

Harbanslal Jagmohandas & Anr vs Prabhudas Shivilal on 12 March, 1976

Equivalent citations: 1976 AIR 2005, 1976 SCR (3) 628, 1976 RENCJ 756, AIR 1976 SUPREME COURT 2005, 1976 MAH LJ 419, 1976 3 SCR 628, 1976 2 SCJ 422, 1976 RENCJ 570, 1976 UJ (SC) 3 7, 1978 BOM LR 213

Author: A.N. Ray

Bench: A.N. Ray, M. Hameedullah Beg, Jaswant Singh

PETITIONER:

HARBANSLAL JAGMOHANDAS & ANR.

Vs.

RESPONDENT:

PRABHUDAS SHIVLAL

DATE OF JUDGMENT 12/03/1976

BENCH:

RAY, A.N. (CJ)

BENCH:

RAY, A.N. (CJ)

BEG, M. HAMEEDULLAH

SINGH, JASWANT

CITATION:

1976 AIR 2005 1976 SCR (3) 628

1977 SCC (1) 575

CITATOR INFO :

R 1978 SC 955 (10)

C 1980 SC 954 (11)

R 1988 SC 1817 (4)

ACT:

Bombay Rents Hotel and Lodging House Rates Control Act 1947-Explanation I to s. 12-Sec. 11-12(3)(a)(b)-Whether a tenant must raise dispute as to standard rent within one month from receipt of notice or whether can be raised in written statement.

HEADNOTE:

Both the appeals raise a common question as to whether a tenant in order to resist passing of a decree of eviction

under the provisions contained in s. 12(3)(a) of the Bombay Rent Act 1947 must dispute the standard rent within one month from the date of receipt of the notice from the landlord terminating the tenancy on the ground of arrears of rent or whether a tenant can raise such a dispute in the written statement. The Gujarat High Court took a view that the dispute as to standard rent has to be raised within one month from the service of the notice on the tenant. The Bombay High Court has taken a contrary view and held that the tenant can raise a dispute as to standard rent in his written statement in answer to the suit and in such a case the provisions of s. 12(3)(a) of the Act will apply. In the Gujarat case, the High Court found that the tenant did not raise the dispute within one month of the service of the notice terminating the tenancy inter alia, on the ground of arrears of rent for more than 6 months. In the Bombay appeal the dispute was not raised within one month from the date of the receipt of the notice. It was, however, raised in the written statement. Under s. 11 of the Act, the court has power to determine standard rent when there is a dispute between the landlord and tenant regarding the amount of standard rent.

^

HELD: (1) Under s. 12 of the Act the landlord is not entitled to recover possession of the premises so long as the tenant pays or is ready and willing to pay the amount of standard rent and permitted increases. Section 12(2) provides that 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 until the expiration of one month next after notice in writing of the payment of the standard rent. Section 12(3)(a) provides for passing a decree for eviction of the tenant is in arrears for a period of 6 months and neglects to make the payment after the expiration of the notice period provided there is no dispute regarding the amount of standard rent. Clause 12(3)(a) provides that in any other case no decree for eviction should be passed if the tenant pays or tenders in the court the standard rent and permitted increases which is due and thereafter continues to pay or tender in court regularly such rent till the suit is finally decided. Explanation I to s. 12 provides that 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 from the receipt of the notice he makes an application under s. 11 for the fixation of the standard rent and thereafter pays the rent fixed by the Court. [632-B, G]

(2) The Bombay High Court view overlooks the limitation of time within which a dispute is to be raised as to standard rent. The view of the Bombay High Court that dispute within one month of the service of the notice

terminating the tenancy is one mode of raising a dispute and there is another mode of raising the dispute at any stage of the suit, nullifies the provisions contained in s. 12 and explanation thereto and confers a right on the tenant where the legislation does not contemplate such right. The provisions in s. 11(3) of the Act deal with orders which may be passed by the court during the pendency of the application disputing the rent. Provisions of s. 11(4) of the Act deal with orders which may be passed consequent upon dispute as to rent. It is

629

only when an application disputing the rent is made within the time contemplated by Explanation I to s. 12 of the Act that the provisions on sub-sections (3) and (4) of s. 11 are attracted. [635F-H, 636A]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 282 of 1971.

Appeal by special Leave from the Judgment and Order dated 22-12-70 of the Gujarat High Court in C.R.A. No. 1353 of 1970 and Appeal by Special Leave from the Judgment and Order dated the 31-3-71 of the Bombay High Court in Special Civil Application No. 859 of 1967.

