefly the relevant facts leading upto the filing of this petition. A recapitulation of these facts is necessary for the purpose of appreciating; the preliminary objection raised on behalf of the respondents against the maintainability of the petition. The dispute in the petition relates to two rooms on the ground floor of a building known as Himmat Nivas situate in Ahmedabad. The premises were let out by the original owner to the petitioner at a monthly rent which according to the petitioner was Rs. 50 per month inclusive of municipal taxes and electricity charges. The rent, according to the respondents, however, was Rs. 50 per month plus municipal taxes plus Rs. 5 in respect of electricity charges. We shall presently refer to this dispute about the rent, but in the meantime it may be pointed out that the original landlords sold the premises to the first respondent on 2nd January 1956 and the first respondent accordingly became the landlord of the premises. The petitioner admittedly fell in arrears of rent from 1st April 1956 and the first respondent, therefore, gave a notice dated 20th February J957 to the petitioner under Section 12(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (hereinafter referred to as the Rent Act) demanding arrears of rent at the rate of Rs. 50 per month plus municipal taxes plus Rs. 3 per month in respect of electricity charges. The petitioner did not give any reply to the notice nor did he comply with the requisitions contained in the notice. The first respondent, therefore, filed a suit against the petition on 1st April 1957 seeking to recover possession of the premises from the petitioner. There were three grounds on which possession was sought, but out of them only one survives for consideration and that is the ground based on arrears of rent. The petitioner in his written statement did not dispute that he was in arrears of rent at the date of the institution of the suit but his contention was that the agreed rent was Rs. 50 per month inclusive of municipal taxes and electricity charges and he was always ready and willing to pay the same to the first

respondent, but the first respondent wrongly demanded rent at the rate of Rs. 50 per month plus municipal taxes plus Rs. 5 per month in respect of electricity charges. The dispute between the parties, therefore, was as to what was agreed rent of the premises and at that stage there was no dispute in regard to the standard rent. During the pendency of the suit the premises were sold to the second respondent on 2nd August 1959 and the second respondent was accordingly joined as a co-plaintiff on 28th August 1959. The petitioner, thereafter, on 1st July 1960, made an application for leave to amend the written statement by introducing a dispute as to the standard rent and the amendment was allowed by the learned trial Judge. The suit was thereafter heard and by a judgement dated 19th July 1960, the learned trial Judge rejected the respondents :' claim to recover possession of the premises from the petitioner. The learned trial Judge held that the standard rent was Rs. 50 per month inclusive of municipal taxes and electricity charges and since the amount of Rs. 2,890/- deposited by the petitioner in Court during the pendency of the suit was more than sufficient to cover the arrears of rent at the rate so determined, the learned trial Judge held that the petitioner was entitled to the protection of Section 12(3)(b). The respondents being aggrieved by this decision preferred an appeal to the District Court and the appeal was transferred to the City Civil Court on the latter Court coming into existence. The learned Principal Judge on a review of the evidence came to the conclusion that the standard rent was Rs. 50 per mouth plus municipal taxes plus Rs. 5 per month in respect of electricity charges and the determination of the standard rent made by the trial Court was incorrect. The question then arose as to which provision applied to the facts of the case. Section 12(3)(a) or Section 12(3)(b). The learned Principal Judge held that neither of these two provisions applied, for on a correct construction of the various sub-sections of Section 12, the applicability of Section 12(3)(a) and Section 12(3)(b) was confined to cases in which there was no dispute as to the standard rent and since in the present case a dispute as to the standard rent was raised by the petitioner in the written statement, Sections 12(3)(a) and 12(3)(b) had no application and the case was governed exclusively by Section 12(1) and the proviso. The learned Principal Judge then proceeded to apply Section 12(1) and the proviso to the facts of the case and held that since the petitioner was admittedly in arrears of rent at the date of the institution of the suit and no application for fixation of standard rent was made within one month of the notice under Section 12(2) as contemplated by the proviso, the petitioner was not entitled to the protection of the Rent Act. The learned Principal Judge accordingly passed a decree for eviction against the petitioner. The petitioner being aggrieved by the decree for eviction preferred a Revision Application to this Court, but the Revision Application was summarily rejected by a single Judge of this Court on 9th July 1962. The petitioner then appealed to the Supreme Court by special leave, but this appeal was also unsuccessful. The Supreme Court rejected the appeal on the ground that though the construction placed by the learned Principal Judge on the various sub-sections of Section 12 was erroneous, that was not a ground for interference under Section 115 of the Code of Civil Procedure and the High Court was, therefore, right in rejecting the revision application. This decision was given on 23rd August 1965 and immediately thereafter, on 2nd September 1965, the petitioner filed the present petition under Article 227 of the Constitution challenging the legality of the decision of the learned Principal Judge.

