

Khemchand Dayalji & Co vs Mohammedbhai Chandbhai on 24 March, 1969

Equivalent citations: 1970 AIR 102, 1970 SCR (1) 80, AIR 1970 SUPREME COURT 102, 1969 RENCJR 370, 1970 (1) SCR 80, 1969 RENCJ 430, 1970 (1) SCJ 11, 11 GUJLR 173, 1970 MAH LJ 848, 1972 BOM LR 428

Author: J.C. Shah

Bench: J.C. Shah, V. Ramaswami, A.N. Grover

PETITIONER:
KHEMCHAND DAYALJI & CO.

Vs.

RESPONDENT:
MOHAMMEDBHAJI CHANDBHAI

DATE OF JUDGMENT:
24/03/1969

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
GROVER, A.N.

CITATION:
1970 AIR 102 1970 SCR (1) 80
1969 SCC (1) 884

ACT:
Ahmedabad City Courts Act, 1961-Suits under Bombay Rents Hotel A Lodging House Rates Control Act 57 of 1947 as applied to the State of Gujarat exclusively triable by court of Small Causes Ahmedabad-Rule 5 under Bombay Act making procedure under Presidency Small Causes Courts Act 15 of 1882 applicable to such suits and proceedings-Ahmedabad Small Causes Court whether empowered to issue distress warrant for recovery of municipal taxes by its power under s. 53 of Act 15 of 1882 Vires of Rule 5.

HEADNOTE:
Jurisdiction to try suits and proceedings between landlords

and tenants under the Bombay Rents, Hotel and Lodging House Rates Control Act 57 of 1947 was by virtue of s. 28 of the Act given to Small Cause Courts. Under s. 49 of the Act the State Government was authorised to make rules for the purpose of giving effect to the provisions of the Act and in particular to make rules among other subjects, for the procedure to be followed in trying or hearing suits and proceedings including proceedings for execution of decrees and distress warrants. For these purposes the Government of Bombay under r. 5 framed by it provided that the procedure under the Presidency Small Cause Courts Act, 1882 would be followed. By the enactment of the Bombay Reorganization Act 11 of 1960 a separate State of Gujarat was constituted out of the territory which formed the State of Bombay, and the area within the city limits of Ahmedabad formed part of the State of Gujarat. The Legislature of the State of Gujarat enacted the Ahmedabad City Courts Act 19 of 1961 which by 17 extended the Presidency Small Cause Courts Act, 1882 (15 of 1882) as well as the Bombay Rents Hotel and Lodging House Rates Control Act 57 of 1947 to the City of Ahmedabad with suitable modifications and amendments. Jurisdiction to try suits under the Bombay Act was by amendment of s. 28 thereof given to the Court of Small Causes Ahmedabad.

The appellants were tenants of a house owned by the respondent in Ahmedabad. Apart from the rent the appellants had also agreed to pay municipal taxes and electricity charges. In 1963 the appellants filed a suit in the Court of Small Causes Ahmedabad for an order inter alia determining the standard rent of the premises in exercise of the power under s. 11 of Bombay Act 57 of 1947. The said court on an application filed by the appellants fixed the contractual rent as the 'interim standard rent' and directed the appellants to pay rent and municipal taxes, which the appellants accordingly deposited in Court. The Court permitted the respondent to withdraw the rent so deposited but not the municipal taxes. The respondent then obtained an order for the issues of a distress warrant under s. 53 of the Presidency Small Cause Court-, Act 15 of 1882 read with r. 5 of the Rules framed under Bombay Act 57 of 1947 for recovery of the amount due as municipal taxes. Distress was levied and the order was confirmed. A revision application in the High Court of Gujarat was rejected. In their appeal against the High Court's order the appellants urged : (i) that r. 5 of the Rules 'framed under s. 49 of the Bombay Act 57 of 1947 was ultra vires the State Government; (ii) that the Court of Small Causes Ahmedabad had no jurisdiction to pass an order issuing a distress warrant in a proceeding under Bombay Act 57 of 1947 especially

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when an application under s. 11 was pending; (iii) that the municipal taxes and electricity charges did not constitute rent which could be recovered by the issue of a distress warrant.