D. V. Patel, S. K. Dholakia and R. C. Bhatia for Appellants in C. A. 282/71.

V. S. Desai, Makohn F. A. Pereize and H. S. Parihar for Appellants in C. A. 2068/71.

V. S. Desai, H. S. Parihar and I. N. Shroff for Respondent in C.A. 282/71.

The Judgment of the Court was delivered by RAY, C.J.-Civil Appeal No. 282 of 1971 referred to as the Gujarat Appeal is by special leave from the order dated 22 December, 1970 of the High Court of Gujarat rejecting a revision application against the judgment and decree passed by the Extra Assistant Judge on 17 September, 1970.

Civil Appeal No. 2068 of 1971 hereinafter referred to as the Bombay Appeal is by special leave from the judgment and order dated 21 March, 1971 of the High Court of Bombay.

Both the appeals raise a common question as to whether the provision contained in section 12(3) (a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 hereinafter referred to as the Act applies. The Gujarat High Court took the view that the provisions of section 12 (3)

(a) of the Act apply to the suit. The Bombay High Court took the view that the provisions contained in section 12 (3) (a) of the Act do not apply to the suit, but that the suit is governed by the provisions contained in section 12 (3) (b) of the Act.

The principal question is whether on receipt of a notice from the landlord terminating the tenancy on the ground of arrears of rent dispute as to standard rent has to be raised before the expiry of the period of one month after the service of the notice.

The Gujarat High Court has taken the view that the dispute as to standard rent is to be raised within one month from the service of the notice on the tenant. The Bombay High Court has taken a contrary view and held that the tenant can raise a dispute as to standard rent in his written statement in answer to the suit and in such a case the provisions of section 12 (3) (b) of the Act will apply.

In the Gujarat appeal the respondent filed a suit for recovery of possession of a portion of the ground floor of a building on the ground that the appellant was in arrears of rent from 1 September, 1964 and also on the ground that the respondent bonafide required possession of the premises in suit. The Third Joint Civil Judge in the trial court gave a decree in favour of the respondent for possession of the premises. The trial court held that the appellants were in arrears of rent from 1 September, 1964 and that they were not ready and willing to pay the rent. The trial Court further held that the contractual rent in respect of the premises was not unreasonable and excessive.

The appellants in the Gujarat appeal filed an appeal in the court of District judge of Surat. The Appellate Court by judgment dated 17 September, 1970 confirmed the judgment and decreed the suit.

The appellants thereafter filed a revision application before the Gujarat High Court on the ground that the court should have held that the case fell under section 12 (3) (b) of the Act. The High Court rejected the revision application at sight.

The facts found in the Gujarat appeal are as follows:

The appellants paid rent to the respondent up to 31 August, 1964. The respondent landlord by notice dated 14 November, 1966 terminated the tenancy of the appellants, inter alia, on the ground that the appellants were in arrears of rent for more than six months. The appellants received the notice on 6 December, 1966. The respondent filed the suit on 2 February, 1967.

In the Gujarat appeal appellants contended that they raised the dispute about the standard rent by their letters dated 17 November, 1966; 19 December, 1966 and 11 February, 1967, and therefore, there was a dispute as to standard rent and the provisions contained in section 12 (3) (a) of the Act do not apply. The Appellate Court found that the letters dated 17 November, 1966 and 19 December, 1966 alleged to have been written by the appellants to the respondent were manufactured by the appellants and the certificates of posting were obtained by unscrupulous means. As to the alleged letter of the appellants dated 11 February, 1967 the Appellate Court found that in that letter the appellants referred to the letters dated 17 November, 1966 and 19 December, 1966. The respondent by his reply dated 16 February, 1967 denied that

the respondent ever received any letter dated 17 November, 1966 or 19 December, 1966. On this evidence the Appellate Court found that there was no dispute as to rent within one month of the service of the notice terminating the tenancy.

In the Bombay Appeal the notice terminating the tenancy was dated 5 April, 1963 to deliver possession on the expiration of 15 May, 1963. The suit was filed on 11 September, 1963. The appellants landlords alleged that the tenants were in arrears from 15 March, 1960 to 15 March, 1963, viz., for over six months. In the Bombay appeal the trial Court gave a decree for possession. The Appellate Court confirmed the judgment of the trial Court. In an application under Article 227 of the Constitution the Bombay High Court held that when the respondent paid all arrears and costs of the suit on 23 December, 1964 it could not be said that the respondent did not comply with the provisions of section 12 (3) (b) of the Act. The Bombay High Court took the view that the Full Bench of the Bombay High Court in Dattu Subhana Panhalkar v.

