

Supreme Court of India

Ibrahim Abdulrahim Shaikh vs Krishnamorari Sripatlal Agarwal on 5 August, 1993

Equivalent citations: 1994 AIR 1609, 1995 SCC (1) 256

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

IBRAHIM ABDULRAHIM SHAIKH

Vs.

RESPONDENT:

KRISHNAMORARI SRIPATLAL AGARWAL

DATE OF JUDGMENT 05/08/1993

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

MOHAN, S. (J)

CITATION:

1994 AIR 1609

1995 SCC (1) 256

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. The appellant is the landlord. The appellant has filed this appeal by special leave against the judgment of the Gujarat High Court in Civil Revision Application No. 211 of 1972 dated 25-3-1975. He filed an application under Section 12 of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947 (for short 'the Act') for ejectment of the respondent on the ground that he was in arrears of rent and also permitted increases. Though notice was issued to the respondent, he did not pay the rent and that, therefore, he is liable for ejectment. The appellant issued two notices one on 8-1-1955 and the second on 9-2-1959. For both the notices, the respondent issued the reply on 31-1-1955 and 25-2-1959 respectively. Therein the tenant has specifically disputed the standard rent and also stated that there were no permitted increases of the rent. Immediately after the filing of the application and receipt of the notices the tenant had deposited all the arrears including permitted increases as claimed by the respondent and thereafter an application under Section 11 of the Act was filed for fixation of the standard rent and also permitted increases. All the three courts found as a

fact that the respondent had paid all the permitted increases to the Municipal Corporation, Ahmedabad. As regards the standard rent, it is found by the High Court that in the Rent Controller's Court before the appellate authority as well as the High Court, while the revision was pending in the High Court, he was regularly depositing the standard rent. As an abundant caution, the tenant also filed in the record all the deposits made by him from time to time which are part of the record in this Court at pages 300-306. Thus, it is clear that the tenant had been paying the rent from the date of the receipt of the notices in the eviction petition and has been continuing to deposit the same pending disposal of the litigation.

2. The sole question that arises for our consideration is whether the case falls under Section 12(3)(a) or (b). Section 12(3)(a) and (b) read as under :

"12. (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 may 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 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 the suit is finally decided and also pays costs of the suit as directed by the Court."

3. This Court in *Harbanslal Jagmohandas v. Prabhudas Shivilal*¹ construing the provisions of the Act and in view of the difference of opinion between the High Court of Bombay and the High Court of Gujarat held that the view of the Gujarat High Court is the correct law. The Gujarat High Court held that the tenant on receipt of the notice from the landlord claiming arrears of rent and also permitted increases unless disputes the same within one month from the date of the receipt of the notice, he is not entitled to claim the benefit of Section 12(3)(a) of the Act. The Bombay High Court's view was that he could raise the dispute in his written statement, which view was not accepted. Therefore, on the basis of this ratio, it is contended by the learned counsel for the appellant that the tenant shall also file an application for fixation of the standard rent or permitted increases under Section 11 within one month. Unless he does it, he is not entitled to the benefit of Section 12(3)(a). In support thereof, he seeks to place reliance on the judgment of this Court in *Shah Dhansukhlal Chhaganlal v. Dalichand Virchand Shroff*². In this case, this Court has held that : (SCR pp. 351-52) 1 (1977) 1 SCC 575 : (1976) 3 SCR 628 2 (1968) 3 SCR 346: AIR 1968 SC 1109 "It appears to us that there is no substance in the contention put forward on behalf of the appellant. Section 12(1) must be read with the explanation and so read it means that a 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. We have already noted that the

tenant made no payment within the period of one month of the notice of ejectment and 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 readiness and willingness to pay have therefore to be judged in the light of the facts of the case."

In that case it was found as a fact that there is no dispute with regard to the standard rent or permitted increases. There was no denial within one month from the date of the receipt of the notice and that the payment was not made immediately on the first day of appearance on receipt of the notice from the court. He disputed the standard rent in written statement. Later he made an offer to pay the entire arrears and the offer was not accepted. From these facts this Court held that unless he disputes within one month from the date of the receipt of the notice and files an application under Section 11(3) he was not entitled to the benefit under Section 12(3)(a).

4. The Act is a welfare legislation interposing between the contractual rights of the landlord and tenant and regulating the letting of the buildings and determination of the standard rent and permitted increases in accordance with the Act. The tenant is obligated to pay the rent to the landlord every month unless the landlord refuses to receive it. In the latter event recourse can be had to deposit the rent. Some statutes provide the procedure for deposit in the Court of the Rent Controller after following the procedure prescribed therein. If the tenant commits default in the payment of the rent the Act provides that the landlord is entitled to file an application for eviction if the arrears of rent continues for six months and more. The Act also prescribes issuance of a notice determining the tenancy for failure on the part of the tenant to pay the arrears of standard rent or permitted increases for six months and more and for delivery of possession. In case the tenant disputes the standard rent or permitted increases claimed in the notice, the tenant is enjoined under Section 12(3)(a) to dispute the correctness thereof and to plead prevailing one by issuing reply notice within one month from the date of its receipt. In that situation it is manifest that the landlord elected his statutory right to determine the tenancy on account of arrears for a period of six months or more. The landlord put the tenant on notice of his negligence and to make payment thereof within one month from the date of the receipt of the notice and on disputation is enjoined to seek remedy under Section 11 (3) for determination of the standard rent or permitted increases. If he fails to dispute and omits to pay the arrears within one month from the date of the receipt of the notice, he becomes liable to be evicted under Section 12(3)(a) of the Act. Admittedly the statute did not prescribe any period of limitation under Section 11(3) to lay the application for fixation of standard rent or permitted increases. Therefore, by necessary construction of Sections 11 and 12, what this Court appears to have intended was that the tenant should dispute the standard rent or permitted increases within one month from the date of the receipt of the notice and then file the application under Section 11(3). It would not appear to have been meant that the application under Section 11(3) should also be filed within one month from the date of the receipt of the notice. But expeditious action is called for to prove the bona fides of the tenant disputing the right of the landlord in the claim of standard rent or permitted increases. The Act appears to have intended to quench thirst of the avaricious landlord to claim the rent in excess of the standard rent or permitted increases under the Act and at the same time obligated the tenant, in case of his dispute or disagreement, to have the statutory recourse for determining standard rent or permitted increases. Therefore, expeditious action had to be had before the receipt of the notice from the court which would indicate not only

bona fides on the part of the tenant in resisting the claim for excess standard rent or permitted increases but also to have his right to pay the standard rent or permitted increases determined according to law.

5. Accordingly, we hold that this case does not fall under Section 12(3)(a) but it squarely falls under Section 12(3)(b). Since the tenant has paid all the arrears on the first day of the appearance and has been continuing to deposit the rent regularly, he did not commit any default to pay the rent and thereby the landlord is not entitled to ejectment by operation of Section 12 of the Act. The appeal is accordingly dismissed with costs which is quantified at Rs 5000.