

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

CIVIL REVISION APPLICATION NO.: 244 OF 2012

MIRZA ISMAIL BAIG S/O MIRZA SATTAR BAIG

VERSUS

MOHAMMAD MUNIRODDIN S/O MOHAMMAD
FAIYAZODDIN, DIED, THROUGH L.RS. KHURSHEED
BEGUM W/O MUNIRUDDIN SHAIKH AND OTHERS

Mr. R. R. Mantri, Advocate for the Petitioner.

Mrs. M. A. Kulkarni, Advocate h/f Mr. A. M. Kulkarni,
Advocate for Respondent Nos.1-A to 1-L.

CORAM: T. V. NALAWADE, J.
DATED: 4th August, 2015.

ORDER:

1. The revision is filed against judgment and order of Rent Controller, Jalna delivered in file No.95/RC/CR-9 and judgment and order of Rent Appeal No.2 of 2010 which was pending in the Court of Principal District Judge, Jalna. In a proceeding filed for eviction under section 15 of Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1054 (hereinafter referred to as the Act) the relief of

eviction is given by the Rent Controller on two grounds, like willful default and personal bonafide requirement of the suit premises. The decision is confirmed by the Appellate Court. Both the sides are heard.

2. The suit property is part of Municipal House No.4252 situated on College Road, Sadar Bazar, Jalna. It was given on monthly rent to the tenant on 1st March, 1992 for doing hotel business and written agreement was prepared accordingly (dated 16th February, 1993). It is contended that there was an agreement to pay Rs.1,000/- per month after the expiry of English Calendar month and the tenant was also liable to pay the electricity charges. It is contended that after expiry of 11 months, the tenant was expected to hand over the possession but the tenant did not hand over the possession.

3. It is the case of the landlord that right from beginning the tenant was not regular in making payment of monthly rent. It is contended that as the tenant was in arrears of rent and he had not paid the rent since March, 1993, statutory notice was issued to tenant on 8th November, 2004 and his tenancy was terminated. It

is contended that in the notice it was also informed that the landlord wanted the premises for his personal bonafide use. The arrears amount was Rs.23,000/-.

4. In the proceeding filed before Rent Controller the landlord contended that his son wanted to run hotel in the suit premises as even after completion of education he could not get the employment. Landlord contended that he has no other premises where the business can be started and as the suit premises is situated on the main road it is suitable for such business.

5. The statutory notice was replied by the tenant. Before filing of the eviction proceeding, a suit was filed by landlord for recovery of the arrears of rent mentioned above and the suit was pending on the date on which the eviction proceeding was filed. When during the pendency of the suit the recovery suit came to be decreed in favour of the landlord, amendment in the pleading came to be made and this circumstance was brought to the notice of Rent Controller. It was also brought to the notice of the Rent Controller that as the rent was not paid by the tenant from February, 1995 to December, 1997 also another suit was filed and this suit

was also decreed.

6. By making amendment landlord brought on the record that the tenant had acquired alternate accommodation during pendency of the proceeding like CTS No.2666/1/2 at Jalna and this property is situated in the vicinity of the suit premises and it is also on the same road and there the defendant has started another hotel by name Apsara hotel.

7. The tenant filed written statement and denied the contentions that he had become defaulter and the landlord requires the suit premises for personal bonafide use and occupation. He contended that there was dispute about the agreed rent and the landlord was asking to pay more rent. He contended that the initial agreed rent, in the year 1987, was Rs.500/- per month and the tenant was expected to pay separately the charges of electricity and water in respect of his share. The tenant contended that he was tendering the rent at aforesaid rate regularly but landlord refused to accept the rent, even when it was sent by money order. It is contended that the landlord wanted to brand him as defaulter and so he avoided to accept the rent.

8. The tenant contended that there was no practice of issuing rent receipt and the landlord is misusing that practice. The tenant contended that his signature was obtained on a blank stamp paper by the landlord and the landlord is misusing that stamp paper. The case of the landlord, which was mentioned in the amendment application, is also denied by the tenant.

