

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Civil Appellate Jurisdiction.**

**C.R.A. NO. 209 OF 2015.
WITH
CIVIL APPLICATION NO.4970/2015.**

**LAXMAN GANU TAYADE LRS CHAMBABAI & ORS.
VERSUS
RAMDAS HIJARIMAL PASI.**

Appearance =>

Mr. Digambar B.Shinde, Advocate for the Applicants.

Mr. Yawalkar, Advocate a/with Mr. S.S. Patil, Advocate for the Respondent.

CORAM : S.V. Gangapurwala, J.

DATE : 8th October, 2015.

Per Court :-

The present Respondent / Plaintiff had filed Regular Civil Suit No.175 Of 2003 in the Court of the Civil Judge Junior Division, Bhusawal for eviction of suit premises on multifarious grounds. The learned Extra Joint Civil Judge, (J.D.), Bhusawal vide his Judgment dated 5th September, 2011 decreed the suit on the ground that the plaintiff required the suit premises reasonably and bonafidely for his own occupation and, secondly that the tenant has committed the default in payment of rent amount.

[2] The defendant - tenant preferred Regular Civil Appeal No.315 Of 2014 before the District Court, Bhusawal. The learned

District Judge -2 Bhusawal vide his Judgment and order dated 5th February, 2015 dismissed the Regular Civil Appeal and confirmed the Judgment and Decree passed by the trial court.

[3] The tenant has assailed the concurrent findings in the present Civil Revision Application.

[4] The learned counsel for the defendant strenuously contended that the present Respondent had purchased the suit premises in the year 1999 and thereafter claiming arrears of rent since the year 1975. The tenant was paying the arrears of the rent to the erstwhile owner. There was no notice of apportionment of the tenancy. The erstwhile tenant never communicated to the present Applicant about divesting his ownership of the suit premises.

[5] According to the learned counsel, after the Applicant got knowledge that the present Respondent has purchased the suit premises, he had sent the money order to the Respondent however, he has refused to accept it. Even after the receipt of the suit notice, the Applicant had been to the Respondent but he refused to accept the rent.

[6] The learned counsel submitted that even after the issuance of the suit summons, there was delay of only seven days in making the application for depositing the arrears of rent amount. The learned counsel submits that it was the Respondent who refused to accept the rent for which the Defendants could not be penalized. The learned counsel further submits that, the findings in respect of default

is absolutely perverse and against the evidence on record. The learned counsel submits that the landlord was well aware that the suit premises is occupied by the present Applicant, still he has purchased the suit premises. It shows that it was not purchased for his own occupation. According to the learned counsel, other part of the premises is in possession of the Applicant and original plaintiff does not require the suit premises for bonafide purpose i.e. for his own use. The aspect of hardship is also not considered. The Appellate Court has not given any reasoning nor has discussed any evidence in that regard. Thus, he submits that, such Judgment cannot be sustained. The learned counsel relied on decision of Single Judge of this Court in case of **Gajulal Kuldiram died per L.R's and others V/s. Ugrasen Bhadrassen Rathod**, reported in 1994(4) Bom.C.R.487.

[7] Mr. Yawalkar, learned counsel for the Respondent submits that brother of erstwhile owner was examined before the court. It has come on record that the defendant has not paid the rent since the year 1975. According to the learned counsel though the limitation would not be available to the plaintiff to recover the arrears of rent prior to three years, still under Section 15(3) of the Maharashtra Rent Act, the tenant for seeking protection of said provision, has to deposit rent alongwith the arrears irrespective of the limitation.

The learned counsel relied on the Judgment of Single Judge of this Court in case of **Prabhakar Venkobaji Manekar V/s. Surendra Dinanath Sharma**, reported in 2015(4) Maha.L.J., 351. The learned counsel further submitted that no discretion vest with the

court even to extend the time for making the payment under Section 15(3). The learned counsel relied on the Judgment of Hon'ble Apex Court in case of **Yusufbhai Noormohammed Jodhpurwala V/s. Mohmmmed Sabir Ibrahim Byavarwala, reproted in (2015) 6 Supreme Court Cases 526.**

[8] With the assistance of the learned counsel for both the sides, I have gone through the Judgments.

The tenant has come with a case that since the year 1975 he is depositing the rent with the erstwhile owner of the suit premises. The plaintiff has purchased the suit premises in the year 1999.

No rent receipts are produced on record by the tenant to justify the said fact. The plaintiff has examined the brother of erstwhile owner of the suit premises, in this regard.

[9] There is no evidence to show that the tenant has deposited the rent since the year 1975. Even there is nothing on record to show that the complete rent was deposited within period of 90 days from the date of service of summons. It was delayed by 7 days. It is also not case that said amount was sought to be deposited alongwith interest @ 15% per annum. Provisions of Section 15(3) of the Maharashtra Rent Act are mandatory, as held by the Hon'ble Apex Court in case of Yusufbhai, cited supra.

[10] Considering the aforesaid discussion on the point of default, both the courts below have arrived at plausible conclusion. Evidence is scanned in this regard.

[11] As far as bonafide requirement is concerned, on perusal of judgment of the learned Appellate Court, it is manifest that the learned Appellate Court has not applied his mind while giving finding on the aspect of bonafide requirement. In two lines, the appellate court has just observed that the landlord requires the premises bonafidely. It was, no doubt, concurring with the view taken by the learned trial court but, it was expected from the first appellate court to discuss the contentions of the appellant.

[12] One grounds is sufficient for eviction. I have considered the Judgment of the trial court on the aspect of bonafide requirement also. The plaintiff has examined the Officer from the Forest Department who has specifically deposed that notice has been issued to the landlord as the logs are lying beyond the land of the saw mill in open due to lack of space. Premises is required for keeping the goods and logs as the plaintiff is running saw mill.

[13] Question of bonafide requirement and hardship have been considered by the learned trial court. I do not find that the learned trial court has committed any error in that regard. In the light of the above, Civil Revision Application is dismissed however with no order as to costs.

[14] At this stage, the learned counsel for the Applicant – tenant seeks protection till ensuing Diwali.

[15] The respondent shall not execute the decree upto 15th November, 2015. Needless to state, on and after 15th November, 2015 the landlord would be entitled to execute the Decree. No costs.

(S.V. GANPURWALA, J.)