2. It is clear from the aforesaid statement of facts that the decision of the learned Principal Judge impugned in the petition was given on 15th January, 1962 while the petition was filed after a period of about 3½ years on 2nd September 1965. Mr. S.B. Vakil, learned advocate appearing on behalf of the respondents, therefore, urged by way of preliminary objection that the petitioner was guilty of laches and gross delay and we should, in the exercise of our discretion, refuse to interfere with the decision of the learned Principal Judge even if it disclosed an error of law apparent on the face of the record. The remedy under Article 227 of the Constitution being a remedy analogous to a revision application, he submitted, the period of 90 days provided for filing a revision application should be regarded as a reasonable period within which the remedy under Article 227 should be adopted and any delay beyond that period, if unexplained or unaccounted for, should be held sufficient to disentitle the petitioner to relief under Article 227. The delay in the present case, he contended, was a delay of more than 3½ years and the explanation for the delay given by the petitioner was not a proper or adequate explanation which should induce the Court to entertain the petition despite the delay. Now there can be no doubt and the respondents are right to this extent, that the remedy under Article 227 is a discretionary remedy and the Court will not ordinarily exercise its discretion in favour of a petitioner who is guilty of laches or delay but there can be no hard and fast rule, no mathematical formula laying down the period within which the remedy must be invoked beyond which delay would be considered fatal to the exercise of discretion in favour of the petitioner. Delay or laches is a factor which bears on the discretion of the Court and that is essentially a matter of discretion cannot be cast in any rigid mould or encased in any straight-jacket formula. Whether or not delay in any particular case is sufficient to disentitle the petitioner to relief under Article 227 must depend on the facts and circumstances of the case. We cannot, therefore, accept the submission of the respondents that merely, because the petition is filed more than 90 days after the date of the impugned decision, the petition must be thrown out on the ground of laches and delay. The period of 90 days provided for pursuing the analogous remedy of revision is certainly a relevant factor and would have to be taken into account, but it would not be proper to regard it as invested with such sanctity that any delay beyond it would necessarily be fatal. What is of the essence is- and that constitutes the principle behind the rule-that the petitioner must not be guilty of inaction in asserting his rights; he must not sleep over his rights; his delay must not have resulted in prejudice to the other party. This principle is stated clearly in the latest decision of the Supreme Court given on 28th February, 1967 in Civil Appeal No. 22 of 1966 : *Moon Mills Ltd. v. M.R. Mehar*[1]. That case related to the issuance of a writ of certiorari and while dealing with the question as to what should be the true principle which must guide the Court in the exercise of its discretion where a question of laches or delay is raised against the petitioner. Ramaswami, J. speaking on behalf of the Supreme Court said :-

> " It is true that the issue of writ of certiorari is largely a matter of sound discretion. It is also true that the writ will not be granted if there is such a negligence or omission on the part of the applicant to assert his right as, taken in conjunction with the lapse of time and

other circumstances, causes prejudice to the adverse party. The principle is to a great extent, though not identical with, similar to the exercise of discretion in the Court of Chancery" .

