

A ANIL KUMAR DADURAO DHEKLE

v.

RUKHIBEN AND ORS.

(Civil Appeal No. 5284 of 2006)

B APRIL 12, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

Rent Control and Eviction:

C *Eviction of tenanted shop – Sought on the ground of default in payment of rent and subletting of the premises without permission of the landlord – Eviction order by trial court – Appellate Court set aside the eviction order – High Court in Revision upheld the order of appellate court – On appeal, held: In view of the evidence, the tenants are liable to be evicted on three grounds (i) default in payment of rent; (ii) sons of the original tenant not entitled to the benefit of s.5(11)(c); and (iii) subletting – Tenants directed to handover vacant possession to the landlord – Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 – ss.12(3)(a) and 5(11)(c).*

E **Allowing the appeal, the Court**

F **HELD: 1.1 Section 12 of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 deals with the ejection of a tenant. As per Section 12(1) of the Act, 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, insofar as they are consistent with the provisions of the Act. Section 12(3)(a) deals with the eviction where rent is payable by the month. Section 12(3)(b) of the Act deals with other cases other than monthly tenancy. [Para 11][219-F-G]**

G **1.2 From the evidence of appellant-landlord admittedly there was default in payment of rent for more than six months and the tenant was liable to be evicted under Section 12(3)(a) of the Act. The appellant-landlord has asserted that the tenancy was a monthly tenancy, where rent of Rs.30/- was due on 6th day of each**

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month and rental receipt was issued accordingly. To substantiate his evidence, the appellant has produced Ex.27 which is a receipt for payment of rent from 06.03.1974 to 05.04.1974. The rent was due from 06.07.1974 to 05.05.1976, amounting to Rs.660/- for twenty two months and Rs.10/- was already in credit of the defendant, thus an amount of Rs.650/- was due. Notice (Ex.31) was sent by the appellant's advocate that the arrears of rent is Rs.650/- which the defendant had received by Ex.4/2. The defendant-original tenant neither sent reply to the said notice nor disputed the standard rent. By producing Ex.27 receipt and other receipts, the appellant-landlord has established that the tenancy was a 'monthly tenancy'. [Paras 13, 15][221-F;222-B-E]

1.3 The notice issued by the Defendant No. 1/2 dated 27.01.2004, also clearly stated that the tenancy is a 'monthly tenancy' at a monthly rent of Rs.30/-. As pointed out by the trial court, the defendants deposited the amount after a lapse of one month after the receipt of notice. Resultantly, the respondent-defendant Nos.1/2 and 1/3 are liable to be evicted on the ground of default in payment of rent. The First Appellate Court and the High Court erred in ignoring the material evidence that the tenancy was a monthly tenancy and that the case would fall under Section 12(3)(a). The finding of the High Court as also of the First Appellate Court that the present tenancy is covered under Section 12(3)(b) is liable to be set aside and the order of eviction passed by the trial court on the ground of default in payment of rent is to be restored. [Para 16][222-F-G; 223-A]

2. The First Appellate Court and the High Court failed to appreciate that the defendant No.1/2 was a full time worker employed somewhere else and defendant No. 1/3 was carrying on his business separately. The findings of the trial court that the defendant Nos.1/2 and 1/3 (the sons of the deceased-original tenant) are not entitled to the benefit of Section 5(11)(c), is well reasoned and based on evidence and the same is to be restored. [Para 19][224-D]

3. So far as the sub-letting is concerned, the defendant No.1/2 stated that the second defendant was engaged as their worker and that he was being paid 50% of the charges as worker and he did not find it profitable and, he had left the job. The fact

A that a stranger was engaged in the shop and he was being paid 50% labour charges, as rightly observed by the trial court that it must have been either a case of partnership or of sub-letting. That apart, second defendant has not been examined to substantiate the version of the defendants that he was engaged by the defendants as their worker. The findings of the First Appellate Court and the High Court on sub-letting is accordingly reversed, restoring the findings of the trial court that the defendants are liable to be evicted on the ground of sub-letting also. [Para 20][224-E-F]

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C 4. The findings and the reasonings recorded by the High Court are not based on evidence, cannot be sustained. As rightly held by the trial court, the respondents-tenants are liable to be evicted on three grounds:-(i) default in payment of rent; (ii) defendant Nos.1/2 and 1/3 not being entitled to the benefit of Section 5(11)(c); and (iii) sub-letting. The appellant-landlord is litigating for more than four decades to get back possession of his own premises and, therefore, the respondent-tenants are directed to handover vacant possession of the premises immediately. [Para 21][224-G-H; 225-A]

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E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5284 of 2006.

