

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 235 OF 2014

Arun Bhikaji Pandit,
Age : 56 years, Occu. Service,
R/o 254/B, Prakashpur Co-op.
Housing Society, Prakashpur,
Savadi, District Ahmednagar

... PETITIONER

VERSUS

Daulat Madhavrao Gaikwad,
Age : 65 years, occu. Pensioner,
R/o 254/B, Prakashpur Co-op.
Housing Society, Prakashpur,
Savadi, District Ahmednagar

... RESPONDENT

Mr. S.B. Yawalkar, Advocate for the petitioner
Mr. Uday S. Malte, Advocate for the respondent

[CORAM : M.T. JOSHI, J.]

RESERVED ON : 28th APRIL, 2015
PRONOUNCED ON: 8th MAY, 2015

JUDGMENT :

1. Aggrieved by the decree of eviction, dated 23rd December, 2010, passed by the Joint Civil Judge, Junior Division, Ahmednagar in Regular Civil Suit

No. 194/2009, as confirmed by the appellate court vide judgement and order dated 31st July, 2014, passed in Regular Civil Appeal no. 51/2011, the original defendant-tenant has filed the present civil revision application.

2. The respondent-plaintiff filed suit bearing Regular Civil Suit No. 194 of 2009 for eviction of the petitioner-defendant on the ground that the present petitioner had made default in payment of rent. His tenancy, therefore, stands forfeited as per the provisions of section 15 of the Maharashtra Rent Control Act. Further, the respondent-plaintiff needs occupation of the suit premises for his bonafide and reasonable occupation after demolition of the entire building, including the area in his possession.

3. The pleadings of the respondent-plaintiff, in short, are as under :-

. That, the entire property wherein the suit

property situates, was originally owned by one housing society. In view of the registered sale-deed dated 15th July, 2008, he became the owner of the same. The petitioner was already inducted as a tenant by the predecessor for a rent of Rs. 1500/- per month. The petitioner, however, continuously remained in arrears of rent. He (respondent-plaintiff) issued notice on 3rd December, 2008 by registered post acknowledgement due for making payment of the rent due. It had come to Rs. 10,500/- till the date of filing of the suit from 01.08.2008 to 29.02.2009.

. As regards the bonafide occupation, the respondent-plaintiff pleaded that he was disabled and old pensioner. He wanted to construct a new building. His family consisted of himself, his wife and two sons. His family was growing. The area in possession of the respondent-plaintiff is not sufficient. He had no other property in the city. On the other hand, the present petitioner can very well avail the premises in Ahmednagar on rent.

However, only to get certain money from the respondent-plaintiff, the petitioner has kept the premises with him. In the circumstances, the vacation of the suit premises was asked for.

4. The present petitioner, as defendant, in his written statement, pleaded as under:-

. That, he is a tenant for a period of more than twenty years of one Khirnabai Khandagale. Initially, the rent was only Rs. 200/- per month. After her death, her brother's son Danial started recovering the rent at the rate of Rs. 300/- per month for a period of 7 to 8 years. Thereafter, his son used to accept the rent at the rate of Rs. 350/- per month. In the circumstances, the pleadings of the respondent-plaintiff that the rent was Rs. 1500/- per month is an imaginary amount. The petitioner tried to tender the rent at the rate of Rs. 350/- per month to the respondent. He, however, did not accept the same and issued the notice with false contention. Upon service of the summons in

the suit, he has deposited the entire arrears in the court and therefore, no decree can be granted on this count.

5. As regards bonafide occupation, he submitted that the respondent-plaintiff is in occupation of two rooms which are bigger in size than the rooms in occupation of the petitioner. Besides, the respondent is having a house in the city in Bishop Lyod city. He is having even tenanted premises thereat. On the other hand, the petitioner resides in the suit tenement alongwith his wife and three children. Out of them, one son is married. In fact, the suit tenement is insufficient to the petitioner. However, as he is poor, he is unable to avail any sufficient accommodation. In the circumstances, he wanted that the suit be dismissed.

6. The trial court as well as appellate court concurred with the contention of the respondent-plaintiff. Hence, the present revision application.

