

**HIGH COURT OF GUJARAT**

**MESSRS, KHEMCHAND DAYALJI AND CO  
V/S  
MOHMADBHAI CHANDBHAI**

**Date of Decision:** 03 September 1965

**Citation:** 1965 LawSuit(Guj) 74

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

**Eq. Citations:** 1965 GLR 829

**Case Type:** Civil Revision Application

**Case No:** 244 of 1965

**Head Note:**

**Bombay Rents, Hotel and Lodging House Rates (Control) Act (LVII of 1947) - S.28, S.49(2)(iii) - Bombay Rents, Hotels and Lodging House Rates (Control) O.1948 - C.IV,R.5,R.6 - Under S.28 Small Cause Court at Ahmedabad exercises its jurisdiction - Issuance of distress warrants - Power under R.5 and R.6 to entertain applications for distress warrants - Rules were framed under S.49(2)(iii) - Therefore R.5 and R.6 can not be held ultra vires - Failure to pay taxes - R.5 and R.6 would apply - Money advanced to landlord for rent by tenant - Though rules would apply - Electric charges included in the rent - Whether tax deposited in court but not given to the landlord amounts to wears.**

**The Small Cause Court at Ahmedabad on or after the enactment of the Ahmedabad City Courts Act 1961 even while exercising its jurisdiction under sec. 28 of the Bombay Rents Hotels and Lodging House Rates Control Act has the power under rules 5 and 6 of the Rent Act Rules 1948 to entertain applications for distress warrants. These rules have been framed by the State Government under the express power reserved to it under sec. 49(2)(iii) of the Rent Act to provide for**

the procedure relating to an application for distress warrants and therefore rules 5 and 6 cannot be said to be ultra vires the Act. (Paras 4 7 Since under the lease the tenants were liable to pay the taxes as and when they became due once there was a failure to pay them the amount of taxes would become arrears and being part of rent they would become arrears of rent to which rules 5 and 6 in Chap. IV of the Rent Act Rules would apply. The mere fact that there were moneys payable by the landlord to the tenants advanced as a loan would not save the applicability of these rules once there were arrears of rent. (Para 6). Mohanlal v. Maheshwari Mills Ltd. referred to. The electric charges are included and form part of the rent. The electric charges therefore could be made the subject matter of the distress warrant. (Para 6). (C.R.A. 1208 of 1960 decided on April 16 1963 by Miabhoy J. referred to). The mere fact that the tenant had deposited the amount of municipal taxes so long as that deposit was not made available to the landlord would not mean that the municipal taxes were paid or that there was no arrears in relation to that part of the rent. Sec. 11 of the Bombay Rent Control Act does not take away the jurisdiction of the Small Cause Court to issue a distress warrant in a fit case where under sub-sec. (3) of sec. 11 an amount equivalent to the municipal taxes has been deposited but is not available either by reason of the Courts order or otherwise to the landlord for payment to the local authority. (Para 7).

**Acts Referred:**

[Bombay Rents, Hotel And Lodging House Rates Control Act, 1947 Sec 28, Sec 49\(2\)\(iii\)](#)

**Final Decision:** Application dismissed

**Advocates:** [A H Mehta](#), [I M Nanavati](#), K S Nanavati

**Reference Cases:**

[Cases Cited in \(+\): 3](#)

[Cases Referred in \(+\): 2](#)

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**Judgement Text:-**

Shelat C J

[1] The petitioners are the tenants and the respondent is the landlord. This revision

application has been taken out by the tenants against the order passed by the Small Cause Court, Ahmedabad, dated March 15, 1965 in an application made by the opponent for a distress warrant in respect of an amount of Rs. 10,243-06 nR, and for permitting a sum of Rs. 9 442 being the amount for municipal taxes due and payable in respect of the leased premises to be seized from a certain amount deposited by the petitioners in the Court. An ex parte order on that application was first passed on February 19 1965 The petitioners however raised certain contentions and the Court after hearing the parties confirmed on March 15 1965 the order for issuing a distress warrant.