The learned Judge then proceeded to set out the principle by quoting the following passage from the judgement of Sir Barnes Peacock in the *Lindsay Petroleum Co. v. Prosper Armstrong Kurd*[2],:-

" Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the

[1](AIR 1967 SC 1450)
[2](1874) LR 5 PC 221

party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving the remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay of course not amounting to a bar by any statute of limitations, the validity of that defense must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one coarse or the other, so far as relates to the remedy" .

This is the test which must govern the exercise of discretion of the Court and if this test is applied, the conclusion must inevitably be in favor of the petitioner. The one important circumstance which must be remembered is that the petitioner has throughout remained in possession of the premises and the effect of granting relief to the petitioner despite the delay in preferring the petition would not cause such prejudice to the respondents which might not have been caused if the petition had been preferred immediately after the date of the impugned decision. It may also be noticed that the petitioner was not guilty of inaction in asserting his rights nor did he sleep over his rights. Immediately after the impugned decision was given, the petitioner preferred a revision application to this Court challenging the impugned decision and when the revision application was summarily rejected, he filed an application for special leave to appeal to the Supreme Court. The appeal by special leave was dismissed by the Supreme Court on 23rd August 1965 and immediately thereafter, without wasting any time, the petitioner filed the present petition on 2nd September 1965. The petitioner was, therefore, not slow in asserting his rights and he immediately adopted proceedings for the purpose of setting at naught the impugned decision. It if undoubtedly true that the petitioner pursued a remedy which was inapplicable since the error in the impugned decision complained of by him was not liable to be

corrected in revision but this remedy was adopted by him under legal advice. The affidavit of Mr. I.M. Nanavati, a senior advocate practicing in this Court shows that immediately after the impugned decision was given, the petitioner consulted him and he advised that the petitioner should prefer a revision application to this Court and it was pursuant to this legal advice that the petitioner adopted the remedy of a revision application. The petitioner cannot, therefore, be said to be guilty of negligence or omission in asserting his rights. Mr. S.B. Vakil on behalf of the respondents contended that no reliance should be placed by us on the affidavit of Mr. I.M. Nanavati since it was not the case of the petitioner in the petition that he had acted under legal advice in preferring the revision application and no new case should be allowed to be made out by the petitioner by filing a supplemental affidavit. Mr. S.B. Vakil also urged that the explanation for the delay must be found in the petition itself and if no explanation was given in the petition, it was not open to the petitioner to give such explanation by filing a subsequent affidavit. We cannot accept the bald proposition that in every case where there is delay in preferring a petition, the delay must necessarily be explained in the petition and the petitioner cannot be permitted to render such explanation in a subsequent affidavit. There can be no hard and fast rule in a matter of this kind and everything must in the ultimate analysis depend on the facts and circumstances of each case. But so far as the present case is concerned, this question is immaterial for we find that the explanation for the delay was given by the petitioner in the petition. The petitioner stated that he was *bona fide* pursuing the remedy of a revision application and as soon as that remedy was ultimately negatived by the Supreme Court, he immediately filed the petition. The petitioner undoubtedly did not give the particulars of *bona fide* or set out the material on which the plea of *bona fide* was based, but that could not prevent the petitioner from giving the necessary particulars in the plea of *bona fide* was challenged by the respondents. The affidavit-in-rejoinder filed by the petitioner supplemented by the affidavit of Mr. I.M. Nanavati merely amplified by giving the requisite particulars the plea of *bona fide* which was already set out in the petition. We are, therefore, of the opinion that in view of these affidavits it must be held that the petitioner was *bona fide* pursuing the remedy of a revision application and there was no such negligence or inaction on his part which would warrant the exercise of discretion against him. We must of course make it clear that it is not our view that any remedy pursued by a petitioner howsoever ill-conceived, would afford justification for delay in filing a petition. If, for example, an extra legal remedy is pursued by a petitioner, that would afford no explanation for delay and so also a remedy which is hopelessly ill conceived would not furnish any ground for excuse of delay. But where, as in e present case, a remedy is pursued under legal advice of a senior advocate and the remedy is one which, until the decision of the Supreme Court in *V. Abbasbhai v. Haji Gulamnabi*[3], was being commonly pursued in this Court by litigants aggrieved by the decision of the appellate Court in cases arising under the Rent Act, we cannot regard the delay occasioned in the pursuit of such remedy cannot be regarded as of such a character that we should in the exercise of our discretion reject the petition on the ground of delay. The preliminary objection urged on behalf of the respondents must, therefore, be rejected.

