Supreme Court of India
Gaurishankar Chhitarmal Gupta vs Srimati Gangabai Tokersey on 8 January, 1971
Equivalent citations: AIR 1971 SC 659, (1971) 3 SCC 137, 1971 III UJ 171 SC
Author: C Vaidialingam
Bench: C Vaidialingam, J Shelat
JUDGMENT C.A. Vaidialingam, J.

1. This appeal, by special leave, by the tenant of a residential building, is directed against the order of the Bombay High Court dated January 9/10, 1967 in Civil Revision Application No. 888 of 1965.

2 The short question that arises for consideration is whether the High Court was justified in holding that the respondent landlord was entitled to seek eviction of the appellant on the ground that the latter had failed to pay the standard rent including the permitted increases for over a period of six months. Incidentally the question also arises whether the notice issued by the respondent on June 15, 1955 is a valid one Under Section 12(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Act 57 of 1947), (hereinafter to be referred as the Rent Act). The facts so far as they are material are as follows :

3. A building known as Lal Bungalow situate in Kurla Road, Andheri originally belonged to the respondent and one Ratnabai. The appellant had taken on rent two rooms in the ground-floor in the said building in or about 1940, agreeing to pay monthly rent of Rs. 25-50. In 1943 the entire ground-floor including the two rooms, already occupied by the appellant were taken on a fresh lease by him on a monthly rent of Rs. 45/-, As disputes arose between the co-owners of the building, resulting in the institution of a suit, a Receiver was appointed to take possession of the suit premises The Receiver went on collecting rent from the appellant at Rs. 45/-per month till March 1954 and subsequently at Rs. 48/2/9. In or about November, 1954 the co-owners settled their disputes and the suit house was allotted to the share of the respondent. The respondent sent a notice through her lawyer on December 21, 1954 to the appellant demanding a sum of Rs. 240/7/6, being the increments in the municipal tax in respect of the building from March 1, 1950 to Nov. 30, 1954 at /1/6 per rupee per month. It was mentioned by the respondent that the said increments were made by the Parle-Andheri Municipality in the years 1945 to 1947. Certain further claims were also made in respect of water charges, but we are now not concerned with that claim in these proceedings. By the said notice the respondent landlord also called upon the appellant to vacate and deliver peaceful possession of the premises by the end of January, 1955 The appellant replied through his lawyer on January 27, 1955. He called upon the respondent to prove her title to the property in respect of which the claim was being made. He pleaded that he had paid to the Receiver all his dues till November, 1954 as also all legitimate increments payable by him He declined to comply with the request for surrender of possession of the premises on the ground that the said demand was illegal. The respondent by letter of March 24, 1955 sent through her Counsel, again reiterated her demand for payment of the increments in the municipal tax. She also gave notice to the appellant terminating his tenancy and called upon him to deliver peaceful vacant possession by the end of April, 1955 There was some further correspondence between the parties and ultimately on June 15, 1955 the respondent sent a lawyer's notice calling upon the appellant to pay a sum of Rs. 315/9/-within the period mentioned therein. The appellant was informed that the said amount

represented:(a) Rs. 262/15/6 'being the arrears of rent, including the amount of the increment in Municipal taxes due by you for five months from 1st December, 1954 to 30th April, 1955 at 1/2 52 9.6 per month', and (b) Rs. 52/9/6 as compensation for use and occupation of the suit premises for the month of May, 1955.

4. It will be noted that in this notice the respondent claimed arrears of rent including the amount of increment in municipal taxes and that the total amount per month was at Rs. 52/9/6. Claim by way of arrears of rent including the increments in municipal taxes was for a period of five months from December 1, 1954 to April 30, 1955 and compensation was further claimed for one month. The appellant again sent a reply through his Counsel on July 1, 1955. In this reply he had stated that the claim contained in the notice dated June 15, 1955 was very much in excess of what was actually due by him. It was further stated that the monthly rent of the premises was only Rs. 45/-& that the municipal tax recoverable was also only Rs. 2/13/-per month. He, however, admitted that from April 1, 1954 there was an addition to the rent according to law, but he stated that he has paid rent at Rs. 48/2/9 including all taxes from April 1, 1954. Admitting that he was in arrears of rent with all charges from December 1, 1954, he stated that he was prepared to remit the dues till June, 1955 though the demand was only for the period ending May, 1955. It was further stated that a cheque for Rs. 337/3/3 representing the arrears at Rs. 48/2/9 for seven mouths from December 1, 1954 to June 30, 1955 was also being enclosed along with the reply. It is seen from the further letter sent by the respondent on July 12, 1955 that the cheque, received along with the reply, was dishonoured. In consequence the appellant was again called upon to remit the amount as per the notice of June 15, 1955 together with an additional sum of Rs. 52/9/6 as compensation for the month of June, 1955. The appellant again replied on July 21, 1955 requesting the respondent to return the cheque and promising to send the amount in cash. The appellant has further stated in his reply that the amount clamed as due till the end of June, 1955 was excessive and illegal.