From the Judgment and Order dated 16.10.2003 of the High Court of Gujarat at Ahmedabad in Civil Revision Application No. 1517 of 1983.

Makarand D. Adkar, Praveen Satale, Vijay Kumar, Rajiv Shankar Dvivedi, Advs. for the Appellant.

F Ashish Negi (for Ms. Richa Kapoor), Adv. for the Respondents.

The Judgment of the Court was delivered by

G **R. BANUMATHI, J.** 1. This appeal arises out of the judgment and order dated 16.10.2003 in Civil Revision Application No.1517 of 1983 passed by the High Court of Gujarat at Ahmedabad, dismissing the revision petition thereby affirming the order of the First Appellate Court which reversed the order of eviction passed by the trial court. *Vide* impugned order, the High Court declined to order eviction on the ground of default in payment of rent and sub-letting without the permission of the landlord.

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2. Brief facts which led to filing of this appeal are as follows: The appellant herein is the owner of the property known as "Radha Bhuvan" a two storeyed building situated on Vadi Rang Mahal, Hathia Khan Road, Vadodara City near Alankar Studio and flour mill. The property consists of ground floor, first floor and second floor. The ground floor of the suit premises was let out to the first respondent-defendant No.1 Manilal Ishwarbhai Valand-the original tenant in the year 1958 on a monthly rent of Rs. 30/-. The original tenant was running a hair cutting salon in the rented premises under the name of 'Excellent Hair Dressing Saloon'. The tenancy commenced from the 6th day of the month and ended on 5th day of the following month and for payment of rent, receipt was given from time to time. The original tenant was not in the habit of paying the rent regularly, that is, on the due date of each month and he was in arrears of rent for the period ranging from 06.07.1974 to 05.05.1976, amounting to Rs.660/ for twenty two months. On wilful default in payment of rent, a notice was duly served upon the original tenant to make payment of the above arrears within one month from the date of receipt of notice and the tenant has neither paid the arrears nor sent any reply. Left with no alternative, the appellant-plaintiff was constrained to file Rent Suit No.499 of 1978 on 29.09.1978 before the Court of Small Causes Judge at Vadodara seeking possession of the property and arrears of rent. During the pendency of the suit, the original tenant Manilal Ishwarbhai Valand died on 26.11.1979 and his legal representatives viz., his wife and two sons namely, Dahyalal and Bhogilal were brought on record as defendant Nos.1/1 to 1/3.

3. One of the sons of the tenant named Bhogilal independently runs hair cutting salon on Ajwa Road opposite to Navjivan Society. Similarly, another son Dahyalal was serving in Alembic Glass Works for the last 10 to 12 years. Even when tenant-Manilal was alive, his son Dahyalal never worked with his father and never helped him in running the shop. After the death of the original tenant-defendant No.1 Manilal, the appellant-plaintiff found that one Somabhai Dahiyabhai Valand was inducted into the suit premises by illegal sub-letting of the tenanted premises so as to deprive the appellant-plaintiff of his legal right to seek possession of the suit property. The said Somabhai Dahiyabhai Valand was arrayed as defendant No.2 in the suit (respondent No.4 in this appeal).

4. Upon consideration of the evidence adduced by the parties and

A the submissions made by the respective parties, the Small Causes Court allowed the rent suit on the ground of default in payment of rent by the respondents-defendants and also directed them to handover peaceful and vacant possession of the property to the appellant-plaintiff. It was further held by the Small Causes Court that after the death of the original tenant, the defendant Nos.1/2 and 1/3 are not statutory tenants of the said premises and that the defendant Nos.1/2 and 1/3 have unlawfully sub-let the suit property to respondent No.4 herein with an ulterior motive of depriving the appellant-plaintiff from obtaining peaceful and vacant possession of the suit premises.