3. That takes as to the merits of the petition. So far as merits are concerned, there is little doubt

that the judgement of the learned Principal Judge suffers from an error of law apparent on the face of the record. The learned Principal Judge took the view that the applicability of Sections 12(3)(a) and 12(3)(b) was confined to cases in which there was no dispute as to the standard rent and where there was such dispute, the case fell to be governed exclusively by Section 12(1) and the Explanation, This view was patently erroneous as it is now well settled by several decisions of this Court and the Supreme Court that the various sub-sections of Section 12 confer protection on a tenant at different stages. Section 12(1) enacts a rule of decision that if at the date of the institution of the suit the tenant pays or is ready and willing to pay the standard rent and permitted increases, he shall be protected from eviction, subject to the provisions of Section 12(3)(a). Section 12(2) gives an opportunity to the defaulting tenant to pay up the arrears and save himself from being evicted; if the tenant pays up the arrears within one month of the service of the notice under Section 12(2), he gets the protection of Section 12(1). If the tenant disputes the amount of standard rent and permitted increases, he can avail himself of the Explanation and show his readiness and willingness to pay the standard rent and permitted increases by complying with the conditions laid down in the Explanation. Section 12(3)(a) specifies the circumstances in which the tenant forfeits the protection under the Rent Act. There are four conditions which have to be satisfied in

[3](1964) 5 Guj LB 55 : AIR 1964 SC 1341

order to attract the applicability of Section 12(3) a) and they are; (1) the rent must be payable by the month; (2) there must be no dispute regarding the standard rent or permitted increases right upto the expiration of a period of one month from the date of the notice under Section 12(2); (3) the rent must be in arrears for a period of six months or more at the date of such notice; and (4) the tenant must neglect to make payment of such arrears until the expiration of a period of one month after the date of such notice. If, in any case, these four conditions are satisfied, the landlord is entitled to obtain a decree for eviction against the tenant. Section 12(3)(b) opens with the words " in any other case" and obviously refers to cases other than those covered by Section 12(3)(a). If the case does not fall within Section 12(a), it would have to be decided by reference to Section 12(3)(b). Where the rent is not payable by the month or there is a dispute as to the standard rent or permitted increases at the date of the notice under Section 12(2) or at any rate before the expiration of a period of one month from such notice or the rent in arrears at the date of such notice is not for a period of six months or more, the case would fall within Section 12(3)(b) and if the conditions of Section 12(3)(b) are complied with, the tenant would be entitled to protection, notwithstanding that he was not ready and willing or deemed to be ready and willing to pay the standard rent and permitted increases within the meaning of Section 12(1). This being the undoubted position in law. It was not seriously disputed by Mr. S.B. Vakil on behalf of the respondents that the judgment of the learned Principal Judge was vitiated by an error of law apparent on the face of the record. But he contended that even so the decree for eviction passed by the learned Principal Judge should not be set aside since the petitioner was admittedly in arrears of rent at the date of the institution of the suit and was consequently not entitled to the protection of Section 12(1) and his case was governed by Section 12(3)(a) and in any event even if Section 12(3)(a) did not apply, Section 12(3)(b) did not afford any protection to

