JESHWANTRAI MULUKCHAND

v.

ANANDILAL BAPALAL

December 7, 1964

[M. HIDAYATULLAH, J. C. SHAH AND R. S. BACHAWAT, JJ.]

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, cls. (a) & (b) of s. 12(3)—Application—Standard rent, fixation.

The appellant-tenant filed a suit for the fixation of standard rent and during its pendency paid the provisional standard rent fixed by the Court of Small Causes. After the final order fixing the standard rent of Rs. 125/- per month passed on November 9, 1956 both the tenant and landlord filed revisions in the District Court which were dismissed after contest on March 25, 1958. It appears that the landlord filed a further revision in the High Court about which it is not known from the record when and how it was dismissed. After the order passed on November 9, 1956 the landlord demanded the balance of the rent due to him at the new rate and sent a registered notice but the tenant did not pay. Thereupon, the landlord filed the suit, giving rise to the present appeal, contending that the tenant was in arrears for six months which he had failed to pay within one month of the notice. The suit was terminated in favour of the tenant on April 28, 1958 because by then the back rent calculated at the standard rate finally fixed and the costs of the suit were fully paid by the tenant. The landlord appealed to the Assistant Judge claiming that after the standard rent was fixed finally on March 25, 1956 the case fell to be governed by cl. (a) of s. 12(3) of the Act and as the tenant was in arrears for a period of six months he ought to have been evicted. The appeal failed as it was held that the tenant was protected by cl. (b) of s. 12(3). On revision, the High Court reversed the decision being of the opinion that cl. (a) of s. 12(3) applied to the facts of the case. In appeal by special leave :

HELD : The appeal must be allowed.

Eviction under cl. (a) is made to depend upon several considerations which must coexist and one such condition is that there should be no dispute about the standard rent. Clause (b) comprehends all cases other than those falling within cl. (a) and a case in which there is a dispute about standard rent must obviously fall not in cl. (a) but in cl. (b).

Since the dispute continued as both sides had filed revisions, the tenant was protected by cl. (b) of s. 12(3). [353 F-H]

Vasumatiben Gaurishankar Bhatt v. *Naviram Vora*, [1964] 4 S.C.R. 417 distinguished.

Vora Abbasbhai Alimahomed v. *Haji Gulamnabi Haji Safibhai*, [1964] 5 S.C.R. 157 referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 539 of 1963.

Appeal by special leave from the judgment and order dated October 24, 1961 and January 16, 1962 of the Gujarat High Court in Civil Revision Application No. 431 of 1960.

A *S. T. Desai, J. B. Dadachanji, O. C. Mathur* and *Ravinder Narain,* for the appellant.

Ganpat Rai, for the respondent.

The Judgment of the Court was delivered by

B **Hidayatullah, J.** Jeshwantrai Mulukchand who appeals by special leave against the judgment of the High Court of Gujarat dated October 24, 1961, was a tenant of a shop belonging to Anandilal Bapalal respondent. By the judgment now under appeal the High Court reversed the concurrent decision of the two courts below and ordered eviction of the appellant from the shop C on the ground that he was in arrears for a period of six months in the payment of the rent. By a supplementary order dated January 16, 1962 mesne profits were also granted to the landlord till delivery of possession of the shop. The High Court has differed from the two courts below in the application of the third sub-section of s. 12 of the Bombay Rents, Hotel and Lodging House Rates Con- D trol Act, 1947, by which sub-section the present proceedings were governed. The High Court held that cl. (a) of the sub-section applied while the courts below applied cl. (b). Before we read the section the facts necessary to understand this difference in the two points of view may be stated.

