

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, orders or	Court's or Judge's orders.
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APEAL FROM ORDER NO. 35 OF 2015
WITH CA/4577/2015 IN AO/35/2015

ANAND SHANKARRAO THAKUR
VERSUS
DEVIDAS AMBADAS ALCHETTI

...
AND

APEAL FROM ORDER NO. 36 OF 2015
WITH CA/4582/2015 IN AO/36/2015

ANAND SHANKARRAO THAKUR
VERSUS
AMBADAS SATWAJI ALCHETTI

...

Advocate for Petitioners : Mr. Mahajan Sandeep Y.
Advocate for Respondent: Mr. Narwade Narayan B.

CORAM: T. V. NALWADE, J.
DATED: 28th JULY. 2015.

PER COURT:

1. Both the proceedings are filed to challenge the judgment and orders of District Court by which the District Court has remanded the matters to trial Court for deciding the issue of standard rent. The Appeals were filed by tenant against the judgment and decree of

eviction given on the ground of default, under the provisions of Maharashtra Rent Control Act, 1999. This decision is set aside by the District Court. Both the sides are heard.

2. The submissions made and the pleadings show that separate properties are in possession of the two tenants who are father and son. Notice of termination of tenancy was given by the landlord, present Appellant, to both these tenants on the ground that they had become defaulters and it was willful default and they had not paid the agreed rent for the period starting from 15th October, 2001 and the period was more than 3 years. Admittedly, these statutory notices were duly served on the tenants. They appeared in the suit filed for eviction in the 2005. They filed applications for fixation of standard rent in the suit in the year 2009. These applications were rejected by the trial Court and the aforesaid decree was given.

3. The judgments of the District Court show that there was virtually no application of mind. When the decree for eviction was not given on the ground of bona fide requirement under section 16 (g) of the aforesaid Act,

this ground is also considered by the District Court.

4. The District Court has not referred the provision of Section 15 of the aforesaid Act in which opportunity is given to the tenant to avoid the forfeiture of tenancy. The tenant can avoid the decree of eviction on the ground of default, if he follows the procedure given in section 15 of the said Act. If the tenant has any dispute with regard to the standard rent of the premises, he can raise the dispute but for using the provision of section 15 of the Rent Act he has to take some risk. He is expected to tender the rent which, according to him, is agreed rent or standard rent after receipt of the notice or at-least after receipt of the suit summons. Thus, the issue of default needs to be decided in view of the provisions of section 15 of the Rent Act. In spite of this circumstance and further the circumstance that the application for fixation of rent was rejected by the trial Court separately and this order was not challenged, the District Court has made the order of aforesaid nature. This Court holds that such order cannot sustain in law. The District Court is expected to decide the dispute on merits and in view of the provisions made in section section 15 of

Maharashtra Rent Control Act.

5. In the result, both the appeals are allowed. The impugned judgment and orders in Appeal from Order No.35 of 2015 and Appeal from Order No.36 of 2015 are hereby set aside and matters are remanded back to the District Court for deciding both the appeals on merits.

6. Pending civil applications, in both the Appeal from order stand disposed of.

[T. V. NALAWADE, J.]

Dt.28/07/2015
ans/35