

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3548 OF 1990

Shankarrao Shamrao Vaidya

..Petitioner

Vs.

Babu Narhar Chandwadkar

..Respondent

....

Mr. P.N. Joshi, Advocate for Petitioner.

Mr. Ajinkya Palav, Advocate i/b P.J. Thorat for Respondent.

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CORAM : N.M. JAMDAR, J.

DATED : 10 APRIL 2015

ORAL JUDGMENT:

This petition is filed by the petitioner-landlord challenging the judgment and orders passed by the District Court alongwith the appeal of the respondent setting aside the decree of eviction against the respondent-tenant.

2. The petitioner is the owner of a house no. 2165 known as 'Vaidya Vada' situated within the limits of Nasik Municipal Council. The respondent was occupying second floor of the suit building and in possession of the premises admeasuring 8 x 5 mtrs.

3. The petitioner filed Regular Suit No. 1041/1978 in the Court of Civil Judge Junior Division, Nasik seeking eviction of the

respondent. The petitioner sought eviction on the ground of default in payment of rent from 1 November 1974 to 30 November 1978 and also on the ground of nuisance and annoyance, permanent construction by way of partition, causing damage to the property. The petitioner also alleged that the wall of the suit property was in the dilapidated condition and there is leakage of water from the sink and the suit building was in a dangerous condition and a notice was received from the Municipal Council requiring the premises to be demolished. The respondent filed written statement and contested the suit. The respondent denied allegations as regard default in payment of rent, nuisance, permanent construction and also that the petitioner had carried out repairs. The learned Civil Judge Junior Division negated the grounds of default, nuisance and annoyance, permanent construction however held that the premises were required for immediate purpose of demolition by the local authorities. The learned Civil Judge, Junior Division accordingly decreed the suit by the judgment and decree dated 10 October 1985.

4. Thereafter the respondent filed Civil Appeal No. 13/1986 in the District Court, Nasik. The petitioner also filed cross objections. The learned District Judge upheld the findings of the learned Civil Judge Junior Division that there was no default, nuisance or permanent construction. The learned District Judge reversed the finding regarding demolition in view of the notice

issued by the local authorities. The learned District Judge held that the part which has become dilapidated for which notice has been issued had already fallen and there was no further notice. The learned District Judge accordingly allowed the appeal by order dated 4 December 1989.

5. The Writ Petition was admitted in the year 1990. In the year 2008, the petitioner placed on record the curved position. In an affidavit it was stated therein that the entire structure has become dilapidated, there was no wall on one side and the premises were not in occupation of any person. Though the Civil Application filed by the petitioner for placing the subsequent event on record was rejected by the order dated 29 January 2015, the affidavit filed in the year 2008 continues to be the part of the petition. Furthermore, the learned Counsel for the respondent submitted that the respondent is not responding to his queries and he has no instructions. The assertions of the petitioner and the arguments of the learned Counsel for the petitioner in this regard have gone unchallenged.

6. The only question is regarding the condition of the premises as on other grounds there is concurrent findings against the petitioner, which are also not challenged by the learned Counsel for the petitioner. He however submits that one part of the premises i.e. the wall had fallen in the year 1978 has come on

record and since nobody is living in the property and that the property has now become more dangerous. The law is settled that the scope of the Court to sit in appeal over the subjective satisfaction of the local authorities regarding the condition of building, is limited. Furthermore, the learned District Judge has not rendered a categorical finding that the premises are in good condition, but has observed that a part has fallen and the purpose of notice has been served. The fact that the part of the structure has fallen means that the building is in dangerous condition. Also that collapse of one wall of the premises is bound to affect the stability of the building and the learned District Judge ought to have taken note of this fact.

7. The building, of which part had fallen in 1978, is in an extremely ruinous condition as on today. Therefore the ground made out by the petitioner that it requires for the purpose of demolition on the ground that it has become dangerous and the notice has been issued cannot be ignored.

8. The learned Counsel for the respondent stated that the respondent is not in touch with him however, he submitted that respondent's rights as tenant need to be protected if the building is to be demolished. This submission is fair and reasonable. The learned Counsel for the petitioner also submitted that it will not be in the interest of the petitioner to keep the premises as they are and

no reconstruction was possible in view of the pendency of the writ petition. He submitted that as per his instructions, the respondent is staying elsewhere therefore he is not interested. The learned Counsel submits that the petitioner however is not averse to an equitable arrangement in favour of the respondent.

9. The proceedings are pending for last 37 years. Considering the factual position as on today and peculiar facts and circumstances, I am of the opinion that the petition needs to be disposed of by making an equitable arrangement. Since the premises are become dilapidated and the petitioner is desirous of reconstruction, the equitable arrangement can be to direct the petitioner to follow the procedure of law as contemplated under Section 13 (hh) of the Bombay Rent Act, 1947, when the landlord reconstructs the building.

10. Considering the facts and circumstances of the case, the petition deserves to be allowed in the above terms. Accordingly, the rule is made absolute in terms of prayer clause (a). The judgment and decree passed by the Civil Judge Junior Division, Nasik in Regular Civil Suit No. 1041/1978 stands restored. However while reconstructing the building, the petitioner shall follow the methodology provided under Section 13 (hh) of the Bombay Rent Act, 1947. Rule is made absolute in the above terms. No costs.

(N.M. JAMDAR, J.)