

HIGH COURT OF GUJARAT

MINOR MANOJKUMAR SURESHCHANDRA SHARMA (THROUGH HIS ADMINISTRATOR)

Versus

RAMBHAROSE MITHALAL

Date of Decision: 23 March 1994

Citation: 1994 LawSuit(Guj) 81

Hon'ble Judges: [J M Panchal](#)

Eq. Citations: 1994 2 GLR 1423, **1995 1 GLH 227**

Case Type: Civil Revision Application

Case No: 1369 of 1993

Editor's Note:

Presidency Small Causes Courts Act, 1882 (XV of 1882)-S.53-Distress warrant-S.53 is a summary procedure-It is not available when the matter involves highly complex question of title, etc.-If there is a pending dispute between landlord and tenant in regard to the rent which the tenant is liable to pay to the landlord, no distress warrant can be issued and levied for recovery of rent.

Distress is a common law remedy and is available only to a person claiming to be entitled to arrears of rent i.e. a landlord against his tenant in certain Towns only by virtue of provision in that behalf made in Chapter VIII of the Act Rent in Sec. 53 of the Presidency Small Causes Courts Act 1882 means contractual rent and the person entitled to rent at common law is the landlord. Section 53 of the Act lays down that the application under the said provision shall be supported by an affidavit or affirmation as provided in the Form marked A in Third Schedule to the Act. A bare reading of Form A in Third Schedule makes it clear that the applicant has to aver that the person against whom distress is sought to be levied is justly indebted to him for the specified amount of the arrears of rent. The Small Causes Court procedure for distress under Chapter VIII of the Act is a summary remedy by which a person seeks an immediate relief to take into his possession the moveables of any person

Acts Referred:

Presidency Small Causes Courts Act, 1882 Sec 53

Final Decision: Application dismissed

Advocates: [M B Gandhi](#), [R C Jani](#)

PANCHAL, J.

[1] This Civil Revision Application which is filed under Sec. 115 of the Code of Civil Procedure, 1908, is directed against the judgment and order dated September, 10, 1993 passed by the learned Judge, Small Causes Court, Ahmedabad rejecting the Distress Warrant Application filed by the applicant under Sec. 53 of the Presidency Small Causes Courts Act, 1882.

[2] The applicant claims to be the owner of the premises bearing Municipal Census No. 475/2 situated outside Delhi Darwaja, opposite Lalakaka Market, Ahmedabad. It is the case of the applicant that when the applicant purchased the disputed premises in the year 1991 from its original owner Ramanlal Laljibhai, the opponent was running a Hotel in the premises bearing Municipal Census No. 475/1 and as the opponent needed additional space for his sweet shop, he hired the premises bearing Municipal Census No. 475/2 from the applicant in the year 1991 and agreed to pay rent of Rs. 2,000/- per month excluding Municipal tax and education cess. Further, it is the case of the applicant that the opponent was irregular in payment of rent and did not pay rent from October 1, 1991 to August 31, 1992 and an amount of Rs. 22,000/- was due and payable by the opponent to the applicant. In the circumstances, the applicant instituted distress warrant proceedings under Sec. 53 of the Presidency Small Causes Courts Act, 1882 ('the Act' for short) in the Small Causes Court at Ahmedabad and prayed the Court to issue distress warrant for an amount of Rs. 22,000/- against the opponent. The Small Causes Court, Ahmedabad on submission of application, initially issued distress warrant by an order dated September 17, 1992.