**[2]** Prior to these proceedings the petitioners had filed a suit being Suit No. 1308 of 1963 in the Small Cause Court for possession of a bathroom which it was alleged was comprised in the leased property for fixation of standard rent and for a proportionate reduction in rent in the event of the respondent not giving possession of the bathroom. During the pendency of that suit the Small Cause Court fixed interim standard rent under sec. 11 of the Bombay Rent Act 1947 The interim standard rent fixed by the Court was the same as the contractual rent namely Rs. 2 171 per month and in addition thereto the municipal taxes levied on the property. It happened that the petitioners had advanced to the respondent a sum of Rs. 80 0 for the purpose of constructing this very building and under the terms of the lease it was agreed that out of the monthly rent of Rs. 2 171 the petitioners should pay Rs. 801/per month and the balance was to be credited to the petitioners towards satisfaction of the aforesaid loan. In pursuance of the order passed on December 23 1964 fixing as aforesaid the standard rent the petitioners deposited Rs. 2 403 as and by way of rent for the months of October to December 1964 and a sum of Rs. 8 921 nP. for the municipal taxes for the year 1964 On January 16 1965 the respondent applied for permission to withdraw the said amounts. The petitioners objected to such withdrawal and thereupon by an order dated February 15 1965 the Court permitted the respondent to withdraw the amount of Rs. 2 403 being the rent for the months of October November and December 1964 at the rate of Rs. 801 per month but did not permit the respondent to withdraw the amount of municipal taxes deposited in the Court. The result was that the respondent could not pay the municipal taxes and consequently proceedings were taken by the Municipal Corporation against him for the recovery of those taxes. It was in these circumstances that the respondent took out proceedings for a distress warrant on February 18 1965 The present application is directed against the aforesaid order dated March 15 1965 whereby the Small Cause Court confirmed its ex-parte order passed earlier on February 19 1965

**[3]** The contention urged by Mr. Mehta is that the Small Cause Court Ahmedabad after the enactment of the Bombay Rent Act 1947 has two kinds of jurisdiction one under the Rent Act as the Court having the exclusive jurisdiction under sec. 28 of that Act and the other under the Presidency Small Cause Courts Act XV of 1882 that while exercising the jurisdiction conferred upon it by sec. 28 of the Rent Act the Small Cause Court cannot exercise its jurisdiction under the Presidency Small Cause Courts Act 1882 and therefore the Court had no jurisdiction to issue the distress warrant a jurisdiction conferred upon it by the Presidency Small Cause Courts Act 1882 Mr. Mehta argued that therefore the distress warrant was issued without jurisdiction and should be set aside. Mr. Nanavati on the other hand argued that while sec. 28 of the Rent Act confers jurisdiction upon the Small Cause Court in matters set out therein it does not deprive the Small Cause Court of the jurisdiction and powers derived by it under the Presidency Small Cause Courts Act 1882 and since the Small Cause Court has the jurisdiction to issue a distress warrant under Chapter VIII of that Act there would be no question of the impugned order having been made without jurisdiction.

**[4]** By sec. 17 of the Ahmedabad City Courts Act XIX of 1961 the Presidency Small Cause Courts Act 1882 was extended to and was brought into force in the City of Ahmedabad on and from the day appointed therein. Consequently the Small Cause Court at Ahmedabad which was till then governed by the Provincial Small Cause Courts Act was henceforward governed by the Presidency Small Cause Courts Act 1882 Sec. 53 of the Presidency Small Cause Courts Act provides that any person claiming to be entitled to arrears of rent of any house or premises to which Chapter VIII extends or his duly constituted attorney may apply to any Judge of the Small Cause Courts or to the Registrar of the Small Cause Court for a distress warrant. Such an application has to be supported by an affidavit or affirmation to the effect of the form marked A in the third Schedule thereto annexed. Sec. 54 then provides that the Judge or the Registrar may thereupon issue a warrant to the effect of the form marked B contained in the same Schedule addressed to any of such bailiffs. The section also empowers the Judge or the Registrar at his discretion to decline to issue such a distress warrant upon personal examination of the person applying for such a warrant. There can therefore be no doubt that the Small Cause Court on and after the enactment of the Ahmedabad City Courts Act 1961 has the power to issue a distress warrant under Chapter VIII of the Presidency Small Cause Courts Act 1882