9. The record shows that, initially tenant avoided to contest the matter and the matter was virtually decided ex-parte against him by the Rent Controller. This decision was challenged by tenant in appeal and the matter was remanded back to the Rent Controller by the District Court. Even after remand of the matter, the tenant did not cooperate the Rent Controller and the cross examination of some witnesses was avoided. When the Rent Controller passed order on 15th January, 2010 that no further cross examination will be allowed, this order was challenged by filing writ petition in this Court. This Court directed the Rent Controller to allow the defendant to cross examine witnesses and to lead evidence and time was fixed for disposal of the matter. This order was made on 10th February, 2010 and only

due to this order Rent Controller could complete the trial of the matter and could decide the matter on 9th August, 2010.

10. The aforesaid conduct of the tenant needs to be kept in mind at-least for considering the ground of default and point of hardship. The evidence of the landlord on the ground of default is as per the pleadings in eviction application. The landlord has given evidence that there was written agreement on the point of rate of rent and also the time when the rent was to be paid. In the agreement it was made clear that the tenant was to give the rent and he was to take receipt of the rent given by him. It was not open to the tenant to create dispute regarding the payment of rent if he had no receipt of the rent paid. This document was for the period of 11 months.

11. Landlord has given evidence that right from beginning the tenant never regularly paid the rent and he was in arrears of rent of 23 months when the statutory notice dated 1st November, 1994 was given. Landlord has given evidence that the tenancy was terminated by the statutory notice and the tenant was

asked to pay the arrears of the rent. He has given evidence that he had already filed proceeding for recovery of the aforesaid arrears of rent in Civil Court and so on the date of filing of the eviction proceeding such suit was pending. Subsequently also landlord was required to file suit in Civil Court for recovery of arrears of rent. Landlord has given evidence that every time he was required to go to Court for recovery of rent and the tenant has harassed him.

12. The cross examination of the landlord and the pleading in the say filed by the tenant show that the tenant has not disputed his signature appearing on the written agreement. It is only suggested to the landlord during cross examination that on 2, 3 occasions the tenant had tendered rent of Rs.500/- but landlord had refused to accept it. The evidence shows that on one occasion such rent was tendered by money order and the landlord had not accepted as it was not the agreed rent.

13. On the other hand, the tenant has given evidence that the agreed rent was Rs.500/- per month. He, however, did not dispute that he was liable to pay water

charges and charges of electricity of his share. These charges were to be paid separately. It can be said that there was no other alternate before the tenant but to pay such charges immediately as he was running hotel and for hotel business water and electricity is a must.

14. In his evidence, the tenant has tried to say that he was deceived and his signature was obtained on a written agreement by the landlord. In the suits filed in Civil Court for recovery of rent, the Civil Court has given decision that the agreed rent was Rs.1,000/-. The suit filed for recovery of the aforesaid arrears of rent, the rent which had become due on the date of the proceedings, was decreed in favour of the landlord. It can be said that only after the decision of the civil suit the tenant started tendering the monthly rent of Rs.1,000/- and the decision was given by civil Court during the pendency of the eviction proceeding.

15. The size of the rented premises is 35'x15'. The tenant has given evidence that he had paid the rent for the period ending November, 1994 but he has no record of such payment. As per the written agreement, Exhibit-37, the tenant was to pay monthly rent of Rs.1,000/- and

the rent was to be paid before completion of the month. In view of the provisions of the Rent Control Act, it can be said that the rent was to be paid before expiry of the next following month. A copy of the judgment delivered in Civil Suit No.73 of 1995 filed for recovery of arrears of rent shows that the rent was claimed for the relevant period and Civil Court held that there was default committed by tenant. In subsequent suits also similar finding is given. Thus, the fact that tenant had not paid rent for the period of 23 months is proved before the civil Court. Appeal against this decision of civil Court was dismissed.