Gajanan Vithoba Bobhate & Anr. held that a tenant could raise a dispute as to standard rent by raising an issue as to standard rent in the written statement.

The provisions contained in sections 12 (3) (a) and (b) of the Act are as follows:

"(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.

(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 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 the suit as directed by the Court."

Explanation I to section 12 of the Act is as follows:-

"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."

The following provisions with regard to standard rent are found in section 11 of the Act. The Court may, upon an application made to it for that purpose, or in any suit or proceedings, fix the standard rent, inter alia, where there is any dispute between the landlord and the tenant regarding the amount of standard rent. If any application for fixing the standard rent is made by a tenant who has received a notice from the landlord under sub-section (2) of section 12, the Court shall forthwith specify the amount of rent or permitted increases which are to be deposited in Court by the tenant and make an order directing the tenant to deposit such amount in Court or at the option of the tenant make an order to pay to the landlord such amount thereof as the Court may specify, pending the final decision of the application. Out of any amount deposited in Court, the Court may make an order for payment of such reasonable sum to the landlord towards payment of rent or increases due to him as it thinks fit. If the tenant fails to deposit such amount or, as the case may be, to pay such amount thereof to the landlord, his application shall be dismissed.

Under section 12 of the Act the 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 the Act. Sub-section (2) of section 12 of the Act states that no suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases 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. Clause (a) of sub-section (3) of section 12 of the Act provides for the passing of a decree for eviction first, where the rent is payable by the month; second, there is no dispute regarding the amount of standard rent or permitted increases; third, the rent or increases are in arrears for a period of six months; and fourth, the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2) of section 12 of the Act. Clause (b) of sub-section (3) of section 12 of the Act, states that 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 permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court.

Explanation I to section 12 of the Act provides that 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 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court.

Counsel for the appellant in the Gujarat appeal relied on the Bombay view that there is no limitation of time during which a dispute must be raised and none can be implied from the Explanation. The Bombay High Court has not agreed with the view of the Gujarat High Court in *Ambalal v. Badaldas*. The Bombay view is that the dispute in section 12(3)(a) is not limited only to a dispute raised within one month of the notice as contemplated in section 12(3) (b) of the Act. The Bombay High Court

relied on section 11(4) of the Act the provisions whereof are as follows:-

"Where at any stage of 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 the rent as the Court considers to be reasonably due to the landlord, or at the option of the tenant an order directing him to pay to the landlord such amount thereof as the Court may specify. The Court may further make an order directing the tenant to deposit in Court periodically, such amount as it considers proper as interim standard rent, or at the option of the tenant an order to pay to the landlord such amount thereof, as the Court may specify, during the pendency of the suit. The Court may also direct if the tenant fails to comply with any order made as aforesaid, within such time as may be allowed by it, he shall not be entitled to appear in or defend the suit except with leave of the Court, which leave may be granted subject to such terms and conditions as the Court may specify."

The Bombay High Court held that to limit raising a dispute within one month from the service of notice would render the provisions of section 11(4) nugatory. The Bombay High Court held that the effect of sections 11 and 12 of the Act is to give the tenant a right to dispute the standard rent in the event of a suit and if the tenant raises a dispute in answer to a suit for recovery of rent it would be a dispute within the meaning of section 12(3) (a) of the Act and would take the suit out of the provisions of that sub-section.

The Gujarat High Court in the decision in Ambalal's case (supra) and in Chunilal Shivilal v. Chimanlal Nagindas took the view that in order to avoid the operation of section 12(3) (a) of the Act the dispute in regard to standard rent or permitted increases must be raised at the latest before the expiry of one month from the date of service of notice under section 12(2) of the Act and it is not enough to raise a dispute for the first time in the written statement. In Ambalal's case (supra) the question was as to what should be stage at which the dispute in regard to standard rent or permitted increases must be raised in order to take the case out of section 12(3) (a) of the Act. The Gujarat High Court held that the dispute is one which is in existence at the date of the notice or at any rate before the ex-

piry of one month from the date of its service and not the one raised subsequently in a written statement with a view to avoiding the operation of section 12(3) (a) of the Act.

Counsel for the appellants in the Gujarat appeal contended that the decision in Vora Abbasbhai v. Haji Gulamnabi has overruled Ambalal's case (supra). In Vora Abbasbhai's case the notice terminating the tenancy was dated 1 December, 1956. The tenant by reply dated 7 December, 1956 contended that the contractual rent was excessive. The tenant made an application on 5 January 1957 for fixation of standard rent under section 11(1) of the Act. While the application was pending the landlord filed the suit on 27 January, 1957 for ejectment. The tenant in the written statement

reiterated the contention that the contractual rent was excessive and that the standard rent should be fixed by the Court. On these facts the question in Vora Abbasbhai's case (supra) was whether the case fall within section 12(3) (a) or section 12(3) (b) of the Act.