7. Mr. S.B. Yawalkar, learned counsel for the

petitioner submits that it is the case of the plaintiff-respondent that there was oral agreement between the parties for payment of Rs. 1500/- per month. However, according to the petitioner, it was only Rs. 350/- per month. In absence of any written or registered contract as per the provisions of section 55 of the Maharashtra Rent Control Act, the plea of the present petitioner would prevail. In the circumstances, demand of Rs. 1500/- per month as a rent, would be an illegal demand. The learned courts below, however, did not appreciate this provision and has agreed with the respondent, only because the present petitioner has not filed any application for fixing of any standard rent, as is required by the provisions of the Act. It would not give any cause to hold that the rent was Rs. 1500/- per month. Relying on the ratio laid down in the cases of **"Ramchandra Appaji Manjage, since deceased by L.Rs. Vs. Mahavir Gajanan Mug"**, reported in **1992 (1) Mh.L.J. 436 and "Chimanlal V. Mishrilal"** reported in **AIR 1985 S.C. 136**, Mr. Yawalkar

submitted that not only the notice would be invalid but also even non-filing of the application for fixing of the standard rent by the tenant would not have any bearing on the case.

8. On the other hand, Mr. U.S. Malte, learned counsel for the respondent, besides making submission that in the revisional jurisdiction of this Court, when concurrent findings are there, unless material evidence is found, no interference is warranted, submitted that the petitioner did not deposit the amount even at the rate of Rs. 350/- per month together with the interest and thereafter also, he made many defaults in regular deposit of the amount in the Court. There was no reply to the registered notice that the rent, in fact, was not Rs. 1500/- per month but only Rs. 350/- per month. In the circumstances, he submitted that the findings of the courts below cannot be faulted with.

9. On the issue of bonafide occupation, Mr. Yawalkar, learned counsel for the petitioner

submitted that the pleadings were vague. There was no pleading as to what the children of the respondent were doing during the relevant period. Even the trial court did not frame the mandatory issue to find out as to whom the greater hardship would be caused and negative burden is placed upon the present petitioner.

10. On the other hand, Mr. Malte, learned counsel for the respondent, submitted that not only the pleadings are sufficient but even the map of the proposed construction alongwith the examination of the architect would clearly show that the respondent needs the suit premises. It has been proved that the respondent is 40% permanently disabled. He is retired having two sons and as the landlord would be the best judge to decide as to how he should reside unless and until his need is found unreasonable or malafide, the court should ordinarily accept his pleadings. He further submitted that the issue regarding the greater hardship may not have been framed in the technical terms but the issue was

framed. Even both the sides were allowed to place the material on record and therefore, now in the revision application, the dispute cannot be raised.

. In support of his submissions, Mr. Malte, learned counsel for the respondent relied on the following authorities:-

- (I) ***Sadashiv Hari Atbavale Vs.
Pune Municipal Corporation Servants
(1993 Mah.RCJ 146)***
- (II) ***Rajendrakumar Sharandas Sharma Vs.
Shrikrushna Babanrao Guhe
[2010 (5) Mh.L.J. 150]***
- (III) ***Chandrakant Pundlikrao Randive Vs.
Lalit Kantilal Thakkar and others
[2009 (5) Mh.L.J. 287]***
- (IV) ***Balwant P. Doshi Vs. Shantaben
Dhirajlal Shah and another
[2002 Bom. R.C. 516]***
- (V) ***Fulchand s/o laxman Bangade Vs.
Anil s/o Janbaji Pund
[2010 (5) Mh.L.J. 975]***
- (VI) ***Suman Shankar Unde Vs.
Shamsunder Lekhraj Khatri
[2005 Bom.R.C. 590]***
- (VII) ***Manhar Auto Stores, Amravati & others Vs.
Kalpesh Hemantbhai Shah
[2010 (3) Mh.L.J. 331]***

- (VIII) ***Sharadabai Anandrao Durgule Vs.
Ramchandra Manku Pol
[2009 (2) Mh.L.J. 225]***
- (IX) ***Mrs. Meenal Eknath Kshirsagar Vs.
M/s Traders & Agencies and another
[1996 SAR (SC) 780]***
- (X) ***Sudha Sumant Barve Vs.
Ranjana Ramesh Padhye
[2013 (4) Mh.L.J. 735]***

11. On the basis of above material, following points arise for my determination:

- I) Whether the tenancy of the petitioner is forfeited for making default in making payment of rent as provided by law ?
- II) Whether the respondent-plaintiff needs the suit premises for his bonafide and reasonable occupation ?
- III) To whom the greater hardship would be caused in case the decree is passed ?