16. The ground of default is provided by section 15 (1), (2) (I) read with proviso to section 15 (2) of Hyderabad Rent Control Act, which runs, as under:

“15. Eviction of tenants. - (1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is

satisfied -

(i) that the tenant has not paid or tendered the rent due by him in respect of the house, within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable; or

... ..

The Controller shall make an order directing the tenant to put the landlord in possession of the house, and if the Controller is not so satisfied, he shall make an order rejecting the application:

Provided that in any case falling under clause (i) if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful he may, before making an order as aforesaid, give the tenant a reasonable time, not exceeding 15 days to pay or tender the rent to the landlord upto the date of such payment or tender."

17. In view of the wording of written agreement already mentioned and aforesaid provision of the Act, it was necessary for tenant to pay or tender rent due by the last day of the month next following that for which

the rent was payable. For getting the protection of aforesaid proviso, it was necessary for the tenant to satisfy the Rent Controller that the default was not willful. As per the provision, the satisfaction of the Rent Controller is important in such cases and when Rent Controller's finding is on this point, the Appellate Court is not expected to interfere lightly unless some relevant material is not considered by the Rent Controller.

18. The point whether the default was deliberate or intentional (willful) can be decided from various circumstances of the case. As already observed, the past conduct of the tenant also needs to be considered for forming the opinion on this point.

19. Civil Court had given the decree for recovery of the arrears of rent for the relevant period in favour of landlord. Further, there was substantive evidence of the landlord and before Rent Controller the tenant could not prove that he had paid the rent for the relevant period. He could have followed the procedure given in Rent Act like section 14 if he had some dispute. This Court has no hesitation to observe that there was material before the Rent Controller to give finding that the tenant had failed

to prove that he had paid or tendered the agreed rent. When default was proved, the burden was on the tenant to prove that it was not willful. The evidence on the record and the copies of the judgments delivered by Civil Court show that only after giving of the decision by the civil Court the tenant started making payment of the rent and he paid the arrears of the rent. The subsequent payment by the tenant cannot make difference as the Rent Controller has refused to give the tenant protection as provided under the aforesaid proviso.

20. The learned counsel for the landlord placed reliance on three reported cases on aforesaid point. In the case reported as **2001 (3) Bom. C.R. 217**, Aurangabad Bench (**Sunderlal Kundanmal Patni since deceased per L.Rs. V/s Nagori Printing Press and another**) this Court has laid down that when the suit for recovery of arrears of rent for relevant period is decreed, the finding given by the civil Court needs to be considered by Rent Controller and that finding is binding on the Rent Controller. In the cases reported as **1984 Mh.L.J. 160 (Shashikant James Patole V/s Mohd. Naeemuddin Siddiqui)**, Aurangabad Bench, and **2000**

(1) Mah.L.J. 315, Bombay (**Ratanshaw Dinshaw Jilla and another V/s Suresh Shankarlal Dhoot**) it is laid down that when the default is proved the burden lies on the tenant to prove that it was not willful defaulter. In the case reported as **AIR 1983 Bombay 417 (Ramchandra Bastiram Saraswat V/s Ramniwas bansilal Lakhotiya)** it is laid down by this Court that the payment made after filing of eviction proceedings does not come in the way of landlord to get the order of eviction on the ground of default.