The only point in controversy in Vora Abbasbhai's case (supra) was whether the second condition in section 12(3)

(a) of the Act, viz., that there was no dispute regarding the amount of standard rent was fulfilled. The landlord's contention was that the dispute concerning standard rent is one which must have been raised before service of the notice and since there was admittedly no dispute in regard to standard rent or permitted increases at the date of service of the notice under section 12 (2) of the Act the second condition in section 12(3) (a) that there was no dispute was satisfied. This Court did not accept the landlord's contention there and held that the defendant in that case raised the contention by reply dated 7 December, 1956 that the contractual rent was excessive and raised the same contention in the application filed for fixation of standard rent.

The Gujarat High Court in Ambalal's case (supra) held that in order to attract the applicability of section 12 (3)

(a) of the Act there must be non-existence of the dispute at the date of the notice and such non-existence must continue right up to the expiration of one month from the date of service of the notice so that if the dispute is raised at any time prior to the expiration of the said period on one month, the operation of section 12(3) (a) would be excluded. The latest point of time when according to Ambalal's case (supra) the dispute in regard to the standard rent must be raised in order to avoid the operation of section 12(3) (a) of the Act is the expiry of one month from the date of service of the notice. Ambalal's case (supra) did not say that the dispute concerning standard rent must be raised before service of the notice in order to repel the applicability of section 12(3) (a) of the Act. If the dispute is in existence prior to the expiry of one month after service of the notice though subsequent to the date of the notice that would be sufficient to oust the operation of section 12(3) (a) of the Act. The decision of this Court in Vora Abbasbhai's case (supra) has not overruled the decision in Ambalal's case (supra). In Ambalal's case (supra) the conclusion is a single one and it is that in order to exclude the operation of section 12(3) (a) of the Act the dispute must be in existence latest within one month after service of the notice.

The question as to when a dispute is to be raised came up for consideration in Shah Dhansukhlal Chhanganlal v. Dalichand Virchand Shroff & Ors.. The appellant fell into arrears of rent in that case. The landlord gave a notice to the tenant on 18 April, 1955 demanding the arrears of rent and also terminating the tenancy of the defendant with effect from 31 May, 1955. The notice was received by the defendant on 21 April, 1955, The suit for ejectment was filed on 15 March, 1956 on the ground that the defendant was in arrears of payment of rent and permitted increases and as such not entitled to the protection of the Act. This Court held that section 12 (1) of the Act must be read with Explanation and so read it means that the tenant can only be considered to be ready and willing to pay 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 by the Court. This Court found in Chhaganlal's case (supra) that the tenant made no payment within the period of one month of the notice of ejectment and further that although in his written statement he raised a dispute about the standard rent he made no application in terms of section 11(3) of the Act. The tenant can claim protection from the operation of section 12(3) (a) of the Act only if the tenant makes an application within one month of the service of the notice terminating the tenancy by raising a dispute as to standard rent.

The view of the Bombay High Court overlooks the limitation of time within which a dispute is to be raised as to standard rent. The view of the Bombay High Court is that disputing within one month of the service of the notice terminating the tenancy is one mode of raising a dispute and there is another mode of raising the dispute at any stage of the suit. The view of the Bombay High Court nullifies the provisions contained in section 12 and Explanation thereto and confers a right on the tenant where the legislation does not contemplate such a right.

The provisions in section 11(3) of the Act deal with orders which may be passed by the Court during the pendency of the application disputing the rent. Provisions in section 11(4) of the Act deal with orders which may be passed consequent upon dispute as to rent. It is only when an application disputing rent is made within the time contemplated by Explanation I to section 12 of the Act that the provisions in sub-section (3) and (4) of section 11 are attracted.

For the foregoing reasons we uphold the view of the Gujarat High Court and we do not accept the view of the Bombay High Court. We dismiss Civil Appeal No. 282 of 1971 with costs. We accept Civil Appeal No. 2068 of 1971 and the judgment of the Bombay High Court is set aside. The decree passed by the Civil Judge on 31 October, 1964 and affirmed by the Assistant Judge on 27 September, 1966 is restored. The appellants will be entitled to costs.

P.H.P.

C. A. No. 282 of 1971 dismissed.

C. A. No. 2068 of 1971 allowed.