

HIGH COURT OF GUJARAT

BACHUBHAI ISMAILBHAI

Versus

ISMAIL HAJI IBRAHIMBHAI MALEK

Date of Decision: 15 July 1994

Citation: 1994 LawSuit(Guj) 178

Hon'ble Judges: [M R Calla](#)

Eq. Citations: **1994 2 GLR 1271**, 1995 1 GCD 95

Case Type: Civil Revision Application

Case No: 665 of 1981

Editor's Note:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (LVII of 1947)-S.12(2) & S.12(3)(a)-Notice has to be specific and must afford real opportunity to the tenant to avail the benefit of making payment of arrears-If notice affords a real opportunity to the tenant, he cannot say that the notice was not specific.

The notice under Sec. 12(2) has to be specific and it must afford a real opportunity to the tenant to avail the benefit of making payment of arrears applying the principle laid down in case of Bapulal (1977 GLR 77) on the contents of the notice in the case at hand Court find that on the basis of rate of rent total due amount of arrears and the date upto which the tenant was in arrears all the three items put together did afford a real opportunity to the tenant and it cannot be said that in the facts of this case the tenant was deprived of this opportunity or facility for any fault or for any defect in the notice. The rent had in fact not been paid and the amount was in arrears from 1-6-1972 is clearly discernible by the mention that the amount of Rs. 1500/- had become due upto 31-5-1977 on the basis of rate of rent at Rs. 25/- P.M. It is also settled principle of interpretation of the statutes that the judgment or the contents of any part of the judgment cannot be read as statute nor an observation made in this regard has to be applied as a statute. It is the question of application of principle of law laid down in a decision rendered by the Court and such principle cannot be read as the dictate of a statute. (Para 5) Bapulal Kalidas v. Bai Kashiben (1) referred to.

Acts Referred:

[Bombay Rents, Hotel And Lodging House Rates Control Act, 1947 Sec 12\(3\)\(a\), Sec 12\(2\).](#)

Final Decision: Application dismissed

Advocates: [Narendra S Desai](#), [R C Jani](#)

Cases Cited in (+): 1**CALLA, J.**

[1] This Revision Application is directed against the judgment and decree dated 22-1-1981 passed by the District Judge, Kaira at Nadiad in Civil Appeal No. 103 of 1979 setting aside the judgment and decree dated 30-4-1979 passed by the 3rd Joint Civil Judge (J. D.), Kaira at Nadiad in Regular Civil Suit No. 478 of 1977.

[2] The plaintiff-respondent herein filed a suit for recovery of the arrears of rent and eviction of the respondent under Sec. 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Bombay Rent Act"). The suit was based on the sole ground of default in the matter of the payment of the arrears of rent for a period over six months and it is alleged by the plaintiff that in fact the arrears were due for a period of five years. The learned trial Court dismissed the suit and against this order of dismissal of suit, an Appeal was preferred by the plaintiff (landlord). The appellate Court has allowed the Appeal and the order of the trial Court has been set aside. In other words, the present petitioner is to be evicted on the basis of the decree passed by the appellate Court. It is against the aforesaid decision dated 22-1-1981 passed by the District Judge, Kaira at Nadiad that the present Civil Revision Application has been filed by the petitioner (tenant).

[3] Mr. Desai has stressed on the point that the notice, which was given by the respondent (landlord) under Sec. 12(2) of the Bombay Rent Act, was invalid, void ab initio inasmuch as it was vague and did not mention the date from which the arrears were due. It is not disputed before me by the learned Counsel for the petitioner that no reply to the notice under Sec. 12(2) had been sent by the petitioner (tenant) and no matter was filed for standardisation of the rent. Thus, the petitioner (tenant) did not contest the matter at the stage of notice. The Counsel of the petitioner has read over the notice under Sec. 12(2) in extenso before me. Having heard the Counsel for the petitioner with reference to the contents of the notice, I find that in the notice rate of rent has been mentioned as Rs. 25/- P. M., tenancy commencing from 1st day of every month according to the Gregorian calendar and it has also been held out in the notice that the total due amount of arrears was Rs. 1,500/- and further that the rent was due

upto 31-5-1977. The fact that the notice contains the aforesaid recitals is not disputed by the learned Counsel for the petitioner. But his submission is that the actual period for which the rent was due has not been mentioned in the notice nor the plaintiff took care to mention the date from which the petitioner (tenant) was in arrears. He has sought support to this submission from 1977 GLR 77 (Bapulal Kalidas v. Bai Kashiben). It has been held in the aforesaid decision by our own High Court that the notice must be precise and there cannot be any dispute with that position of law that the contents of notice must convey such fact on the basis of which the recipient of notice is able to make out as to for what period the amount is due and how much amount has to be paid. Mr. Desai has laid much stress on the words mentioned in para 6 of the aforesaid decision in the case of Bapulal Kalidas v. Bai Kashiben (supra) :

"A vague notice requiring the tenant to pay all arrears of rent and permitted increases, without indicating the actual amount due on that account or the point of time from which the rent and permitted increases at a specified rate are, according to the landlord, in arrears, would afford no real opportunity to the tenant to avail of the facility or benefit of making payment of the arrears due by him before he is sued in ejectionment."

[4] Mr. Jani -has submitted that the contents of the notice conveyed the rate of the rent, the total amount of arrears and also the date upto which the rent had become due. He has frankly conceded and rightly so that the notice does not mention the date or point of time specifically from which the tenant had fallen in arrears. But his submission is that once it is given out that the rent was due upto a certain date, the rate of rent has been mentioned and the total due amount has also been mentioned, the date from which it was due and the point of time and the period of arrears is clearly deducible and, therefore, it is futile to contend in the facts of this case that the notice was vague or that it was not precise or that it did not afford an opportunity to the tenant to avail the benefit of making the payment of the arrears.

[5] I have considered the submissions made by both the sides and I have also gone through the contents of para 6 of the aforesaid decision cited by Mr. Desai. While there cannot be any dispute to the settled proposition of law that the notice under Sec. 12(2) has to be specific and it must afford a real opportunity to the tenant to avail the benefit of making payment of arrears, applying the principle laid down in the aforesaid decision cited by Mr. Desai on the notice in the case at hand, I find that on the basis of rate of rent, total due amount of arrears and date upto which the tenant was in arrears, all the three items put together did afford a real opportunity to the tenant and it cannot be said that in the facts of this case, the tenant was deprived of this opportunity or facility for any fault or for any defect in the notice. The rent had in fact not been paid and the amount was in arrears from 1-6-1972 is clearly discernible by

the mention that the amount of Rs. 1,500/- had become due upto 31-5-1977 on the basis of rate of rent at Rs. 25/-R M. It is also settled principle of interpretation of the statutes that the judgment or the contents of any part of the judgment cannot be read as statute nor an observation made in this regard has to be applied as a statute. It is the question of application of principle of law laid down in a decision rendered by the Court and such principle cannot be read as the dictate of a statute. I am fully convinced that in this case, there has been no denial of real opportunity to the tenant so as to avail the benefit of making payment of the arrears. In this view of the matter, I do not find any substance in this Revision Application and the same is hereby dismissed. Rule discharged. Interim relief automatically stands vacated. No order as to costs.

However, on the request of the learned Counsel for the petitioner that the petitioner shall be put to hardship in case of immediate eviction it appears to be reasonable to grant three months time for handing over the possession of the vacant premises to the petitioner (tenant). It is made clear that the petitioner (tenant) shall pay the amount equivalent to the rent up to date including this period of three months to the respondent and also hand over the vacant possession before 31-10-1994 without fail.

Application dismissed.