

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Civil Revision Application No. 14 of 2015

Santosh S/o Mahadu Kakde. .. **Petitioner.**

Versus

Narayan S/o Rangnath Nemane. .. **Respondent.**

Shri. P.F. Patni, Advocate, for petitioner.

Shri. C.R. Thorat, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 19th NOVEMBER 2015

ORDER:

1) The revision is filed to challenge the judgment and decree of Regular Civil Suit No.113/2007 which was pending in the Court of the Civil Judge, Junior Division, Gangapur, District Aurangabad and also the judgment and order of Rent Appeal No.2/2012 (Old No.4/2010) which was pending in the Court of the District Judge-1, Vaijapur. The suit filed by present respondent for possession of house property is decided in his favour. Both the sides are heard.

2) The suit was filed in respect of house property bearing Village Panchayat No.2188 situated at village Savangi at Lasur Station. It is the case of the plaintiff that the property was given on lease basis to the defendant on monthly rent of Rs.500/-. The agreement was for the period of 11 months starting from 1st April 2004 and the month for the rent was from 1st of each month upto 30 of that month as per the English calender. It was the case of the plaintiff that the defendant did not pay rent for 20 months. Possession was claimed on the ground of default and also on the ground of bona fide requirement. It was the case of the plaintiff that by issuing notice dated 4-4-2007 he had terminated the tenancy of the defendant. It was contended that notice was served on the defendant but he had not taken pains to reply that notice.

3) The defendant contested the suit by filing written statement. He denied everything. He contended that when relations were cordial he paid the rent to the plaintiff but plaintiff was bent upon to harass him and tried to evict him forcibly. He also took defence that previous owner Babasaheb Nemane had agreed to sell the

property to him and some consideration was also paid to him but Babasaheb, brother of the plaintiff, avoided to complete the transaction. He contended that he was in possession under the said agreement. He contended that the plaintiff had no right to claim the arrears of rent.

4) The issues were framed on the basis of aforesaid pleadings. Both sides gave evidence. The trial Court held that possession of the defendant was as a tenant and he was in arrears of rent of at least 20 months. It was held that the plaintiff was in need of the suit premises for personal use. It was further held that the tenancy was terminated by the plaintiff by giving notice.

5) Evidence is given by the plaintiff to show that he had received the suit property in partition and Babasaheb had no concern with the property. The defendant also admitted in his evidence that the plaintiff was owner but he had taken defence of aforesaid nature. As the initial relationship was admitted by the defendant the Court held that the defendant was occupying the premises as tenant. The aforesaid defence taken by the

defendant shows that he was not disputing that he had not paid rent though he has taken defence that due to strained relation he was not paying the rent.

6) The plaintiff gave evidence that he wanted to live in the suit property as he was running grocery shop at Lasur Station and he was not having any other house in that area. There is nothing with the defendant to show that plaintiff has other accommodation. In view of nature of defence taken by the defendant and the aforesaid evidence given by the plaintiff, there was no alternative before the trial Court than to give decree in favour of the plaintiff.

7) It appears that the suit was filed under the provisions of Transfer of Property Act but the appeal was filed by the present appellant under the provision of Section 34 of the Maharashtra Rent Control Act, 1999. The Appellate Court has confirmed the aforesaid finding given by the trial Court. The circumstance that the appeal was filed under the Maharashtra Rent Control Act can be used only against the tenant and not against the landlord.

Learned counsel for the appellant placed reliance on one case reported as **AIR 1989 Bombay 313 (Shakirbhai Makbul Hussain v. Tahera Begum)** and submitted that suit ought to have been tried as suit filed under Provincial Small Causes Court Act. This case cannot help the tenant as the powers to try small cause suits are also vested with the Court of the Civil Judge Junior Division in the State. In any case such objection regarding the procedure was never taken by the tenant.

8) The submissions made show that the decree of eviction is already executed and possession is handed over to the landlord. In view of these circumstances, this Court holds that it is not possible to interfere in the findings given by the Courts below which are concurrent on both the grounds.

9) In the result, the proceeding stands dismissed.

Sd/-
(**T.V. NALAWADE, J.)**

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