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ANSUYABEN KANTILAL BHATT

v.

RASHIKLAL MANIKLAL SHAH AND ANR.

APRIL 8, 1997

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[K. RAMASWAMY AND D.P. WADHWA, JJ.]

*Rent & Eviction :*

*Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 :*

C

*Application for eviction of tenant on grounds of bonafide requirement and non-payment of rent—Held, in view of the protracted litigation stretching over 31 years, bonafide requirement may not exist now—Tenant to pay arrears of rent in ten bi-monthly instalments—Rent also increased with retrospective effect—In case the landlord's son intends to start business after his retirement*

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*he may file an application before the Rent Controller, who will pass necessary orders.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2104 of 1977.

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From the Judgment and Order dated 6.10.76 of the Gujarat High Court in C.R.A. No. 12 of 1971.

M.C. Bhandare and Ms. C.K. Sucharita for the Appellant.

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C.S. Vaidyanathan, Dr. Maya Rao, Sudama Ojha for the Respondents.

The following Order of the Court was delivered :

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This is one of the classic instances of the cases holding the law that "delay defeats justice". the landlord filed a suit in 1966 for eviction of the tenant for personal occupation and today after 31 years, we are disposing of the matter at the level of this Court. It is not necessary to detail all the circumstances leading to the filing of the petition. Suffice it to state that the landlord who was just to retire from private service having four unmarried grown-up daughters and one son aged 24 years had filed an application for eviction of the tenant under the Bombay Rents, Hotel & Lodging

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House Rates Control Act, 1947 (for short, the 'Act'). The application was filed on two grounds, namely, one she needs the premises for personal occupation and the tenant also has committed default in the payment of the rent for more than six months. When a notice was issued by the landlady-appellant calling upon the respondents to vacate the premises on the above grounds, reply came with the allegation that he was not in arrears of the rents and the appellant is not in need of the premise. Thus, necessitated the respondent to file the suit for eviction. In the written statement, a defence was taken that the standard rent is much less than the contracted rent. As a consequence, the rent payable to the respondent was less. Therefore, he has not committed default in payment of the rent. Though an application under Section 11 for fixation of the standard rent was not filed, the determination in that behalf was made at Rs. 101 per month. The Rent Controller allowed the petition. But, on appeal, the District Judge dismissed the appeal holding that the respondent needs the house for personal occupation and also the default was committed by him. On revision, the High Court reversed the order. Thus, this appeal by special leave.

The High Court proceeded on two premises, namely, that the landlady was not in need of the house since her husband has by then become too old and secondly it was held that the comparative hardship to the tenant was not taken into consideration and, therefore, the premises on which the appellate authority proceeded is wrong in law. The High Court came to the conclusion that under the contract, since the property tax was required to be paid by the tenant, the contract of monthly tenancy as well as the payment of property tax being a composite tenancy, there is no default in payment of the rent. Shri M.C. Bhandare, learned senior counsel appearing for the appellant, contends that the view taken by the High Court is not correct in law. He contends that *bona fide* recruitment requires to be considered at the time when the need arises and mere fact that he has become old at the time when the petition came up, it is relevant ground. Though we find force in the contention, it need not be now decided due to long lapse of time of 31 years. Now, he is not in a position to set-up any business. At the time when he filed the application, admittedly, he was 54 years of age by now he is 87 years. Under these circumstances, the need of the landlady for her husband to set-up the business cannot be said to be subsisting. At that time, they had four unmarried daughters, obviously, he had to set-up the business but now they have already been married and

A need, therefore, no longer subsists. It is further stated that his son who was 24 years of age is now going to retire in another four and a half years. Under these circumstances, as and when he retires from service and if he intends to set-up the business, it is always open to make necessary application. On such suit being filed, necessarily the tenant requires to give place to the landlord to occupy the premises. The Rent Controller/civil Court, therefore, is directed that on filing the petition and satisfying that there is a need for his starting the business, the order of eviction requires to be passed.

C With regard to the view taken by the High Court on the default of the payment of rent, it is contended by Shri M.C. Bhandare that the view taken that the monthly tenancy gets converted into yearly tenancy is untenable. Though the tenancy is a composite one, the monthly rent requires to be paid at the end of every succeeding month. If there is any written agreement within the stipulated time, the contracted monthly tenancy cannot be, by judicial interpretation, converted into yearly tenancy. On that premise, it cannot be held that he has not committed default in payment of rent, but we need not decide it on the view we have taken. Since the standard rent has already been fixed by the Court and deposited by the tenant, the default does not subsist. The concept of wilful default does not apply to the action under this Act. Therefore, if there is any default in payment of the rent and if the amount so paid gets adjusted after the determination of the standard rent, necessarily, the default originally existing ceases to operate. Suffice it to state that when standard rent was fixed as Rs. 101 per month, it is unrealistic as of date. Therefore, we requested Mr. P.H. Parekh, learned counsel practising in this Court to obtain the prevailing rentals in the Bank Street in Baroda. He was good enough to contact the people there and he has furnished the information that there is two tier system, one legal and one extra-legal prevailing in that area. We cannot give legitimacy to the illegal practice prevailing in that area but the legal rentals payable are now as on date range between Rs. 4,000 to Rs. 6,000 per month to a tenancy of 250 sq. fts. Under these circumstances, we think that the rentals may be spread over which may be acceptable to both the parties. Thus, the appeal in this Court came to be filed in December 1976, the rent from January 1, 1977 to December 31, 1980 shall be paid @ Rs. 2,000 per month. Rent from January 1, 1981 to December 31, 1991 shall be paid @ Rs. 2,500 per month and from January 1, 1992 till date of vacating the premise @ Rs. 3,500 per month. The amount shall be paid

accordingly. All the arrears shall be paid in ten bi-monthly equal instalments as on date starting from May 1, 1997. The rent from April 1, 1997 shall be paid on or before the 10th of every succeeding month @ Rs. 3,500 per month. If the respondent commits default, he shall be liable to ejectment even before filing of the application for personal occupation. A

The appeal is accordingly disposed of. B

G.N.

Appeal disposed of.