HELD: (i) Rule 5 was framed under Bombay Act 57 of 1947 in exercise of the authority conferred by s. 49(2)(iii). After the enactment of the Ahmedabad City Courts Act, 1961, r. 5 as originally 'framed by the Government continued in force by virtue of s. 87 of the Bombay Reorganization Act 11 of 1960, and applied to the Ahmedabad Small Causes Court. When r. 5 was framed under Bombay Act 57 of 1947 it was not ultra vires and it was not shown to have become ultra vires after the enactment of the Ahmedabad City Courts Act in its application to the City of Ahmedabad. [85 F-G]

(ii) The distress warrant issued by the Court of Small Causes Ahmedabad against the appellant was within its powers.

By the enactment of the Ahmedabad City Courts Act, 1961, the proceedings before the Court of Small Causes at Ahmedabad were governed by that Act and by virtue of the amendment made in s. 28 of Bombay Act 57 of 1947 it became a court of exclusive jurisdiction to try suits, proceedings, claims and questions arising under that Act. Being a court governed by the Presidency Small Causes Courts Act, the Ahmedabad Court of Small Causes was competent to exercise, subject to the Ahmedabad City Courts Act, all the powers which a Presidency Small Cause Court could exercise. Power to issue a distress warrant being expressly conferred by s. 53 of the Presidency Small Cause Courts Act upon the Courts governed by it, the Court of Small Causes Ahmedabad, was competent to exercise that power. [85 D-E]

Section 28 does not make the Court of Small Causes trying suit under the Bombay Act a special Court : it is a court which is competent to exercise all the powers conferred on it under the statute which governs it. Its power to issue distress warrant could therefore be exercised even in respect of suits and proceedings which were exclusively triable by it by virtue of the Bombay Act 57 of 1947. [85 H] Pendency of an application for fixation of standard rent does not suspend the court's power to issue distress warrant, for until standard rent is determined or an interim order is made, rent at the contractual rate is payable and process for recovery by distress warrant may always be adopted. In the present case the amount of municipal taxes was due and it was payable by the appellants. Though deposited in Court it could not be withdrawn by the respondent. The municipal taxes were therefore in arrears and a distress warrant could be applied for under s. 53 of the Presidency Small Cause Court by the respondent. It was not necessary for the respondent to approach a higher court against the erroneous order of the Small Cause Court preventing him from recovering the amount of municipal taxes. [86 B-G]

(iii) By the express terms of the tenancy the appellants had undertaken to pay the municipal taxes and electricity charges as part of the rent : it was not open to them to contend that these taxes and charges were not rent

recoverable by the issue of a distress warrant. [83 H-84 A]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 808 of 1966. Appeal by special leave from the judgment and order dated September 3, 1965 of the Gujarat High Court in Civil Revision Application No. 244 of 1965.

Arun H. Mehta and I. N. Shroff, for the appellant. S.T. Desai, P. C. Bhartari, J. B. Dadachanji and O. C. Mathur, for the respondent.

The Judgment of the Court was delivered by Shah, J. The respondent is the owner of- a house in the town of Ahmedabad. The appellants are the tenants of that house at a monthly rental of Rs. 2,171/-. Under the agreement of lease the -appellants were to pay out of the agreed rent Rs. 810/- per month, and the balance was to be appropriated towards a loan advanced by them to the respondent for constructing the house. The appellants had also agreed to pay municipal taxes and electricity charges. The appellants filed suit No. 1308 of 1963 in the Court of the Small Causes, Ahammadabad, for an order, inter alia, determining the standard rent of the premises in exercise of the power under s. 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act 57 of 1947. The Court of Small Causes, Ahamadabad, on an application filed by the appellants fixed the contractual rent as "interim standard rent" and directed the appellants to pay the rent and municipal taxes. Pursuant to this order, the appellants deposited Rs. 2,403/- as rent and Rs. 8,921.25 due as municipal taxes for the year 1964-65. An application by the respondent to withdraw the amount deposited in Court was resisted by the appellants. The Court permitted the respondent to withdraw Rs. 2,403/- but not the municipal taxes. The respondent then obtained an order for the issue of a distress warrant under S. 53 of the Presidency Small Cause Courts Act 15 of 1882 read with r. 5 of the Rules framed under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, for recovery of the amount due as municipal taxes. Distress was levied, and the order was confirmed. A revision application moved in the High Court of Gujarat against that order was rejected. In support of this appeal counsel for the appellants urges that r. 5 of the Rules framed under S. 49 of the Bombay Rents, Hotel and Lodging House Rates Control Act 57 of 1947, is ultra vires the State Government; that the Court of Small Causes Ahmedabad has in any event no jurisdiction to pass an order issuing a distress warrant when trying a suit or proceeding under Bombay Act 57 of 1947 especially when an application for determination of standard rent under s. 11 of the Act is pending; and that the municipal taxes and electricity charges do not constitute rent which may be recovered by the issue of a distress warrant. By the express terms of the tenancy the appellants had undertaken to pay the municipal taxes and electricity charges as part of the rent it is not open to them to contend that they are not rent recoverable by the issue of a distress warrant. The last branch of the argument has, therefore, no force. The relevant provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act 57 of 1947 and other statutes which have a bearing may first be noticed. Bombay Act 57 of 1947 was intended to control rents and to confer protection against eviction upon tenants of premises in certain urban -areas in the Province of Bombay. By s. 28 of the Act certain courts were designated as courts of exclusive jurisdiction to entertain and try suits and proceedings between a landlord and