My findings to the above points no.(I) is in the negative and (II) is in the affirmative and the

greater hardship would be caused to the respondent-plaintiff in case the decree is denied. The civil revision application is, therefore, dismissed for the reasons to follow :-

R E A S O N S

12. The respondent/plaintiff's case is that there was oral agreement between the parties to pay rent at the rate of Rs. 1500/- per month. According to the petitioner, the rate of the rent was Rs. 350/- per month. He also tried to prove the same by bringing on record the certified copies of the assessment list prepared by the concerned Municipal Corporation alongwith the officials of the said Corporation.

13. The provisions of Section 55 of the Maharashtra Rent Control Act read as follows :-

“55. (1) Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement for leave and

licence or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the commencement of this Act, shall be in writing and shall be registered under the Registration Act, 1908.

(2) The responsibility of getting such agreement registered shall be on the landlord and in the absence of the written registered agreement, the contention of the tenant about the terms and conditions subject to which premises have been given to him by the landlord on leave and licence or have been let to him, shall prevail, unless proved otherwise.

(3) Any landlord who contravenes the provisions of this section shall, on conviction, be punished with imprisonment which may extend to three months or with fine not exceeding rupees five thousand or with both."

14. In view of the above provisions, it would be clear that in case the parties plead that there was oral agreement between the parties, then the pleas of the tenant would normally prevail. Thus, the demand of Rs. 1500/- per month as a rent would not be a valid demand. Merely because the petitioner did not file any application for fixing of standard rent, that would not give any cause to hold that the rent was Rs. 1500/- per month. Once initial demand

is held to be illegal, the tenancy would not be forfeited and there would not be any further question of confirmation by way of deposit of the arrears of the rent in the court and thereafter, deposit of the same regularly in the court.

15. The ratio in the cases of ***"Ramchandra Appaji Manjage, since deceased by L.Rs. Vs. Mahavir Gajanan Mug"*** and ***"Chimanlal V. Mishrilal"*** (cited supra) would fortify the above findings. In the circumstances, both the courts have committed material irregularity in granting decree of eviction on the ground of default in payment of rent.

16. The decree, however, on the count of bonafide and reasonable need of occupation of the respondent cannot be faulted with. The map attached to the plaint, coupled with the deposition of the Architect, would show that the entire premises consisted of three blocks. According to the defendant, one block consisted of one room and

according to him, the rooms in occupation of the respondent-plaintiff are comparatively bigger in size. The evidence on record would show that the size of each of the rooms is about 15 feet x 8 feet. It would be thus clear that only two rooms are in possession of the respondent-plaintiff. No evidence was placed by the petitioner as regards any additional occupation with the respondent-plaintiff, an open space admeasuring 3 gunthas in certain area of Ahmednagar. On the other hand, the evidence placed on record would show that the two sons of the present petitioner had acquired two different tenements i.e. the flats. It is further proved that the respondent-plaintiff is 40% disabled old man. He has two sons and therefore, need of the occupation would be growing. There is no evidence on record from the side of the present petitioner-defendant that he, at any point of time, had made any effort to secure any alternative premises. The reading of the judgement of both the courts below would show that though the trial court did not

specifically word the issue regarding the greater hardship, it was framed in somewhat different terms by making enquiry as to whether the petitioner can secure any alternative accommodation.

17. Considering all the above facts on record, the findings of both the courts below need not be disturbed on this count. In the result, the following order:-

18. The civil revision application is dismissed without any order as to costs.

[M.T. JOSHI]
JUDGE

. After pronouncement of the judgement, learned counsel for the petitioner prayed that the effect and operation of the above order be stayed for certain period. Learned counsel for the respondent opposed the same.

. However, considering the overall facts on record, the effect and operation of the present order is hereby stayed till 10th July, 2015.

[M.T. JOSHI]
JUDGE

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