21. The learned counsel for the tenant placed reliance on some reported cases. In the case reported as **AIR 2003 SC 2993 (P.M.Punnoose V/s K.M.Munnneruddin and others)** the Apex Court held that the willful default was not proved in that case and there were circumstances like bonafide dispute as to quantum of arrears. There were circumstances like sending rent by money orders by the tenant and the refusal on the part of landlord to accept the amount sent by money order. The proceeding was centering around payment of rent of one month. In view of this peculiar circumstance, the Apex Court held that the Rent

Controller ought to have used his power given to him under section 10 (2) of Tamil Nadu Rent Control Act and the Rent Controller ought to have given time to the tenant to pay the rent. Thus, facts of the reported case were altogether different. Similarly, the facts of another case cited for tenant, reported as **AIR 1999 SC 3041 (J. Jermons V/s Aliammal and others)** were different. The facts of this reported case show that there was some prohibitory order from Income Tax Department to tenant and due to the order, tenant was prevented from making payment of rent to the landlord. In view of this circumstance, the Court held that there was reasonable basis for tenant to assume that he was prohibited from making payment of rent to landlord and so it was not willful default. The facts in three cases cited for tenant like **AIR 2000 SC 568 (C. Chandramohan V/s Sengottaiyan (Dead) by L.Rs. and others)**, **AIR 2002 SC 562 (M/s. Shrikrishna Oil Mill V/s M/s. Radhakrishnan Ramchandra)** and **(Bane Khan alias Munshi, Sharif Khan V/s Surajlal, Balaprasad Jaiswal)**, Bombay were different. The facts and circumstances, in each and every case on the point of

default are always different. In such cases, the Court is expected to take decision on the basis of facts of the case before it.

22. The learned counsel for the landlord submitted that decision given by Rent Controller on facts, on the ground of default is confirmed by the Appellate Court and so there is no scope to interfere in the finding in the present proceeding, revision. There is force in this submission. In section 26 of the Act scope of revisional powers of this Court is given and this provision runs as under:

“26. Revision.- *Notwithstanding anything contained in this Act or any other law for the time being in force, an application for revision shall lie to the High Court from any final order passed on appeal by an appellate authority on the following grounds:*

(a) that the original or appellate authority exercised a jurisdiction not vested in it by law, or

(b) that the original or appellate authority failed to exercise a jurisdiction so vested, or

(c) in following the procedure or passing the order, the original or appellate authority acted illegally or with material

irregularity.”

23. This Court has already mentioned the challenges made against the order of Rent Controller and the relevant material is also quoted. The decision is on facts and the entire relevant material made available by both the sides is considered by the Rent Controller. In view of the position of law and the facts and circumstances of this case, this Court holds that it is not possible to interfere in the decision given by Rent Controller which is confirmed by the District Court on the ground of default.

24. On the ground of bonafide requirement, there is a pleading that landlord wants to do the business of hotelling in the suit premises. The tenant was allegedly running hotel in this premises. The land lord has come with a case that his son will be doing business as his son could not get the employment. Landlord has given evidence that the tenant has started hotelling business in other premises situated on the same road. This contention has two angles. On one hand, it shows that the tenant has now got alternate accommodation and from this circumstance, the landlord wants to show that

no hardship will be caused to the tenant if the decree of eviction is given against him.

25. The evidence of landlord and tenant was recorded at least on two occasions in view of the circumstances and developments already mentioned. Landlord has given evidence that property No.1-4-79 (2666/1/2/35) is acquired by the tenant and he had obtained construction permission also from local body to make more construction on this property.

26. The landlord has given evidence that his other son owns and runs a flour mill and also a grocery shop. In the cross examination it is brought on the record that part of the building where the rented premises is situated belongs to the sister of the landlord. There is record of City Survey Office in that regard. The evidence of the landlord shows that he has four sons. The licence of flour mill is in the name of deceased mother of the landlord. Thus, the evidence is given that he, his son are in business and even his sister is doing business. He has examined one witness to show that the tenant has acquired alternate accommodation and there tenant is running hotel.