tenant, relating to recovery of rent or possession to which the provisions of the Act applied, and also to decide claims or questions arising under the Act. Section 28 as originally enacted and later amended by Bombay Acts 58 of 1949 and 15 of 1952, insofar as it is material reads :

"(1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or "proceeding would not, but for this provision, be within its jurisdiction,

(a) in Greater Bombay, the Court of Small Causes, Bombay;

(aa) in any area for which, a Court of Small Causes is established under the Provincial Small Cause Courts, Act, 1887, such Court and

(b). . .

shall have jurisdiction to entertain and try

-any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions and subject to the provisions of subsection (2), no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question.

Section 28 did not set up new Courts to try suits or proceedings between landlords and tenants : it invested existing courts with exclusive jurisdiction to try suits and proceedings of the nature set out and claims or questions arising under the Act. Section 31 of the Act provides, inter alia, that the courts specified in s. 28 shall follow the prescribed procedure in trying and hearing suits, proceedings, applications and appeals and in executing orders made by them. Section 49 authorises the State Government to make rules for the purpose of giving effect to the provisions of the Act and in particular to make rules, among other subjects, for the procedure to be followed in trying or hearing suits, proceedings (including proceedings for execution of decrees and distress warrants), applications, appeals and execution of orders. Pursuant to the authority conferred, rules were framed by the Government of Bombay and r. 5 which deal with the procedure to be followed by the Court of Small Causes, Bombay, for suits, proceedings, appeals, etc. provided insofar as it is material :

"In such of the following suits -and proceedings as are cognizable by the Court of Small Causes, Bombay, on the date of the coming into force of these Rules, namely (2) proceedings under Chapter VII and VIII of the Presidency Small Cause Courts Act, 1882, and (3) proceedings for execution of any decree or order passed in any such suit or proceedings, the Court of Small Causes, Bombay, shall follow the practice and procedure provided for the time being (a) in the said Act, except Chapter VI thereof, and (b) in the rules made under section 9 of the said Act."

By the enactment of the Bombay Reorganization Act 11 of 1960 a separate State of Gujarat was constituted out of the territory which formed the State of Bombay, and the area within the city limits of Ahmedabad formed part of the State of Gujarat. By the Gujarat Adaptation of Laws (State and Concurrent Subjects) Order, 1960, cl. (a) of sub-s. (1) of S. 28 of Bombay Act 57 of 1947 as it was originally enacted was deleted. The Legislature of the State of Gujarat enacted the Ahmedabad City Courts Act 19 of 1961 which by s. 17 provided that the Presidency Small Cause Courts Act, 1882 (XV of 1882), shall extend to and come into force in the City of Ahmedabad on and from the appointed day. By s. 18 it was provided :

"The Presidency Small Cause Courts Act, 1882 (XV) of 1882), and the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom.

LVII of 1947), shall in their application to the City of Ahmedabad stand amended in the manner and to the extent specified in the Schedule."

