

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 236 OF 2014

DEELIP JUGALKISHOR JAISWAL

VERSUS

MOHD. HAROON MOHD. OSMAN

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Advocate for Applicant : Mr. Patni Pramod F.

Advocate for Respondents : Mr. Anil S. Bajaj

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CORAM : S. V. GANGAPURWALA, J.

DATE : 27th August, 2015

PER COURT :

1. The applicant is the original tenant. The respondent landlord has filed suit for eviction and recovery of arrears of rent. The trial Court decreed the suit and tenant filed appeal before the appellant Court. The appellate Court dismissed the appeal. The defendant tenant is assailing the said concurrent findings in the present revision.

2. Mr. Patni, the learned counsel for the applicant strenuously contends that the case revolves round the payment of rent and quantum of rent. Learned counsel submits that no agreement was executed between the parties. Relationship between the parties as landlord and tenant is not disputed. In view of Section 55 of the Maharashtra Rent Act, in absence of any agreement, the terms and conditions put-forth by the tenant will have to be presumed unless otherwise proved.

3. The learned counsel submits that both the Courts had misread the

said provision. Upon the notice being received from the landlord, the tenant replied the said notice stating that the rent agreed per month is Rs.1000/- and not Rs.3000/- as claimed by the landlord. The learned counsel submits that the rent was being paid but landlord has, at no material point of time, passed on receipts. The Court was required to take into consideration these circumstances.

4. The learned counsel submits that on oath, the petitioner has submitted about the payment of rent and the tenant is not in arrears of rent. According to learned counsel, there is nothing on record to suggest that rent agreed between the parties is Rs.3000/- per month. The court has drawn inference on the basis of the rent being paid by other tenants who were situated on ground floor. The premises leased out to the present applicant was on first floor and was used as godown and not as a shop. This aspect was not being considered by the courts and the courts have blindly relied upon the evidence of plaintiff without any corroborative or supportive documents.

5. Learned counsel further submits that even the notice issued by the plaintiff under section 15 of the Maharashtra Rent Act is vague and it did not specify the amount, permitted increases. When the notice itself was not complying the provisions of Section 15, the suit could not have been maintained on the basis of such defective notice. Learned counsel relies on the judgment of the Division Bench of Gujarat High Court in a case of

Khimji Bhimuji Majithia Vs. Taraben Lalji Son, reported in 1982 Bombay Rent Cases 65. Learned counsel submits that the decree passed on the basis of same is absolutely erroneous.

6. Mr. Bajaj, learned counsel for the respondent landlord submits that the tenant is not consistent in his stand, as such his evidence is not trustworthy. The applicant is inducted as tenant in January, 2006. The said fact was stated in the notice. However in the evidence, the tenant has taken a different stand that he has been inducted as a tenant in the year 2008. No such stand was taken in the reply to the notice and in the written statement. The learned counsel submits that the rent agreed was Rs.3000/- per month, the same is proved by the corroborative evidence of independent witness i.e. the other tenants who are paying the same rent in the same building.

7. With the assistance of the learned counsel, I have gone through the judgment. The relationship between the parties is not disputed. It is further not disputed that there is no agreement between the parties. Section 55 of the Maharashtra Rent Act casts a burden upon the landlord to get the lease agreement registered. As per section 55(2) of the said Act, in absence of written registered agreement, the contention of the tenant about the terms and condition subject to which premises have been given to him by the landlord on lease shall prevail, unless proved otherwise.

Perusal of the said provision it is manifest that in absence of

written agreement, the terms and conditions as put-forth by the tenant will have to be considered unless otherwise proved by the landlord. In such a case, heavy burden lay on the landlord to prove that the agreed rent is Rs.3,000/- per month. In the present case, there is word against word. It is also not disputed that the other tenants who have been examined by the landlord are the tenants on the ground floor and doing commercial business. These premises are commercial shops, whereas, suit premises is on the first floor and is being used a godown. As such it was unsafe to rely on the version of the plaintiff that agreed rent is Rs.3000/-. In absence of specific written term about the rate of rent, so also in absence of cogent evidence being led by landlord, the version of the tenant will have to be accepted. The landlord has not been in a position to prove otherwise as required under section 55(2) conclusively that the rate of rent was Rs.3,000/- per month. As such, I accept that rate of rent was Rs.1000/- per month.

8. The tenant does not seem to have paid even the said rent to the plaintiff. It has been proved that the present petitioner has been inducted as tenant in the year 2006. Even petitioner did not raise dispute in the notice nor in the written statement that he has been inducted as a tenant in the year 2006. However, for the first time, in the evidence, the tenant came with the case that he has been inducted as a tenant in the year 2008. If this is the stand of the tenant that he has been inducted as a tenant for the first time in 2008, then certainly it cannot be accepted that

rent must have been paid for the year 2006. There is nothing on record to show that even the rent was paid by tenant @ Rs.1000/- per month. Nothing is borne out from the record. Even that amount has not been paid or deposited in the court as is required under section 16(3) of the Maharashtra Rent Act nor the rent has been deposited regularly. even as per the quantum of the rent as agreed by the defendant. The Apex Court in a case of Yusufbhai, 2015 (6) SCC 526, has held that the court has no discretion even to grant time for depositing the shortfall. Admittedly the tenant has not deposited the rent month to month in the Court nor on the first date of hearing along-with interest even at the agreed rate.

9. In the light of above, I pass following order:

ORDER

- i. The decree of eviction as passed by the learned trial court and confirmed by the appellate Court is upheld.
- ii. The defendant shall deliver the vacant possession of the suit premises to the plaintiff as per the decree of the trial Court.
- iii. The decree to the extend of arrears of rent @ Rs. 3000/- per month is quashed and set aside and instead, it is directed that the defendant shall pay amount of arrears of rent from April 2007 at the rate of Rs. 1000/- per month with permitted increase of 4% per annum till possession of the premises alongwith simple interest @ 15% per annum. The amount paid by the defendant i.e Rs.51,000/- shall be adjusted.

iv. At this stage, learned counsel for the applicant seeks one year's time to vacate the premises. Mr. Bajaj, the learned counsel for the respondent opposes the said request. Considering the fact that the applicant is occupying the premises and using the same as godown, I am inclined to grant 6 months time to the applicant to vacate the suit premises, however, on conditions that the applicant shall give undertaking that he will not create any third party interest and shall pay rent regularly. Arrears of rent till date shall be paid within four weeks. Undertaking shall be filed within two weeks. The undertaking shall contain the fact that the applicant tenant shall handover vacant peaceful possession of the suit premises to the respondent landlord on or before 28th February, 2016.

v. Civil revision application is accordingly disposed of. No costs.

(S. V. GANGAPURWALA, J.)

JPC