[3] On notice being served, the opponent contested the application for issuance of distress warrant submitted by the applicant vide reply at Exh. 9 and contended, inter alia, that he has not hired or taken on lease any premises bearing Municipal Census No. 475/2 from the applicant and there being no relationship of landlord and tenant between the parties, with regard to property bearing Municipal Census No. 475/2, the application should be dismissed. The opponent also contended that his father had hired one premises before 50 years and started business in the name and style of 'Rambharose Hotel' and the said premises is bearing Municipal Census No. 475/1/1. The opponent has raised a contention in the written statement that there are two rooms in his possession as tenant, out of which in one room he is running the business of hotel and shop which is abutting on the main road and behind the said loom, there is a Chokdi, water tap, drainage, water tank, etc.; whereas on the western side there is

another room which is being used for godown purpose as well as for residential use of the servants. According to the opponent, serious disputes are going on between the opponent and the applicant in respect of the premises bearing Municipal Census No. 475/ 1/1 and the suits are also pending in the Small Causes Court at Ahmedabad, but he has not hired any premises bearing Municipal Census No. 475/2 from the applicant and, therefore, there is no question of paying monthly rent of Rs. 2,000/- to the applicant at all. After emphasising that the facts stated by the applicant, in the Distress Warrant Application are concocted, the opponent has stated that he has not taken on lease any property bearing Municipal Census No. 475/2 from the applicant and, therefore, the Distress Warrant Application should be dismissed by the Court.

[4] Both the learned Advocates appearing for the respective parties made a statement at the Bar before the learned Judge, Small Causes Court, Ahmedabad that the parties did not want to lead any oral evidence in the matter. After hearing the learned Advocates for the parties, the learned Judge has come to the conclusion that the question of title was seriously in the contest and as the right to the alleged amount of rent was seriously challenged, summary proceedings under Sec. 53 were not the proper proceedings in which contentious questions pertaining to title, rights and liability can be adjudged. The result was that the Court rejected the application which was submitted by the applicant under Sec. 53 of the Act by order dated September 10, 1993, giving rise to the present revision application.

[5] As is evident from the impugned order, the applicant has asserted that he has let out the premises bearing Municipal Census No. 475/2 to the opponent, whereas the opponent in terms has denied the relationship of landlord and tenant between the parties so far as the property bearing Municipal Census No. 475/2 is concerned. After referring to the Commissioner's report, the learned Judge has come to the conclusion that the premises A, B, C, D, E, F, G shown in the report are owned by the applicant and premises A & E bearing Municipal Census No. 475/1/1 are in possession of the present opponent since long as a tenant. The learned Judge has noted the fact that the premises B, C & D are in possession of the applicant and premises G & F are in possession of one Mahalaxmi Dairy Farm and as there is no other space or another room which the opponent could have hired, the opponent is not the tenant of the premises described as Municipal Census No. 475/2. The learned Judge has noted the fact that the applicant has not been able to furnish the relevant data as to in which month or on which date the premises bearing Municipal Census No. 475/2 were let out to the opponent. In the facts of the case, the learned Judge has refused to accept and act upon the bare statement made by the applicant in his application for distress warrant to the effect that the opponent is tenant of the premises bearing Municipal Census No. 475/2. On overall view of the matter the learned Judge has come to the

conclusion that the opponent has seriously denied his liability to pay any amount of rent in respect of the premises bearing Municipal Census No. 475/2 and in view of serious contest between the parties, the application cannot be granted.