5. The respondent instituted on October 9, 1955 in the Court of Small Causes, Bombay, the suit, out of which the present proceedings arise, for evicting the appellant from the suit premises. The respondent averred that the appellant's tenancy had been terminated by the notice of March 24, 1955 One of the grounds for ejectment was stated to be that the appellant had failed to pay the full and due amount of rent in respect of the suit premises at Rs. 52/9/6 per month from April 1, 1954. The break up of this amount has been given as: (a) monthly rent Rs. 45/-; (b) Rs. 3/6/-on account of increase in rent at 7% from April 1, 1954 plus Rs. 4/3/6 per month on account of permitted increases due to increase in municipal taxes. The respondent also relied on certain additional grounds for seeking ejectment, such as non payment of water charges and converting an open verandah into a room without the consent of the landlord. However, in view of the findings of the Courts below, these additional grounds no longer survive.

6. The appellant contested the suit pleading that there has been no termination of the tenancy and that no valid and legal demand has been made regarding arrears of rent and permitted increases. In fact he pleaded that the demand made was in excess of the actual amount payable by him He further pleaded that the respondent was not entitled to ask for his eviction from the premises.

7. The Court of Small Causes by its judgment of February 26, 1959 dismissed the suit holding that the demand of rent made in the notice of June 15, 1955 was not a proper demand and as such the landlord was not entitled to ask for eviction on the ground of non payment of rent. The Court, however, recorded a concession made on behalf of the appellant that the notice dated June 15, 1955 should be treated as a notice Under Section 12(2) of the Act and the rate at which the arrears were claimed, namely, Rs. 52/9/6 per month for the period from December 1, 1954 to May 31, 1955 was correct as per the break up of figures given in the claim made in the suit. The further concession that the rent, according to the demand, was not paid till the filing of the suit, was also noted by the Court. However, the Small Causes took the view that before a tenant could be made liable to pay the permitted increases and in consequence to treat him as a defaulter for non-payment of such amount, it was obligatory on the part of the landlord to have made a demand for the payment of the permitted increases. In this case, the demand having been made only on June 15, 1955, the tenant was bound to pay the permitted increases only from that date and not for any period anterior thereto and hence the tenant cannot be considered to be a defaulter so as to give a right to the landlord to ask for eviction. The appeal filed by the respondent before the appellate Bench of the Small Causes Court was summarily rejected on November 27, 1964. However, on revision, the High Court set aside the order of dismissal passed by the Appellate Bench and remanded the appeal for disposal after giving reasons. Alter remand, the Appellate Bench by its judgment dated April 6, 1955 differed from the view of the Trial Judge and decreed the respondent's suit The Appellate Bench held that there has been a proper notice to quit issued by the respondent. It further held that the notice dated June 15, 1955 was a valid one and as the appellant was in arrears for six months, and not having paid the amount demanded within one month, the landlord was entitled to an order for evicting the appellant, In fact the Appellate Bench was of the view that in view of the concessions made by the Counsel for the appellant not noted by the Small Causes Court, it was not open to the appellant to contend that the rate at which the rent was claimed, namely, Rs. 52/9/6 per month was not the correct amount payable by him.

8. The appellant carried the matter before the High Court in Civil Revision Application No 888 of 1965 which was dismissed by the order dated January 9/10, 1967 holding that the demand made by the respondent was legal and that the notice dated June 15, 1955 was a valid notice Under Section 12(2) of the Act. The High Court has, held that the claim of the respondent comes Under Section 12(3)(a) of the Act and as such he was entitled to have a decree in his favour for eviction of the appellant.

9. Mr. V.S. Desai, learned Counsel for the appellant, has raised two contentions; (i) the respondent having issued the notice on June 15, 1955 demanding the permitted increases, the question of appellant's being in default should have been considered only for the period subsequent to that date and as no such default has been established, the order for eviction is not legal; (ii) in any event the appellant having contested the demand of the respondent, the position in law is that there is a dispute regarding the standard rent and permitted increases between the landlord and the tenant and, therefore, Section 12(3)(a) does not apply so as to entitle the respondent to have an order for eviction. A minor contention was also raised by Mr. Desai that the notice dated June 15, 1955 does not satisfy the requirement of Section 12(2) and hence the suit for eviction was not maintainable.

10. In our opinion, none of these contentions has any substance and all of them can be disposed of together.

11. It is now necessary to advert to certain provisions of the Act. Section 5 Clause (7) defines "permitted increase" as meaning an increase in rent permitted under the provisions of the Act. Clause (10) defines "standard rent" in relation to a premises. Section 7 puts an embargo against a landlord receiving any rent higher than the standard rent except in the circumstances mentioned therein. One such circumstance is when the landlord is entitled to recover such increase under the provisions of the Act. Section 10 permits the landlord to make an increase paid by him to a local authority any rate, cess or tax imposed or levied.