C 5. Being aggrieved by the order of the Small Causes Court, the legal representatives of the original tenant preferred Civil Appeal No.227 of 1981 before the District Judge, Vadodara. The 2nd Extra Assistant Judge, Vadodara on 30.07.1983 allowed the appeal filed by the respondents herein. The First Appellate Court held that under notice Ex.31, appellant-plaintiff demanded rent and other local taxes and hence D the tenancy was not a monthly tenancy but annual, and rent was payable at the end of every year and that the case of the appellant-plaintiff was covered under Section 12(3)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 [Bombay Rent Control Act]. The First Appellate Court further held that the appellant-plaintiff failed to prove that defendant Nos.1/1 to 1/3 had sub-let the premise to the second E defendant/4th respondent. On these findings, the appellate court reversed the order of eviction passed by the trial court.

F 6. Feeling aggrieved by the order passed by the First Appellate Court, the appellant-plaintiff preferred the revision before the High Court under Section 29(2) of the Bombay Rent Control Act. As noted above, the High Court dismissed the revision holding that there is no default in payment of rent and that the defendants have deposited all the amount due, on the first day of the hearing of the suit and thus, complied with the provisions of Section 12(3)(b) of the Bombay Rent Control Act. Insofar as the sub-letting is concerned, the High Court affirmed the findings of G the first appellate court. Aggrieved by the dismissal of the revision, the appellant-plaintiff is before us by way of this appeal.

H 7. When the matter was taken up for admission and notice was issued, though the service was complete none appeared for the respondents. In the interest of justice, by order dated 08.03.2017, we directed the Registry to engage a counsel for the respondents through

the Supreme Court Legal Services Committee and Ms. Richa Kapoor. A
Advocate was nominated to appear for the respondents.

8. Learned counsel for the appellant submitted that as a matter of
fact respondents were persistent defaulters in payment of rent for the
period ranging from 06.07.1974 to 05.05.1976 which the High Court
failed to appreciate properly. It was further submitted that the case falls B
under Section 12(3)(a) of the Bombay Rent Control Act, as per which
if the tenant is in arrears of rent for more than six months he is liable to
be evicted and, therefore, the Rent Controller had rightly directed the
respondents to vacate the premises. It was further submitted that after
the demise of the original tenant, respondent No.4 Somabhai Dahiyalal C
Valand was inducted into the suit premises as sub-lessee and thus the
respondents are also liable to be evicted on the ground of subletting
without the permission of the landlord. Learned counsel for the appellant-
plaintiff further submitted that the First Appellate Court and the High
Court failed to properly appreciate the evidence and materials placed on
record and hence the impugned judgment cannot be sustained. D

9. Per contra, the learned counsel for the respondents-defendants
submitted that both the appellate court as well as the High Court have
dealt with all the issues extensively and have rightly arrived at the
conclusion that case would fall under Section 12(3)(b) of the Bombay
Rent Control Act and that the appellant-plaintiff failed to prove the case E
of sub-letting without the permission of the landlord.

10. We have carefully considered the rival contentions and perused
the impugned judgment and other materials on record.

11. Section 12 of Bombay Rent Control Act deals with the
ejection of a tenant. As per Section 12(1) of the Act, a landlord shall F
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, insofar as they are consistent with the
provisions of this Act. Section 12(3)(a) deals with the eviction where G
rent is payable by the month. Section 12(3)(b) of the Bombay Rent
Control Act deals with other cases other than monthly tenancy. Section
12(3)(a) and (b) with relevant explanations read as under:

**“12. No ejection ordinarily to be made if tenant pays or is
ready and willing to pay standard rent and H**

A **permitted increases.**

(1).....

(2).....

B (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 a rent or increase 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.

C (b). In any other case no decree for eviction shall be passed in any such suit if on the 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].

[and there after,-

E (i) Continues to pay or tender in Court such rent and permitted increases till the suit is finally decided; and

(ii) pays costs of the suit as directed by the Court.

(4)

F **Explanation.-** 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.

