

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

WRIT PETITION NO.3737/2007

Punjab National Bank,
A Body Corporate constituted under
the Banking Companies (Acquisition of
Undertakings) Act, 1970 having its
registered office at 7, Bhikaji Cama
Place, New Delhi, through its Branch Manager,
Punjab National Bank, Gandhibagh,
Nagpur.

..Petitioner.

..Versus..

1. Smt. Aminabai w/o Sheikh Mohsinbhai (Dead)
by legal representatives.
1. Zueb s/o Mohsinbhai Amin,
aged major, Occu. Business.
2. Jabir s/o Mohsinbhai Amin,
aged major, Occu. Business.
3. Zaminbhai s/o Mohsinbhai Amin,
aged major, Occu. Business.
4. Juzbrbhai s/o Mohsinbhai Amin,
aged major, Occu. Business.
5. Zehrabai w/o Abdul Hussain Haidi,

aged major, Occu. Household.

6. Rizwana w/o Hakumiddinbhai Calcuttawala,
aged major, Occu. Household.
7. Zubedabai w/o Saituddinbhai Fidvi,
aged major, Occu. Household.
All R/o Chhaori, Sadar, Nagpur.

..Respondents.

Shri A.C. Dharmadhikari, advocate for the petitioner.
None for the respondents.

CORAM : Z.A. HAQ, J.

DATE : 11.6.2015

ORAL JUDGMENT

1. Heard Shri A.C. Dharmadhikari, the learned advocate for the petitioner.

None for the respondents.

2. The petitioner/tenant has filed this petition challenging the judgment and decree passed by the Subordinate Courts under the provisions of Maharashtra Rent Control. Act, 1999.

The issue as to whether the judgment and decree passed under the Maharashtra Rent Control Act, 1999 can be challenged in civil revision or in writ petition has been referred to Larger Bench. However, as the writ petition is of

2007 and was admitted and is listed for final hearing, the petition is taken up for final hearing.

3. Shri Dharmadhikari, the learned advocate for the petitioner has submitted that the tenant has handed over the vacant possession of the suit premises to the landlord in 2005. The landlord has filed Pursis Stamp No.1945/2013 stating that the landlord will withdraw the mesne profits application filed before the Small Causes Court, Nagpur. In these facts, the only issue which is required to be considered in this petition is about the legality of the decree passed by the subordinate Courts granting mesne profits for the period from 1st August, 2000 till 19th October, 2000.

The learned advocate for the petitioner has submitted that the landlord had filed application under the provisions of the C.P. and Berar Letting of Premises and Rent Control Order, 1949 seeking permission to terminate the tenancy of the tenant and that application came to be rejected and in view of the rejection of the application, the civil suit filed by the landlord for ejectment and possession was not maintainable. It is submitted that the subordinate Courts

have not considered this challenge and, therefore, the judgment and decree passed by them suffers from illegality. It is further submitted that the landlord had filed Civil Suit No.277/2005 praying for decree for recovery of arrears of rent for the period from March, 1988 to March, 2005 which included the period for which the mesne profits have been granted by the subordinate Courts. It is submitted that the landlord having claimed the rent for the period from 1st August, 2000 till 19th October, 2000, the landlord would not be entitled to claim mesne profits for the same period. On these grounds, the judgment and decree passed by the subordinate Courts has been assailed.

4. As far as the challenge to the judgment and decree passed by the subordinate Courts for ejectment and possession is cornered, the challenge raised on behalf of the tenant does not survive as the tenant has handed over the vacant possession of the suit property to the land. The challenge to the decree passed by the subordinate Courts granting mesne profits for the period from 1st August, 2000 till 19th October, 2000 also is not supported by any legal submissions. Order 20 Rule 12(ba) of the Code of Civil Procedure empowers

the Court to pass decree for the mesne profits. It cannot be said that the subordinate Courts have committed any jurisdictional error by granting mesne profits for the period from 1st August, 2000 till the date of filing of the suit i.e. 19th October, 2000. The submission that the landlord having claimed the arrears of rent for the same period in Civil Suit No.277/2005, he cannot be permitted to claim mesne profits for the same period also cannot be considered in the present proceedings. Whether the claim of the landlord for the arrears of rent for the period from 1st August, 2000 till 19th October, 2000 is proper or not, will have to be examined in the proceedings of Civil Suit No.277/2005 and/or the proceedings arising out of the judgment passed in that civil suit. Whether the claim of the landlord for the arrears of rent for the above referred period amounts to waiver of the termination of tenancy has not been raised by the petitioner in this petition and, therefore, it is not required to be considered. The learned trial Judge has consciously recorded that the amount of mesne profits payable by the tenant to the landlord has to be calculated after deducting the amount paid by the tenant to the landlord for that period.

Considering the facts of the case, I see no reason to interfere with the

judgment and decree passed by the subordinate Courts. Writ petition is dismissed. Rule is discharged. In the circumstances, the parties to bear their own costs.

JUDGE

Tambaskar.