

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,	Court's or Judge's orders.
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CRA NO. 164 OF 2014

TARACHAND BANWARILAL JAISWAL
VERSUS
PUKHRAJ MISHRILAL SANCHETI

...
Advocate for Petitioners : Mr. Kedar Balbhim R.
Advocate for Respondent: Mr. P. F. Patni.

CORAM: T. V. NALAWADE, J.
DATED: 30th NOVEMBER, 2015.

PER COURT:

1. The petition is filed to challenge judgment and decree of Rent Suit No.35 of 2008 which was pending in the Court of Civil Judge, Junior Division, Aurangabad and also to challenge the judgment and order of Rent Appeal No. 6 of 2012 which was pending in District Court, Aurangabad. The suit filed for eviction on the grounds of default and bonafide requirement for personal use is decided in favour of Respondent. Both sides are heard.
2. Respondent, plaintiff is the owner of Plot No.4 which is given House No.5-17-33 and which is situated

at Samtanagar, Aurangabad. There are some shops in the building and one shop having size 9'x14' is in possession of present petitioner, original defendant. It is the case of the landlord that on monthly premium of Rs.1,200/- the shop was given in possession of the defendant on 8th June, 2000 and there was leave and licence agreement.

3. It is the case of the landlord that as per the agreement he was entitled to increase the premium by 20% after every three years. It is contended that the defendant paid premium at the rate of Rs.1,440/- from 8th June, 2003 to 7th June, 2006 and after that when he was expected to pay the premium at the rate of Rs.1,728/-, he paid the premium at that rate only up to the period ending 7th February, 2008. It is contended that after that, the premium at the enhanced rate was not paid by the defendant and so he had become defaulter.

4. It is the case of plaintiff that the defendant sent notice through his Advocate on 28th February, 2008 and he contended that the demand of Rs.1,728/- per month as premium was illegal and he denied that there was

such agreement. It is the case of the plaintiff that he then issued notice under section 15 of Maharashtra Rent Control Act and asked to make payment of the arrears of Rs.8,640/- for the period 8th February, 2008 to 7th June, 2008. It is contended that the defendant did not pay the enhanced premium amount and he gave false reply. It is the case of the plaintiff that due to the circumstance defendant has become defaulter and so he is liable to be evicted on the ground of willful default.

5. It is the case of plaintiff that he is a medical practitioner and he has one dispensary at village Karmad which is at a distance of 25 Kms. from Aurangabad city. It is the case of plaintiff that he is living in Aurangabad city and due to his age, which is more than 59 years, it is difficult for him to go to Karmad and so he wants to start his dispensary at Aurangabad. He contended that for opening his dispensary he wants the suit premises. He contended that no hardship will be caused to the defendant if eviction order is made but hardship will be caused to the plaintiff as he will not be in a position to open his dispensary at Aurangabad. He contended that the suit property is suitable property for

him for starting of dispensary.

6. The defendant contested the suit by filing written statement. He denied that there was agreement to enhance the premium by 20% after a period of every 3 years. He denied that he had paid Rs.1,440/- per month due to such agreement of enhancement and then he had paid Rs.1,728/- per month for some period. It is contended that defendant is illiterate, he is not knowing English language and the plaintiff is trying to extract money from him. It is the case of defendant that due to cordial relations he never insisted for receipt and the plaintiff is misusing the practice of not issuing receipts. He contended that he had given amount of Rs.25,000/- as deposit amount and that amount is with plaintiff and so he cannot be treated as defaulter. He contended that when he received the notice of demand of the money he sent Rs.6,000/- to the plaintiff as the rent for the said period by presuming that the monthly rent is Rs.1,200/- and so he is not defaulter.

7. It is the case of defendant that in the aforesaid building there are 5 shops and one shop is already in the possession of a son of plaintiff where the said son is

selling ornaments. The defendant contended that there is one more shop from the same building lying vacant, in possession of the plaintiff and there plaintiff can open his dispensary. It is contended that the case of bonafide requirement of plaintiff is not true and the suit is filed with malafide intention. He contended that that greater hardship will be caused to him if the eviction order is made against him.