**[5]** But it was argued that though the Small Cause Court has the power to issue a distress warrant a similar power is not to be found in the Rent Act 1947 and therefore

while exercising its jurisdiction under the Rent Act the Court cannot resort to its power under the Presidency Small Cause Courts Act. In my view that contention has no force even assuming that Mr. Mehtas contention were to be right that the Small Cause Court at Ahmedabad cannot exercise its power under the Presidency Small Cause Courts Act while exercising its jurisdiction in matters set out in sec. 28 of the Rent Act 1947 Sec. 18 of the Ahmedabad City Courts Act 1961 provides that the Presidency Small Cause Courts Act 1882 and the Bombay Rent Act 1947 shall in their application to the City of Ahmedabad stand amended in the manner and to the extent specified in the Schedule. Under that Schedule sec. 28 is amended and the Court of Small Causes at Ahmedabad has been made the Court for the city of Ahmedabad and therefore it would be that Court which has jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating inter alia to recovery of rent possession of any premises etc. The question however is can an application for distress warrant be said to be a proceeding for the recovery of rent or a proceeding under the Rent Act in respect of which the Small Cause Court has the exclusive jurisdiction ? The answer to that question is to be found in sec. 49 of the Rent Act which empowers the State Government to make rules for giving effect to the provisions of the Act and clause (iii) of sub-sec. (2) of that section expressly empowers the Government amongst other things to frame rules regarding the procedure to be followed in trying or hearing suits proceedings (including proceedings for execution of decrees and distress warrants) applications appeals and execution of orders. It is therefore clear that if the Small Cause Court as the Rent Court had no power to issue distress warrants there was no question of the Legislature authorising the State Government to frame rules in regard to proceedings for distress warrants. The power to frame rules in respect of proceedings for distress warrants was included in sec. 49 sub-sec. (2) by the Legislature presumably because it was aware that a Small Cause Court governed by the Presidency Small Cause Courts Act 1882 had the power to issue distress warrants and if such Court were to be made the Rent Court under sec. 28 of the Rent Act it would have the power to issue such distress warrants and for that purpose specific power to frame rules in regard to distress warrants was conferred upon the State Government under clause (iii) of sec. 49(2). In pursuance of the power so reserved to it the then Government of Bombay framed rules under the Rent Act called the Bombay Rents Hotel and Lodging House Rates Control Rules. 1948. Chapter IV of those rules deals with the procedure to be followed by the Court of Small Causes Bombay in suits proceedings appeals etc. Rule 5 in that chapter deals with the procedure for suits the value of the subject-matter of which does not exceed Rs. 30 and for proceedings for execution of decrees and orders passed therein and for distress warrants. So far as is relevant for the purposes of this judgment that rule provides that in