E The tenant rented the shop from April 1, 1954 and executed a rent note for Rs. 155/- p.m. From February 1, 1955 he did not pay the rent and when the landlord demanded it the tenant filed a suit for fixation of standard rent. During the pendency of those proceedings, the Court of Small Causes, Ahmedabad acting under s. 11(3) of the Act (to which reference is unnecessary) fixed F Rs. 80/- p.m. as provisional standard rent and the tenant paid Rs. 1600/- by instalments for the period for which he was then in arrears. On November 9, 1956 the court passed a final order fixing Rs. 125/- p.m. as the standard rent. Both sides filed revisions against that order in the District Court and they were dismissed after contest on March 25, 1958. It appears that the G landlord filed a further revision in the High Court but it is not known from the record when and how it was dismissed. After the order was passed on November 9, 1956, the landlord demanded Rs. 1385/- as the balance of the rent due to him at the new rate till the end of January, 1957 and sent a registered notice but the tenant did not pay. On March 4, 1957 the landlord filed the suit H from which this appeal arises contending that the tenant was in arrears for six months and had not paid the arrears within one month of the notice. This suit terminated in favour of the tenant

on April 28, 1958 because by then the back rent calculated at Rs. 125 p.m. and the costs of the suit were fully paid by the tenant. The landlord appealed to the Assistant Judge, Ahmedabad claiming that after the standard rent was fixed finally on November 9, 1956 the case fell to be governed by cl. (a) of s. 12(3) of the Act and as the tenant was in arrears for a period of six months he ought to have been evicted. The appeal was not accepted. The Assistant Judge held that the tenant was protected by cl. (b) of s. 12(3) of the Act. On revision before the High Court under s. 115 of the Code of Civil Procedure the decision was reversed as in the opinion of the High Court cl. (a) of the third sub-section applied to the facts of the case.

Section 12 of the Act, in so far as it is material, may now be read:

> "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.
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> (2) . . . . . [illegible]
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> (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 shall 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 continues to pay or tender in Court regularly such rent and premitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court.
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> (4) . . . . . .
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> *Explanation* 1. 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

A 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.

B *Explanation* 2. . . . . .

Mr. S. T. Desai submits on behalf of the appellant that the High Court could not act under s. 115 of the Code of Civil Procedure when no question of jurisdiction was involved and he refers to *Vora Abbasbhai Alimahomed* v. *Haji Gulamnabi Haji Safibhai*(1). He argues in the alternative that as the tenant paid the provisional standard rent and discharged all arrears of standard rent and costs before the suit was decided he could not be evicted under cl. (a) of the third sub-section and he relies on the same ruling. Mr. Ganpatrai on the side of the landlord submits that after the decision of the court fixing Rs. 125 p.m. as standard rent, no dispute regarding the amount of standard rent remained and as rent was payable by the month and the tenant was in arrears for six months and did not pay the arrears of standard rent so fixed within one month of the notice to him, the court was bound to pass a decree of eviction under cl.(a). This is how the High Court also viewed the matter. He relies upon *Vasumatiben Gaurishankar Bhatt* v. *Naviram Mancharam Vora and Others*(2).

The decision referred to by Mr. Ganpatrai has no application here. In our opinion, it is unnecessary to decide the first of Mr. Desai's contentions because this appeal can be disposed of on a consideration of the rival contentions on the second point. We are concerned with the two clauses (a) and (b) of s. 12(3). Eviction under cl. (a) is made to depend upon several conditions which must coexist and which find adequate enumeration in our summary of Mr. Ganpatrai's argument. One such condition is that there should be no dispute regarding the amount of standard rent. Clause (b) comprehends all cases other than those falling within cl. (a) and a case in which there is a dispute about the standard rent must obviously fall not in cl. (a) but in cl. (b). There was here a dispute about standard rent. The tenant had already made an application for fixation of standard rent, paid the arrears of provisional standard rent and complied with the requirements of cl. (b). He was therefore protected.

(1) [1964] 5 S.C.R. 157. (2) [1964] 4 S.C.R. 417

The contention of Mr. Ganpatrai that the dispute regarding the standard rent came to an end on November 9, 1956 when the court fixed Rs. 125 p.m. as the standard rent would be correct if the parties accepted the determination. But neither side did. Each side questioned the amount by filing a revision in the District Court. It is particularly strange for the landlord to claim that there was no dispute subsisting when he himself filed one revision after another to get the amount increased. Since the dispute continued, the case was not governed by cl. (a) but by cl. (b) and the High Court was in error in applying the former clause and reversing the decisions based on the latter.

The appeal will be allowed and the judgment of the High Court will be set aside and that of the Assistant Judge, Ahmedabad will be restored. The respondent will bear the costs throughout.

Appeal allowed