By s. 19 it was provided :

"With effect on and from the appointed day..... the Provincial Small Cause Courts Act, 1887 (IX of 1887), and all rules, notifications and orders made thereunder shall cease to apply to, or be in force, in the City of Ahmedabad, By the Schedule certain amendments were made in the Presidency Small Cause Courts Act, 1882, in its application to the City of Ahmedabad By cl. 13 of the Schedule, s. 50 of the Presidency Small Cause Courts Act was to apply to every place within the City of Ahmedabad. Certain amendments were also made in s. 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, and in sub-

s. (1) of s. 28, before cl. (aa) the following clause was inserted :

"(a) in the City of Ahmedabad, the Court of Small Causes of Ahmedabad,"

By the enactment of the Ahmedabad City Courts Act, 1961, the proceedings before the Court of Small Causes at Ahmedabad were governed by that Act and by virtue of the amendment made in s. 28 of Bombay Act 57 of 1947 it became a Court of exclusive jurisdiction to try suits, proceedings, claims and questions arising under that Act. Being a Court governed by the Presidency Small Cause Courts Act, the Ahmedabad Court of Small Causes was competent to exercise, subject to the Ahmedabad City Courts Act, all the powers which a Presidency Small Causes Court may exercise. Power to issue a distress warrant being expressly conferred by s. 53 of the Presidency Small Cause Courts Act upon the Courts governed by it, the Court of Small Causes, Ahmedabad, was competent to exercise that power.

Rule 5 was framed under the Bombay Act 57 of 1947 in exercise of the authority conferred by s. 49 (2) (iii). After the enactment of the Ahmedabad City Courts Act, 1961, r. 5 as originally framed by the Government of Bombay continued in force by virtue of s. 87 of the Bombay Reorganization Act 11 of 1960, and applied to the Ahmedabad Small Causes Court. When r. 5 was framed under Bombay Act

57 of 1947 it was not ultra vires, and it is not shown to have become ultra vires after the enactment of the Ahmedabad City Courts Act in its application to the City of Ahmedabad. The argument that s. 28 sets up a new set of Courts, with special powers and jurisdiction is without substance. Section 28 merely confers upon the existing Courts exclusive jurisdiction in respect of matters relating to possession of premises and recovery of rent and to determine claims and questions arising under that Act. On that account it does not become a Special Court : it is a court which is competent to exercise all the powers which are conferred upon it by virtue of its constitution under the statute which governs it. The Court of Small Causes at Ahmedabad had, therefore, power to issue distress warrant and that power could be exercised even in respect of suits and proceedings which were exclusively triable by it by virtue of the Bombay Act 57 of 1947.

We are also unable to hold that so long as an -application for fixation of standard rent is pending, the Court's jurisdiction to issue a distress warrant remains suspended. Until standard rent is determined, or an interim order is made, rent -at the contractual rate is payable and process for recovery by distress warrant may always be adopted. Section II of Bombay Act 57 of 1947 confers upon the Court power to fix standard rent and permitted increases in certain cases. The Court is also competent to determine interim standard rent, and direct payment pending final determination of standard rent.

The appellants applied for fixation of standard rent and invited the Court to pass -an order fixing interim standard rent and the Court of Small Causes proceeded to pass the order for payment of rent and municipal taxes. In the present case there was an express order of the Court requiring the appellants to deposit in Court Rs. 810/- per month and also to deposit municipal taxes. The Court of Small Causes ordered that the amount deposited by the appellants towards municipal taxes shall not be paid over to the landlord. The amount was on that account not available to the respondent. The respondent was unable to pay the taxes and the Municipality threatened to attach the property. The amount of municipal taxes was due and it was payable by the appellants. Though deposited in Court, it could not be withdrawn by the respondent. The municipal taxes were, therefore, in arrears and a distress warrant could be applied for under s. 53 of the Presidency Small Cause Courts Act by the respondent.

It was urged that the appellants had to pay the amount of interim standard rent twice over : once when they deposited it in the Court and again when they satisfied the demand to avoid execution of the distress warrant. The landlord undoubtedly cannot obtain the amount twice over. But that does not mean that when the tenant has not made the amount available to the landlord the application for distress was not maintainable.

The argument that the erroneous order passed by the Court of Small Causes preventing the landlord from recovering the amount of municipal taxes could have been got corrected by approaching the superior courts and so long as that order stood, no distress could be levied, ignores the fact that the appellants had persuaded the Court of Small Causes to pass that order. In our judgment, there was no bar to the respondent maintaining the application for distress. The appeal fails and is dismissed with costs. G.C. Appeal dismissed.