

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

WRIT PETITION NO. 7591 OF 2015

Gopal Govardhanlalji Sharma
[since died thr. L.Rs. -
Akash s/o Gopal Sharma & Ors.] **PETITIONERS**

V E R S U S

Gopal s/o Narayan Abdhoot **RESPONDENT**

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Mr. S.S.Kazi, Advocate for Petitioners.

Mr. S.J.Salunke, Advocate for Respondent

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 31st AUGUST, 2015

ORDER :-

1. The petitioner/respondent is before this court aggrieved by findings on fact by two courts about failure to establish payment of rent and about non tender of rent regularly during pendency of proceedings are points out that , the appellate court has reversed the finding in favour of the respondent on the ground of bonafide requirement.

2. Mr. Kazi, learned counsel has taken me through the

depositions of the witnesses, in whose presence it is claimed that land-lord was being paid rent by the tenant. Both courts have observed that most of the depositions are by the persons who had business relations with the petitioner/respondent, who appears to be contractor. The courts have further observed that even otherwise there is no evidence to show that rent being regularly paid by the tenant during pendency of proceedings as contemplated u/s 15 (3) of the Maharashtra Rent Control Act, 1999.

3. The learned counsel for the respondent has submitted that the evidence in this respect is tendered, both the courts on appreciation have considered it as otherwise and have found that the tenant had fallen in arrears and it appears that he has also not paid rent regularly, finding is based on evidence and appreciation is not at all perverse. As such, evidence is not open for reconsideration in the writ proceedings.

4. In the circumstances, no error can be said to have been committed by giving finding on the point of arrears of rent. Writ Petition as such can not be entertained on this ground.

5. Under the circumstances, Writ Petition is rejected.

6. At this stage, Mr. Kazi, learned counsel for the petitioners requests for time to vacate the suit premises. The learned counsel for the respondent graciously agrees to give reasonable period of four months for vacating the premises subject to usual undertaking.

7. The petitioners shall give an undertaking that they will continue to pay amount by way of compensation for occupation of the premises concerned at the rate of rent and further that they would not create any third party right, title or interest of whatsoever nature or cause any obstruction either by themselves or through anybody on their behalf in respect of the property as per the decree passed by the trial Court. Such an undertaking be given within a period of fortnight in this Court. In case undertaking as directed is filed, the execution of decree shall remain in abeyance for a period of four weeks thereafter. If no undertaking is filed, execution may proceed further.

[SUNIL P. DESHMUKH, J.]