[6] In my view, the findings recorded by the learned Judge are just and proper. There is nothing on the record of the case from which this Court can come to the conclusion that the opponent is tenant of the premises bearing Municipal Census No. 475/2 situated outside Delhi Darwaja, Opposite Lalakaka Market, Ahmedabad. The so-called rent receipts produced by the applicant have been challenged and questioned as false and fabricated. The right to the alleged amount of rent is seriously challenged and the liability is stoutly denied. Distress is a common law remedy and is available only to a person claiming to be entitled to arrears of rent', i.e., a 'landlord' against his 'tenant' in certain Towns only by virtue of provision in that behalf made in Chapter VIII of the Act. 'Rent' in Sec. 53 of the Act means contractual rent and the person entitled to rent at common law is the landlord. Sec. 53 of the Act lays down that the application under the said provision shall be supported by an affidavit or affirmation as provided in the Form marked 'A' in Third Schedule to the Act. A bare reading of Form 'A' in Third Schedule makes it clear that the applicant has to aver that the person against whom distress is sought to be levied is justly indebted to him for the specified amount of the arrears of rent. The Small Causes Court procedure for distress under Chapter VIII of the Act is a summary remedy by which a person seeks an immediate relief to take into his possession the moveables of any person to be held almost as a pledge to compel the performance of the satisfaction of a debt, namely, arrears of rent but the said debt, however, must be a debt, and not a mere pretence to cover controversial questions of title. The procedure is a summary one because it starts ex-parte on a mere sworn affidavit which only asserts as its foundation a debt, i. e., arrears of rent. Because it is ex-parte in the first instance, it is all the more essential for the Court to examine the objections when they are made. This summary procedure is not, however, available when the matter involves highly complex question of title, etc. If there is a pending dispute between a landlord and a tenant in regard to the rent which the tenant is liable to pay to the landlord, no distress warrant can be issued and levied for recovery of the rent. It can be levied only to recover such rent as was due and payable on the basis of the rent paid by the tenant to the landlord and accepted by the landlord in respect of the month preceding the period for which the landlord makes an application for issue of distress warrant to recover it. Issue of a distress warrant is a drastic and summary remedy. It is not a suit. It is issued at the instance of a landlord without serving any notice upon the tenant. It is nothing but a demand for rent made by a landlord upon his tenant through the Court of Law. If the landlord wants the Court to enforce such a demand without calling upon the tenant to show cause as to why it should not be enforced, it must be in respect of an agreed amount or in respect of the standard rent

fixed or in respect of the amount which is calculated on the basis of the rent paid by the tenant to his landlord for the month preceding the period of rent in respect of which application for distress warrant has been made. If there is dispute as to the amount of contractual rent, the determination of the correct amount of rent payable by a tenant to his landlord can be done only in a suit and not in distress warrant proceedings firstly because distress warrant proceedings are not a suit where defences of a tenant can be tried and secondly because it is a summary remedy of a drastic nature to which resort can be allowed to the landlord in case of arrears of rent in respect of which there is no pending dispute or in respect of which there was an agreement between the parties or an order of the Court prior to the levy of distress.

[7] In this case, I find that complex and contested questions are involved and the Small Causes Court, exercising powers under Sec. 53 would certainly be not a proper forum to deal with such hotly debated questions. Here the relationship of landlord and tenant between the parties is in dispute so far as premises bearing Municipal Census No. 475/2 are concerned. The opponent has asserted that he is not the tenant of the premises bearing Municipal Census No. 475/2 nor liable to pay an amount of Rs. 2,000/- per month by way of rent exclusive of Municipal taxes and education cess. There is no agreement between the parties in respect of amount of rent nor there is an order of the Court holding that the opponent is the tenant of the premises bearing Municipal Census No. 475/2 and that he is liable to pay the rent for the said premises at the rate of Rs. 2,000/- per month exclusive of Municipal taxes and education cess. The elaborate discussion made in the impugned judgment of the learned Judge itself is sufficient proof of the fact that the question of relationship of landlord and tenant is hotly debated and highly in contest between the parties. Distress proceeding which are initiated ex-parte and which are ex-facie of summary character, cannot be said to be proper proceedings for dealing with contentions like the one that has been raging in this litigation.

[8] In my view, the applicant has a suitable remedy open to him to file suit under Sec. 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 for the purpose of realising the rent and in such suit, the question of title can also be incidentally gone into. A more efficacious remedy is available to the petitioner and no case is made out by the petitioner to interfere with the impugned Order.

[9] On overall view of the matter, it cannot be said that any jurisdictional error is committed by the learned Judge in passing the impugned Order necessitating interference of this Court in the present revision application. The revision application, therefore, fails. Rule is discharged with no order as to costs. Ad-interim relief granted earlier is hereby vacated.

Application dismissed.