the petitioner since the conditions of that Section were not satisfied. Miss Daboo readily conceded that the petitioner was not entitled to the protection of Section 12(1) as he was admittedly in arrears of tent at the date of the institution of the suit but her contention was that Section 12(3)(a) did not apply and the case was, therefore, governed by Section 12(3)(b) and the conditions of Section 12(3)(b) being satisfied, no decree for eviction was liable to be passed against the petitioner. These rival contentions raised the question as to whether the case was governed by Section 12(3)(a) or Section 12(3)(b). We have already set out the four conditions which are necessary to be satisfied in order to attract the applicability of Section 12(3)(a) and the dispute between the parties centred round the fulfillment of the first condition denoted by the words " where the rent is payable by the month" . The argument of the petitioner was that the rent in the present case was Rs. 50 per month plus municipal taxes plus Rs. 5 per month in respect of electricity charges and since the municipal taxes were payable by the year, the rent could not be said to be payable by the month within the meaning of Section 12(3)(a). The respondents on the other hand urged that the word " rent" was used in Section 12(3)(a) not in its legal technical sense but in its popular sense and according to the popular sense, it did not include municipal taxes and that in any event if it included municipal taxes, there was sufficient compliance with the first condition since a part of the rent was payable by the month. The argument of the petitioner was supported by a decision given by me sitting as a single Judge in *P. Mohanlal v. Maheshwari Mills Ltd.*[4], and the correctness of this decision was also therefore, questioned on behalf of the respondents. But for the purpose of deciding the present petition it is not necessary to go into the question whether the

[4](1962) 3 Guj LR 574

decision in (1962) 3 Guj LR 574 (supra), is correct, for we are of the view that, even if the decision is correct and the case does not fall within Section 12(3)(a) and must, therefore, be governed by Section 12(3)(b), the conditions of Section 12(3)(b) are not satisfied and the petitioner is therefore, not entitled to protection under Section 12(3)(b). Our reasons for saying so are as follows.

4. Section 12(3)(b) says that " in any other case" , that is, in any case other than that covered by Section 12(3)(a) :-

> . . .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 continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of suit as directed by the Court" . The Section lays down certain conditions and if those conditions are fulfilled, no decree for eviction can be passed against the tenant. The first condition is that on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant must pay or tender in Court the standard rent and permitted increases then due. Having done that, the tenant must thereafter, according to the second condition, continue to pay or tender in Court

regularly the standard rent and permitted increases till the suit is finally decided and lastly, he must also pay costs of the suit as directed by the Court. Now it is well settled that the first day of hearing of the suit is the day on which the Court applies its mind for the first time to the case, which would ordinarily be the date of framing of the issues. The tenant who is in arrears of rent must, therefore, pay or tender in Court the arrears of standard rent and permitted increases on the date of settlement of issues. But if he fails to do so, he has still another opportunity given to him by the Legislature and he can pay up the arrears of standard rent and permitted increases on or before such other date as may be fixed by the Court. The Court may fix another date for payment of the arrears of standard rent and permitted increases either suo motu or on the application of the tenant. The tenant must then continue to pay or tender in Court regularly the standard rent and permitted increases till the suit is finally decided. Now what does the expression " till the suit is finally decided' mean ? Does it refer to the decision of the suit by the trial Court or is it intended to include the decision of the suit in appeal by the appellate Court ? The word " finally" in our view suggests that what is in the contemplation of the Legislature is not the decision of the suit by the trial Court but the ultimate decision of the suit by the appellate Court. It is trite knowledge that an appeal is a continuation of a suit and when the appeal is decided, the suit is finally disposed of by the appellate Court. The expression " till the suit is finally decided" , therefore, in our view refers to the decision of the suit in appeal by the appellate Court. Otherwise the word " finally" would be meaningless. When, therefore, an appeal is preferred by the landlord against a decree passed by the trial Court dismissing his suit and the question arises before the appellate Court whether the tenant is entitled to the protection of Section 12(3)(b), the appellate Court would have to consider whether the tenant has. after paying or tendering in Court the arrears of standard rent and permitted increases on the first day of hearing of the suit or on or before such other date as might have been fixed by the Court, continued to pay or tender in Court regularly the standard rent and permitted increases till the decision of the appeal. If the tenant has done so, no decree for eviction can be passed by the appellate Court against the tenant.