12. Section 10C again permits the landlord to make an increase in the rent of the premises referred to in column (1) which were let on or before September 1, 1940 by an addition to the rent at the rates specified in column (2). In this case the finding of the Courts is that the premises in question is covered by item No. 2, in column (1) "dealing with residential premises, rent of which exceeds Rs. 20/-per month, but does not exceed Rs. 80/-per month". Therefore, it follows that the respondent was entitled to claim an increase in the rent by an amount not exceeding 7 1/2%of the standard rent It may be mentioned that Section 10C was added by the Bombay Act 61 of 1953. Section 11 enables the Court to fix standard rent and permitted increases in the circumstances mentioned therein. Sub-sections (1), (2), (3)(a) and (3)(b) of Section 12, which are material for the present purpose are as follows :

Section 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.

(1) 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 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, 1882.

(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 other date as the Court may fix, the tenant pays or tenders in Court the standard rent permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increase till the suit is finally decided and also pays costs of the suit as directed by the Court.

13. The contention raised by Mr. Desai is that in this case the notice dated June 15, 1955 is not valid and in accordance with Section 12(2) of the Act as no particulars have been given so as to make the appellant know how the amount of a sum of Rs. 52/9/6 has been arrived at The Counsel further contended that when the appellant replied stating that the claim is excessive it follows that there is a dispute regarding the permitted increases and therefore, the matter should have been dealt with Under Section 12(3)(b) and not Under Section 12(3)(a) of the Act. We are not inclined to accept this contention.

14. No doubt the notice dated June 15, 1955 does not give the break tip for the sum of Rs. 52/9/6, which was being claimed per month. We have already referred to the concession made by the Counsel for the appellant before the Small Causes Court that the break up given in the claim made by the respondent is correct and that the sum demanded under the notice is the proper amount that the landlord was entitled to claim. Normally, this concession is enough to come to a conclusion that the appellant was perfectly aware about the nature and quantum of the permitted increases that were being demanded by the notice dated June 15, 1955.

15. Even otherwise if the appellant was in any manner of doubt on this point or required any clarification from the respondent, normally, he should have called for information on those points especially when he was sending replies through a lawyer to the notices issued by the respondent. Excepting baldly saying that the claim was excessive, he never cared to ask for any particulars. The appellant must have been well aware that the standard rent in this case is Rs. 45/-per month and that the respondent was entitled to an increase not exceeding 7 1/2% Under Section 10G. Further he must also be well aware that the respondent was further entitled to claim increases on account of payment of municipal taxes to a local authority Under Section 10 of the Act. That the appellant was well aware of this is clear from his reply dated July 1, 1955 wherein he was stated that the municipal tax is only Rs. 2/13/-and that he has been paying the same to the Receiver. That the increases that the respondent was entitled to get Under Sections 10 and 10C were Rs. 4/3/6 and Rs. 3/6/-respectively, is not challenged. Adding those two items to the standard rent of Rs. 45/-it follows that the total monthly amount claimed in the sum of Rs. 52/9/6 was perfectly correct.

16. We are not inclined to accept the contention of Mr. Desai that the permitted increases demanded by the landlord will take effect only from June 15, 1955 We are of the opinion that it is sufficient if the landlord charges the tenant at a higher rate and makes a demand at that rate and that the date from which the demand would be effective would not be the date of intimation So far as we could see there is nothing in law to prevent the landlord making the increase at the time of giving the notice. Section 12(3)(a) itself gives the tenant a period of one month for complying with the demand for arrears of rent for a period of six months or more and it is only if the amount is not paid within that period, the landlord is entitled to file a suit. There is nothing in the Act which requires a landlord to give first a notice Under Section 10 or 10G and then a further notice Under Section 12. In this case the landlord has given a notice on June 15, 1955 calling upon the appellant to pay the arrears due from December 1, 1954. There is no controversy that the amount was not paid till the institution of the suit. When that is so, it follows that the appellant was in arrears for a period of six months or more and that he had further neglected to make the payment until the expiration of one month after the notice dated June 15, 1955. That this notice was one Under Section 12(2) of the Act, has been

admitted before the Small Causes Court on behalf of the appellant. The mere fact that the said notice does not give the break up for the claim of Rs. 52/9/6 does not make it also invalid notice Under Section 12(2).

17. We have already referred to the correspondence between the parties and pointed out that the appellant at no stage asked for any clarification or further particulars from the respondent. Excepts making an allegation that the claim of the respondent is excessive, the appellant not prepared to squarely face the issue, if he had any doubt, by calling upon the respondent to give particulars as to how the sum of Rs. 52/9/6 Was made up This conduct clearly shows that the appellant full well knew that the said amount represents the standard rent with the permitted increase under the Act. Under these circumstances, it cannot be considered that in this case there was a dispute between the landlord and the tenant either regarding the amount of the standard rent or permitted increases. We are in agreement with the reasoning of the High Court on this aspect.

The appeal fails and is dismissed with costs.