27. In the substantive evidence, tenant has admitted that he has started new hotel by name Apsara Hotel situated on the same road. His attention was drawn to the admissions given by him in evidence given in Civil Suit No.31 of 2000 (deposition dated 26th April, 2007). The tenant admitted in that suit that CTS No.2666/1/2A belongs to him and he is now running hotel in that premises. He has admitted the record in respect of this alternate premises and he has admitted that he has obtained permission from local body to make construction. Though he has tried to say that his younger brother is running the hotel, fact remains that the relevant record like licence is in his name and it is he, who has purchased the property and who has obtained permission of local body. This alternate property admeasures 180 sq.mtrs. and the construction permission was obtained in the year 1996.

28. The contention of the landlord that his one son has crossed the age of 25 years and the said son could not get job even after completing education, is not disputed by the tenant. It is already mentioned that the tenant has brought on record that the landlord's son is doing

the business of floor mill and grocery shop. His younger son has no source of income and for him the landlord wants to do some business. The material available is sufficient to prove that the landlord bonafidely requires the suit premises for his own use, for starting business for his younger son and the evidence is sufficient to prove that by acquiring alternate accommodation the needs of the tenant are satisfied.

29. The landlord can get possession of non residential premises for doing business under the provisions of section 15 (3) (iii) of the Act and this provision runs as under:

“15. Eviction of tenants.-

(3) (a) A landlord may subject to the provisions of clause (d) apply to the Controller for an order directing the tenant to put the landlord in possession of the house -

(iii) in case it is any other non-residential house, if the landlord is not occupying for purpose of a business which he is carrying on, a non-residential house in the city, town or village concerned which is his own or to the possession of which he is entitled;”

30. On the aforesaid point, the learned counsel for tenant placed reliance on one case reported as **2001 (1) ALL MR 703**, Aurangabad Bench (**Sanjaykumar S/o. Govindlal Agrawal V/s Keshavlal S/o. Banduchand Shah**). This Court referred the Division Bench case of this Court reported as **1977 Indian Law Reports Bombay Series page 1334 (Shantabai alias Jadhavbai W/o. Keshrimal Kabra V/s Modonlal S/o. Mansukhlal Kabra and another)** and held that under aforesaid provision for getting the possession, the landlord must be doing the business on the date of the suit and for that business he has no premises of his own use, for non residential purpose. On this point, more cases reported as 1981 Mh.L.J. 843 Bombay (**Motilal Chandulal Darak V/s Abdul Majid Tar Mohammad Kacchi**) and **1996 (1) Mh.L.J. 352**, Aurangabad Bench (**Shivram Gajulal and another V/s Ugrasen Bhadrasen Rathod**) were cited. In the second case, the learned Single Judge has observed that if the finding given by the Rent Controller has no basis of material such finding can be set aside in revision. There cannot be any dispute over this proposition.

31. This Court has carefully gone through the facts of the case of Shantabai, cited supra, decided by Division Bench of this Court. In this case, the Division Bench considered one case decided by learned Single Judge of this Court which was between **Madanlal Ranglal and Gurunath** reported in **(1968) Bom.L.R. 578**. Another case like Civil Revision No.254 of 1963 decided on 30th July, 1965 was also referred **(Kanhayalal Kaluram V/s Amolakchand Chandanmal)**. The provision of section 15 (3) (a) (iii) of the Act was considered and interpreted. The Division Bench endorsed the observations made by the learned Single Judge in the Revision No.254 of 1963 and held that it is sufficient for the landlord to prove that he was doing some business and it is not necessary for landlord to show that for the same business he wants the suit premises. The Division Bench has further observed that it is necessary for the landlord to prove that on the date of the proceeding he was doing the business. The facts of the present case show that the family of the landlord was doing some business in presentee as laid down in these cases and so this Court holds that on this ground also the landlord has made out

his case. As this circumstance is not disputed and it is brought on record by tenant himself it is not possible to interfere in the finding given on this fact also. In the result, this Court holds that the landlord is entitled to get the possession on both the grounds and there is no possibility of interference in the findings which are concurrent of Rent Controller and the District Court. So, the Revision stands dismissed.

[T. V. NALAWADE, J.]

Dt.05/08/2015
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