5. Now in the present case what happened was that during the pendency of the suit the petitioner deposited in the Court an aggregate sum of Rs. 2,990/-. The arrears of standard rent and permitted increases due upto the date of the decree of the trial Court were Rs. 2,550 according to the standard rent determined by the trial Court. The amount deposited by the petitioner was, therefore, more than sufficient to cover the arrears of standard rent and permitted increases upto the date of the decree of the trial Court. There was in fact an excess of Rs. 440/- and this excess was withdrawn by the petitioner from Court on 9th September 1960. The respondents preferred an appeal against the decree of the trial Court and in this appeal they challenged inter alia the determination of the standard rent made by the trial Court. The appellate Court found that the standard rent determined by the trial Court was not proper and that the standard rent should be, not Rs. 50/- per month inclusive of municipal taxes and electricity charges as determined by the trial Court, but Rs. 50/- per month plus municipal taxes plus Rs. 5 per month in respect of

electricity charges. On the basis of this determination the amount deposited by the petitioner in Court during the pendency of the suit and the appeal was not sufficient to cover the arrears of standard rent and permitted increases upto the date of the decree of the appellate Court and it would, therefore, seem that the petitioner was not entitled to the protection of Section 12 (3)(b) at the date when the appellate Court decided the appeal and the appellate Court had, therefore, no alternative but to pass a decree for eviction against the petitioner. But, contended Miss Daboo, so long as the determination of the standard rent by the trial Court was not set aside by the appellate Court it governed the rights and liabilities of the parties and, therefore, the petitioner was justified in continuing to deposit in Court standard rent at the rate determined by the trial Court and if the appellate Court was of the view that the determination of the standard rent made by the trial Court was erroneous and that it should be enhanced, the appellate Court should have granted time to the petitioner to pay up the arrears of rent on the basis of the enhanced standard rent determined by it and if the petitioner paid up such arrears of rent on or before the date fixed by the appellate Court, the petitioner should have been accorded the protection of Section 12(3)(b). Miss Daboo in support of this contention relied strongly on the following passage from the judgment of the Supreme Court in (1964) 5 Guj LR 55 : AIR 1964 Supreme Court 1341 :-

> " Where there is no dispute as to the amount of standard rent or permitted increases but rent is not payable by the month, or the rent is not in arrears for six months, by paying or tendering in Court the standard rent and the permitted increases and continuing to pay it till the suit is finally decided the protection granted by the clause is made effective. Where there is a dispute as to the standard rent, the tenant would not be in a position to pay or tender the standard rent, on the first date of hearing, and fixing of another date by the Court for payment or tender would be ineffectual, until the standard rent is fixed. The Court would in such a case on the application of the tenant, take up the dispute as to standard rent in the first instance, and having fixed the standard rent, call upon the tenant to pay or tender such standard rent so fixed, on or before the date specified, and continues to pay or tender it regularly till the suit is finally decided he qualifies for the protection of Clause (3)(b). If in an appeal filed against the decree, the standard rent is enhanced, the appeal Court may fix a date for payment of the difference, and if on or before that date the difference is paid, the requirement of Section 12(3)(b) would be complied with."

The answer which Mr. S.B. Vakil gave to this contention was that the procedure indicated by the Supreme Court in the above passage does not impose an obligation on the appellate Court to suo motu fix a date for payment of the difference and it is only if an application for that purpose is made by the tenant that the appellate Court would determine first whether the standard rent should be enhanced and if it enhances the standard rent, fix a date for payment of the difference by the tenant. There was in the present case, argued Mr. S.B Vakil, no application made by the petitioner to the appellate Court for determining the question of standard rent in the first instance and fixing a date for payment of the difference if the standard rent was enhanced by the appellate Court and there was accordingly no obligation on the appellate Court to first decide the dispute