G **Explanation I.-** 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

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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.” A

12. So far as the first ground of eviction of arrears of rent is concerned, it is an admitted case that the tenant Manilal was in arrears of rent from 06.07.1974 to 05.05.1976 amounting to Rs.660/- and proper notice (Ex.31) was issued asking him to vacate premises in case he fails to make good the arrears of rent. Though the tenant Manilal received the said notice, no reply was sent there to; nor the dispute of standard rent was raised. It is only in the written statement filed by him, the dispute was raised for the first time as to the standard rent. Notably, the tenant Manilal had never applied for fixation of the standard rent earlier nor within one month of the service of notice had he applied for fixation of the standard rent. As noted earlier, the tenant Manilal did not even send reply notice disputing the standard rent. B C

13. According to the appellant-landlord, the property is situated on main road and Gajrawadi bus stand is also nearby and hence, the standard rent of the demised property cannot be less than Rs.30/- per month. It is also pertinent to note that at relevant point of time, first floor of the tenanted premises was let out to another tenant namely Chimanlal Jaiswal who was using the same for residence and had been paying rent of Rs.30/- per month. Likewise, the second floor was let out to one tenant named Rikhavchand who was also using it as residence and the ground floor was let out for hair cutting salon on the rent of Rs.30/- per month. Upon consideration of evidence, the trial court recorded that rent of Rs.30/- per month for the salon in the ground floor cannot be said to be excessive. There is no *bona fide* in the dispute raised by the tenant as to the standard rent. From the evidence of appellant-landlord admittedly there was default in payment of rent for more than six months and the tenant was liable to be evicted under Section 12(3)(a) of the Bombay Rent Control Act. D E F

14. The First Appellate Court took the view that in Ex.31 Notice, appellant-plaintiff had demanded not only the rent but also other local taxes with permitted increases and it was not a case of monthly tenancy; but the rent was payable at the end of every year and therefore, the case of the appellant-plaintiff was covered under Section 12(3)(b) of the Bombay Rent Control Act and not covered under Section 12(3)(a) G H

A of the Act. In our view, the First Appellate Court as well as the High Court did not properly appreciate the evidence of appellant-plaintiff and other evidence adduced by the parties.

15. The appellant-landlord has asserted that the tenancy was a monthly tenancy, where rent of Rs.30/- was due on 6th day of each month and rental receipt was issued accordingly. To substantiate his evidence, the appellant has produced Ex.27 which is the receipt No.184. Ex.27 is a receipt for payment of rent from 06.03.1974 to 05.04.1974. So far as the rent receipt is concerned, the defendant No.1/2 Dahyabhai Manilal Valand son of the tenant Manilal admitted the signature of his father on the receipt Ex.27. After the said payment of rent, defendant C paid an amount of Rs.100/- as rent in lieu of which three other similar receipts were prepared on 14.08.1974 and in this manner rent upto D 05.07.1974 was paid, Rs.10/- being remainder in credit of the defendant. According to appellant-landlord, the respondent did not come to receive those three receipts and so the counter-foils were not signed by him. E The rent was due from 06.07.1974 to 05.05.1976, amounting to Rs.660/- for twenty two months and Rs.10/- was already in credit of the defendant, thus an amount of Rs.650/- was due. Notice (Ex.31) was sent by the appellant's advocate that the arrears of rent is Rs.650/- which the defendant had received by Ex.4/2. As already noted, the defendant Manilal had neither sent reply to the said notice nor disputed the standard rent. By producing Ex.27 receipt and other receipts, the appellant-landlord has established that the tenancy was a 'monthly tenancy'.

16. In this regard, the learned counsel for the appellant has drawn our attention to the notice issued by the Defendant No. 1/2-Dahyalal F Manilal Valand dated 27.01.2004, wherein it is clearly stated that the tenancy is a 'monthly tenancy' at a monthly rent of Rs.30/-. As pointed out by the trial court, the defendants deposited the amount after a lapse of one month after the receipt of notice. Resultantly, the respondent-defendant Nos.1/2 and 1/3 are liable to be evicted on the ground of G default in payment of rent. The First Appellate Court and the High Court erred in ignoring the material evidence that the tenancy was a monthly tenancy and that the case would fall under Section 12(3)(a). The finding of the High Court as also of the First Appellate Court that the present tenancy is covered under Section 12(3)(b) is liable to be set aside and H the order of eviction passed by the trial court on the ground of default in

payment of rent is to be restored.