such of the following suits and proceedings as are cognizable by the Court of Small Causes Bombay on the date of the coming into force of these rules namely ....(2) proceedings under Chapter VII and VIII of the Presidency Small Cause Courts Act 1882 and (3) proceedings for execution of any decree or order passed in any such suit or proceeding the Court of Small Causes Bombay shall follow the practice and procedure provided for the time being (a) in the said Act except Chapter VI thereof and (b) in the rules made under sec. 9 of the said Act. Rule 6 of those rules provides that every application for a distress warrant under Chapter VIII of the Presidency Small Cause Courts Act 1882 shall be accompanied also by an affidavit of the applicant or his duly constituted agent stating that the amount claimed is not in excess of the rent recoverable under the Act. Mr. Mehta however argued that rule 5 does not provide for proceedings such as distress warrant proceedings to be taken out under sec. 28 of the Rent Act and though rule 5 has been included in the Rent Act Rules it does not in express terms provide for a power to the Small Cause Court acting as a Rent Court to exercise its power to issue distress warrants as provided in Chapter VIII of the Presidency Small Cause Courts Act 1882 He contended that that being so whereas the Small Cause Court at Ahmedabad has jurisdiction to issue distress warrants under the Presidency Small Cause Courts Act it has no such power under the Rent Act and that rule 5 does not confer any such power for it deals only with proceedings under Chapters VII and VIII of the Presidency Small Cause Courts Act 1882 The rule could have been expressed in more lucid terms but read as a whole it is clear that it empowers the Small Cause Court even while exercising its jurisdiction under the Rent Act to take proceedings under Chapters VII and VIII of the Presidency Small Cause Courts Act 1882 and further provides that if such proceedings are taken it shall follow the procedure provided in that Act except the procedure laid down in Chapter VI thereof or in the rules made under sec. 9 of that Act. It is no doubt true that in sub-rule(2) of rule 5 what are mentioned are the proceedings under Chapter VII and VIII of the Presidency Small Cause Courts Act 1882 and not proceedings under the Rent Act. But that had to be done because though the Small Cause Court Ahmedabad has been constituted as a Rent Court under sec. 28 of the Rent Act unlike other Rent Courts it has the power to issue distress warrants which the other Rent Courts have not under Chapter VIII of the Presidency Small Cause Courts Act 1882 The draftsman being aware of this difference between the Small Cause Court and the other Rent Courts deliberately used the phraseology to be found in sub-rule (2) of rule 5. That the Legislature intended the Small Cause Court to exercise the power of issuing distress warrants even when constituted as a Rent Court is manifest from the fact that sec. 49(2)(iii) of the Rent Act itself

empowers the State Government to frame rules in regard to issuance of distress warrants by the Small Cause Court when exercising its jurisdiction under the Rent Act. In other words rule 5 read along with sec. 49(2)(iii) permits in matters arising under the Rent Act including the recovery of rent the Small Cause Court in proceedings cognizable by it on the date of the coming into force of these rules to adopt proceedings under Chapter VIII of the Presidency Small Cause Courts Act 1882 and the rule provides that if such proceedings are taken the procedure to be followed would be the procedure laid down in that Act. It would not therefore be correct to say that rule 5 does not carry out the object of the draftsman to provide for the procedure as regards proceedings for distress warrants. Nor would it be correct to say that in matters set out in sec. 28 of the Rent Act the Small Cause Court Ahmedabad has no jurisdiction to issue a distress warrant. The contention urged in this behalf by Mr. Mehta therefore cannot be sustained. Nor can his other contention namely that rules 5 and 6 in Chapter IV of the rules were ultra vires of the Rent Act be sustained because an express power has been reserved to the State Government to frame rules in regard to distress warrants which as aforesaid can be issued only by the Small Cause Court which has been invested with the exclusive jurisdiction under sec. 28 of the Rent Act.

**[6]** The next contention urged by Mr. Mehta was that even if the Small Cause Court had jurisdiction to issue distress warrants there were no arrears of rent on the date when it was issued and therefore the order was bad. This contention was a two-fold one (1) that the municipal taxes though admittedly payable by the petitioners as tenants under the lease were not part of the rent and therefore failure to pay them would not amount to arrears of rent and (2) that even if they did the petitioners had advanced Rs. 80 0 out of which Rs. 42 0 were still due and payable to them for the construction of the lease-hold premises and that the balance of those monies being still payable by the respondent the municipal taxes for the year 1964-1965 could have been adjusted by the respondent against that amount due by him to the petitioners. The first part of the argument no longer survives in view of the decision of Bhagwati J. in Mohanlal v. Maheshwari Mills Ltd. (1962) 3 G. L. R. 574 The second part of the argument also is not tenable because the liability to pay municipal taxes under the lease as they become due at the end of each year was independent of and distinct from the contract of loan under which the amount of Rs. 80 0 was advanced and the liability to pay the Municipal taxes by the petitioners was not dependent or conditional on the satisfaction of the liability of the landlord to repay the loan. Since under the lease the tenants were liable to pay the taxes as and when they became due once there was failure to pay them the amount of the taxes would become arrears and being part of rent they would become arrears of

