

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.397 of 2015

(Shri Ashok s/o Wasudeorao Palaspagar v. Shri Anil s/o Motilalji Mahajan)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's order

Court's or Judge's orders

Shri C.A. Joshi, Advocate for Petitioner.
Shri M.R. Johrapurkar, Advocate for Respondent.

Coram : R.K. Deshpande, J.

Date : 19th October, 2015

Section 15(3) of the Maharashtra Rent Control Act, 1999 being relevant, is reproduced below :

“15. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases

(3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court.”

In terms of the aforesaid provision, the tenant was required to deposit the standard rent and permitted increases within a period of ninety days from the date of service of suit summons. The tenant was further

required to pay the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter to continue to pay or tender in Court regularly such standard rent and permitted increases till the suit is finally decided.

The decree for eviction has been passed on two grounds – one is of arrears of rent, and another is of bona fide requirement. On the question of arrears of rent, the notice was issued to the petitioner-tenant on 7-8-2000, which was returned with an endorsement “not claimed”. Thereafter, another notice was issued to the petitioner-tenant on 6-11-2000, which was received by him. The suit was filed on 19-1-2001. The rent claimed by the respondent-landlord was at the rate of Rs.1,500/- per month. The petitioner-tenant disputed it. The Courts below have recorded the finding that the rent was at the rate of Rs.600/- per month. Shri Joshi, the learned counsel for the petitioner-tenant, could not point out from the record the compliance of sub-section (3) of Section 15 of the Maharashtra Rent Control Act. He is also unable to point out that the arrears of rent were deposited by the petitioner-tenant within a period of ninety days upon service of suit summons, or that the petitioner-tenant has been regularly making the payment of rent during the pendency of the suit. In view of this, the decree passed by the Courts below for eviction and possession on the ground of default in payment of rent, needs to be maintained.

Shri Joshi, the learned counsel for the petitioner-tenant, has urged that the suit on the basis of the notice dated 6-11-2000 was not

maintainable, as it was filed on 19-1-2001, that is before expiry of ninety days. The lower Appellate Court has taken a view that the initial notice issued to the petitioner-tenant on 7-8-2000, which was returned as “not claimed” was a good service. The suit filed by the respondent-landlord on 19-1-2001 was also held to be a good service. Sub-section (3) of Section 106 of the Transfer of Property Act, 1882 states that a notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section. Thus, even otherwise, the notice cannot be held to be invalid. No such question was raised before the Trial Court. No issue was framed.

Consequently, the petition is dismissed.

Both the learned counsels to pay the costs of Rs.500/- each for lack of assistance.

Judge.

Lanjewar