8. Issues were framed on the basis of aforesaid pleadings. Both the sides gave evidence. The trial Court decreed the suit in view of some vital admissions given by the defendant in his evidence. Those are the admissions with regard to the agreement over the enhancement of the rent, premium after expiry of every three years. He admitted that initially the rent was Rs.1,200/- per month, then he paid monthly rent Rs.1,440/- for three years and then he paid monthly rent Rs.1,728/- for the period 8th June, 2006 to 28th February, 2008. He admitted that as per the agreement the rent was Rs.1,200/- per month for first three years, Rs.1,440/- for the next three years and then it was Rs.1,728/- per month. He also admitted that he was willingly paying

such rent. He has admitted that when plaintiff asked him to vacate the premises, he decided to give notice to plaintiff. It is admitted circumstance that the first notice was given by the tenant and not by the landlord and the tenant created dispute over the agreed rent. It was specific admission in his evidence that he had agreed to pay the enhancement of 20% after every three years and he had given the enhanced rent willingly.

9. It appears that in the trial Court suggestion was given to the tenant, during his cross examination, that he can shift his shop to other shop of plaintiff which was vacant. Thus, offer was given to the tenant to shift his business to other shop. Tenant refused to shift to the other shop situated in the same building by saying that there was a stock of goods of crores of rupees in his shop.

10. The evidence of plaintiff is as per aforesaid contentions. Due to aforesaid admissions, the trial Court decreed the suit and the Appellate Court confirmed the findings given by the trial Court. In the present proceeding the learned counsel for Petitioner, tenant submitted that only due to some admissions it was not

proper on the part of the trial Court and first Appellate Court to hold that the tenant is willful defaulter. It was also submitted that when one shop was already vacant and this circumstance was not mentioned in the plaint, it was wrong on the part of the Courts below to hold that plaintiff bonafidely requires the suit property for personal use.

11. The judgments delivered by the Courts below show that they have considered the entire evidence given by both the sides. Aforesaid admissions of defendant are considered by the Courts below. It is not disputed that it is the tenant who created dispute by sending notice and he disputed the rate of rent. Even when he created dispute, he did not approach Court for getting decision on the standard rent. When there are provisions in The Maharashtra Rent Control Act like sections 11 and 15 he did not take steps like tendering rent and enhancement demanded by the landlord after receipt of termination notice and also after receipt of service of summons of the suit. When there are admissions of aforesaid nature and tenant did not take the steps which are given under The Maharashtra Rent Control Act for protecting the

possession there was no other alternative before the Courts below than to give decree on the ground of default. It is finding on fact and it is not possible to interfere in the findings of the Courts below which are concurrent.

12. On the ground of bonafide requirement, the plaintiff has given evidence that he is a medical practitioner and at present he is running a dispensary in other village like Karmad situated at a distance of 25 Kms. from Aurangabad. He has given evidence that he has become old and so he wants to open dispensary in Aurangabad. He is living in the same building on the first floor. The learned counsel for the landlord submitted that the suit shop is situated adjacent to stair case leading to the first floor and the space adjacent to the stair case can also be used for making a sitting room for the patients and so the suit property is suitable for opening the dispensary. Though there is no such specific pleading in the plaint, it is up to the landlord to decide as to which premises is most suitable for his business. Though in the pleading no offer was given by the landlord to the tenant to shift the business to other

shop which was vacant, when such offer was given it was necessary for the tenant to accept that offer. The size of the alternate accommodation suggested by the landlord is similar and the suit shop is situated in the same building. It appears that the tenant does not want to vacate the suit premises. It is he who created the dispute by sending the notice. Due to this conduct and facts and circumstances of the present case, the Courts below have held that greater hardship will be caused to the landlord if eviction order is not given on the ground of bonafide requirement for personal use. It is again a finding of fact and there are concurrent findings of the Courts below.

13. The learned counsel for landlord placed reliance on the case reported as **AIR 1975 S.C. 794 [Shaikh Jaffar Shaikh Mahmood and others V/s Mohd. Pasha Hakkani Saheb and others]**. The Apex Court has laid down that the power of High Court in Revision filed under section 115 Civil Procedure Code is limited and it is not possible to the High Court to re-appreciate the evidence. It was also a case filed under Rent Control Act, Hyderabad Houses (Rent, Eviction and

Lease) Control Act, 1954. There cannot be any dispute over the proposition made by the Honourable Supreme Court. This Court holds that it is not possible to interfere in the finding given by the Courts below.

14. In the result, the revision stands dismissed.

[T.V. NALAWADE, J.]

Dt.30/11/2015
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