rent to which rules 5 and 6 in Chapter IV of the Rent Act Rules would apply. The mere fact that there were monies payable by the landlord to the tenants advanced as loan would not save the applicability of these rules once there were arrears of rent. Another contention raised by Mr. Mehta was that in any event the amount of electricity charges would not be part of the rent and that therefore the amount in respect of such electricity charges could not have been included in the distress warrant. There can be no doubt that under the lease the tenants were liable to pay charges for the electricity consumed by them in the lease-hold premises. The contention that the electric charges could not be made the subject matter of the distress warrant as they would not form part of the rent can no longer survive in view of the decision of Miabhoy J. in Civil Revision Application No. 1208 of 1960 decided on April 15 1963 wherein it has been held that electric charges are included in and form part of the rent.

**[7]** The fact that the petitioners had deposited the amount of municipal taxes for the year 1964-1965 in the said suit No. 1308 of 1963 would also in my view not preclude the applicability of rules 5 and 6 of the said rules relating the distress warrants or the exercise of the Courts power to issue such distress warrant. Though the deposit of Rs. 8 921 nP. was made the landlord was not permitted to withdraw it on an objection raised by the petitioners. Therefore that deposit was not made available for the payment of the municipal taxes. The result was that either the landlord paid the municipal taxes himself or allowed them to remain in arrears subjecting there by the property in question to be in danger of being attached under the provisions of the Bombay Municipal Corporations Act. Therefore the mere fact that the petitioners had deposited that amount so long as that deposit was not made available to the landlord would not mean that the municipal taxes were paid or that there were no arrears in relation to that part of the rent. Mr. Mehta lastly relied upon sec. 11(3) of the Rent Act under which it an application for fixation of standard rent is made by a tenant who has received a notice from his landlord under sec. 12(2) the Rent Court has the power to make an order directing the tenant to deposit in Court forthwith and thereafter monthly or periodically such amount of rent as the Court considers to be reasonably due to the landlord pending the final decision of the application and out of the amount so deposited the Court may made an order for the payment of such reasonable sum to the landlord towards the payment of rent as it thinks fit. this provision has nothing to do with the power of the Small Cause Court to issue distress warrants. Sec. 11(3) was introduced to enable a landlord to have a reasonable amount by way of rent while an application for fixing the standard rent by a tenant remains pending. But for such a provision the landlord would De without any rent whatsoever for a considerable time while the standard rent application is not disposed



of. No doubt if a tenant has deposited under section 11(3) the amount fixed by the Court as standard rent it would be a matter for consideration for the Court whether distress warrant should be issued or not. But that would not mean that sec. 11 takes away the jurisdiction of the Small Cause Court to issue a distress warrant in a fit case where under subsec. (3) of this section an amount equivalent to the municipal taxes has been deposited but is not available either by reason of the Courts order or otherwise to the landlord for payment to the local authority. There is no question of any difference between the amount to be deposited in respect of such municipal taxes and the amount of actual municipal taxes. If the amount of municipal taxes is deposited with the Court under sec. 11(3) and such deposit is available to a landlord obviously no Court would ordinarily issue a distress warrant in respect of such an amount. But it is difficult to see how sec. 11(3) can affect the power of the Small Cause Court exercising its jurisdiction as a Rent Court to issue and stress warrant under rules 5 and 6 of the aforesaid rules. Mr. Mehta also relied upon sec. 12 of the Rent Act but there again it is difficult to comprehend as to how that section also can have any relevance so far as the present question is concerned.

**[8]** These were only contentions raised by Mr. Mehta. In my view the Small Cause Court even while exercising its jurisdiction under sec. 28 of the Rent Act 1947 has the power under rules 5 and 6 of the Rent Act Rules 1948 to entertain applications for distress warrants and within the scope of those rules has the jurisdiction to issue a distress warrant and further those rules have been framed by the State Government under the express power reserved to it to provide for the procedure relating to an application for distress warrants and therefore rules 5 and 6 cannot be said to be ultra vires the Act. In that view the contention raised by Mr. Mehta both on the vires of the rules as also on merits cannot be sustained and the revision application therefore must fail. Rule discharged. The petitioners will pay to the respondent the costs of this application.

Application dismissed.