as to the standard rent and fix a date for payment of the difference on the basis of the standard rent, if enhanced. We are not impressed by this argument urged by Mr. S.B. Vakil. Though the Supreme Court has said in the passage quoted above, that if in an appeal filed against the decree, the standard rent is enhanced, the appellate Court may fix a date for payment of the difference, it is clear from a subsequent paragraph in the judgment that according to the Supreme Court, though there is a discretion in the appellate Court to follow this procedure, the appellate Court must exercise the discretion in favor of the tenant where it finds that not to do so would result in injustice to the tenant. Where a tenant has been regularly depositing in Court standard rent and permitted increases at the rate determined by the trial Court, it would be most unfair and injustice to the tenant to deprive him of the protection of Section 12(3)(b) which would inevitably be the result if the standard rent is enhanced by the appellate Court and no opportunity is given to the tenant to pay the difference. In such a case the appellate Court must in the exercise of its discretion fix a date for payment of the difference by the tenant so that of making payment of the difference on or before such date, the tenant may qualify for the protection of Section 12(3)(b). The words " on or before such other date as the Court may fix" in Section 12(3)(b) clearly support this view. The Court can fix " such other date" suo motu and in a case where a tenant has regularly deposited in Court standard rent and permitted increases according to the rate determined by the trial Court, the appellate Court, if it enhances the standard rent, must suo motu in the exercise of its discretion fix a date for payment of the standard rent " then due" according to the enhanced rate and if the tenant makes payment of the same on or before such date, the tenant must be given the protection of Section 12(3)(b) and no decree for eviction can go against him.

6. If, therefore, in the present case the petitioner had regularly deposited in Court the standard rent according to the rate determined by the trial Court right upto the passing of the decree by the appellate Court, the appellate Court would have been bound to fix a date for payment of the arrears of standard rent according to the enhanced rate determined by the appellate Court and if the petitioner paid or tendered the same on or before such date, the appellate Court could not have passed a decree for eviction against the petitioner. But we find that the petitioner did not regularly deposit in Court the standard rent at the rate determined by the trial Court He admittedly made default in payment of the standard rent for the month of December 1961 with the result that on 15th January 1962 when the appellate Court gave its decision enhancing the standard rent, the petitioner was in arrears of standard rent even according to the rate determined by the trial Court. There was, therefore, no obligation on the appellate Court to grant time to the petitioner to make payment of the arrears of standard rent according to the enhanced rate and the appellate Court could not be said to be guilty of an error of law in passing a decree for eviction against the petitioner. Realising this difficulty in the way of the petitioner, Miss Daboo contended that even if the conditions of Section 12(3)(b) were not complied with, there was yet a discretion in the Court whether or not to pass a decree for eviction against the petitioner and she sought to support this contention by reference to a decision of Chagla, C.J. in *Kalidas Bhavan v. Bhagwandas*[5], But this decision is no longer good law so far as this Court is concerned, since a

contrary view has been taken by a Division Bench of this Court in *Ambalal v. Babaldas*[6], It is clearly laid down in this decision that where a landlord has determined the. tenancy of a tenant otherwise than under Clause (g) of Section 111 of the Transfer of Property Act and the tenant is not entitled to claim the protection of any sub-section of Section 12 of the Rent Act, the right of the landlord under the ordinary law of landlord and tenant to recover possession of the premises from the tenant on the termination of the tenancy must prevail and the tenant cannot resist the landlord's claim for possession and the Court has no discretion to refuse to grant a decree for possession to the landlord. We are, therefore, of the view though for different reasons, that the decree for eviction passed by the appellate Court was legal and valid.

7. The petition, therefore, fails and the rule is discharged with costs. Miss Dahoo applies for leave to appeal to the Supreme Court under Article 133(1)(c) of the Constitution. Leave is refused.

Petition dismissed.

[5](1958) 60 Bom LR 1359

[6](1962) 3 Guj LR 625 : (AIR 1964 Guj 9)