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17. Next question falling for consideration is, after the death of Manilal, whether defendant's heirs-defendant Nos. 1/2 and 1/3 are entitled to continue in the shop. Appellant-landlord pleaded that none of the Manilal's sons were doing business of hair cutting alongwith the defendant Manilal and under Section 5(11)(c) of the Bombay Rent Control Act, the defendant Nos. 1/2 and 1/3 are not entitled to continue in tenancy after the death of deceased-tenant Manilal. Section 5(11)(c) reads as under:-

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(11) "tenant" means any person by whom or on whose account rent is payable for any premises and includes-

(a) xxx

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(b) xxx

(c) (i) any member of the tenant's family residing with him at the time of his death as may be decided in default of agreement by the Court;

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(ii) in relation to premises let for business, trade or storage, any member of the tenant's family carrying on business, trade or storage with the tenant in the said premises at the time of the death of the tenant as may continue, after his death, to carry on the business, trade or storage, as the case may be, in the said premises and as may be decided in default of agreement by the Court.

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18. It is brought on record that defendant No. 1/2 Dahyabhai was serving in Alembic Glass Works as full time worker and, to prove the same Ex.39 Service Card was produced which shows that Dahyabhai was a full time worker and he never carried on business of Barber alongwith the original tenant Manilal. Though in his evidence, defendant No. 1/2 Dahyabhai has stated that he was staying in the shop and was doing barber work alongwith his father nothing was produced to prove the same. As rightly pointed out by the trial court, no evidence was produced to show that defendant No. 1/2 Dahyabhai had worked alongwith his father or that he had cut hair of even a single person in Baroda in the tenanted shop premises.

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19. So far as the other son Bhogilal-defendant No. 1/3 is concerned, it is brought on record that he was running a separate barber shop in

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A Navjivan Society and to prove the same, appellant-landlord has produced photographs Exs.49-50 which showed that Bñogilal was actually working in his separate shop in Navjivan Society while his father Manilal was alive. In this regard, it is relevant to refer to the observation of the trial court that to his identity and his photographs, how defendant No.1/3 came to the court with his head completely shaven and moustache removed to disguise himself as a different person from the photographs Exs.49, 50 and 51. Nothing was brought on record to show that defendant Nos.1/3 had been doing the business with his father at any point of time. Further, the appellant-landlord has also produced Exs.43 and 44 photographs to show that there was only one chair for the customers in the shop and that neither defendant No.1/2 nor defendant No.1/3 were present in the shop to carry on the business alongwith tenant-Manilal thereafter. The First Appellate Court and the High Court failed to appreciate that the defendant No.1/2 was a full time worker in Alembic Glass works and defendant No. 1/3 was carrying on his business separately. The findings of the trial court that the defendant Nos.1/2 and 1/3 are not entitled to the benefit of Section 5(11)(c), is well reasoned and based on evidence and the same is to be restored.

20. So far as the sub-letting is concerned, the defendant No.1/2 stated that the second defendant Somabhai Dahyabhai was engaged as their worker and that he was being paid 50% of the charges as worker and as still Somabhai did not find it profitable and, he had left the job. The fact that a stranger was engaged in the shop and he was being paid 50% labour charges, as rightly observed by the trial court that it must have been either a case of partnership or of sub-letting. That apart, second defendant Somabhai has not been examined to substantiate the version of the defendants that he was engaged by the defendants as their worker. The findings of the First Appellate Court and the High Court on sub-letting is accordingly reversed, restoring the findings of the trial court that the defendants are liable to be evicted on the ground of sub-letting also.

21. The findings and the reasonings recorded by the High Court are not based on evidence, cannot be sustained. As rightly held by the trial court, the respondents-tenants are liable to be evicted on three grounds:-(i) default in payment of rent; (ii) defendant Nos.1/2 and 1/3 not being entitled to the benefit of Section 5(11)(c); and (iii) sub-letting. It is unfortunate that the appellant-landlord is litigating for more than

four decades to get back possession of his own premises and, therefore, A
the respondent-tenants are directed to handover vacant possession of
the premises immediately.

22. The impugned judgement of the High Court is set aside and
this appeal is allowed and the order of eviction passed by the Court of
Small Causes Court, Vadodara is restored. The respondent Nos. 1 to 4 B
or other person, if any, inducted by the respondents Nos. 1 to 4 are directed
to handover vacant possession within two months from the date of this
judgment, failing which the respondents shall be liable for contempt of
this court apart from other remedies available in law. No costs.

Kalpana K. Tripathy

Appeal allowed. C