

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

Writ Petition No.4752 of 2015
(Dilip s/o Shankarrao Talewar and others v. Champalal s/o Laxminarayan
Lakhotiya and others)

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

Court's or Judge's orders

Shri M.M. Agnihotri, Advocate for Petitioners.
Shri S.S. Joshi, Advocate for Respondents.

Coram : R.K. Deshpande, J.

Date : 6th October, 2015

Civil Application (CAW) No.1911 of 2015 :

This is an application for amendment of the petition. The application is allowed. Necessary amendment be carried out within a period of two days.

The civil application is disposed of.

Writ Petition No.4752 of 2015 :

Regular Civil Suit No.108 of 2006 for eviction and possession between the landlords and tenants, the Court of Small Causes passed a decree in favour of the landlords on 29-11-2014. This is confirmed in Regular Civil Appeal No.13 of 2015 by the lower Appellate Court by its judgment and order dated 10-4-2015. Hence, the tenants are before this Court in this petition against the concurrent findings of fact.

The decree for eviction was passed on two grounds - (i) bona fide requirement, and (ii) default in payment of rent. It is not in dispute that the petitioner-tenants had failed to file the written statement. The Trial Court had passed an order of “No WS” on 10-8-2006. The order has attained the finality.

The contention of Shri Agnihotri, the learned counsel for the petitioners, is that the petitioners have filed Special Civil Suit No.306 of 2005 for specific performance of contract dated 26-3-2003 in respect of the suit property on 31-3-2005. The respondents have purchased the suit property by a sale-deed dated 3-2-2004, that is subsequent to the agreement of sell with the petitioners. The said suit is pending for adjudication and it is fixed for final arguments. It is his further submission that the Courts below ought to have independently assessed the evidence to decide as to whether the landlords have established the case of bona fide requirement and default in payment of rent. He submits that the suit could not have been decreed solely on the ground that the petitioner-tenants have failed to file the written statement.

With the assistance of the learned counsels appearing for the parties, I have gone through the judgments delivered by both the Courts below. On the question of default in payment of rent, the Trial Court has held in paras 16 and 17 of its judgment as under :

“16. ... On perusal of said office copy of notice, it reveals that, said notice of attornment was issued to the father of defendants no.2 to 4 by the erstwhile landlord and thereby

intimated father of defendant no.2 to 4 about property including suit shop blocks was sold to the present plaintiffs and he should pay rent from 01.02.2004 onwards to the plaintiffs. On perusal of RPAD receipt and postal acknowledgment (Exh.77/1 and 77/2), it reveals that, said notice was served upon the father of defendant no.2 to 4. Hence, upon going through notice (Exh.76) and notice (Ex.22), it reveals that, inspite of knowledge of notice of attornment in respect of plaintiffs have purchased the property including the suit shop blocks. The defendants have not complied both the notices by making payment of arrears of rent to the plaintiffs. The said evidence of Champalal Lakhotiya (PW1) remains unchallenged and unrebutted as the defendant did not cross examine Champalal Lakhotiya (PW1) and Kajab Deb (PW2). Hence, there is no evidence in rebuttal either oral or documentary to the evidence adduced by plaintiffs on record. Therefore, I have no hesitation to believe the said evidence adduced by the plaintiffs on record. Therefore, I have no hesitation to believe the said evidence adduced by the plaintiffs.”

“17. By way of notice (Exh.20) tenancy came to be terminated and notice served upon the defendants on 12.08.2005 but it was not complied. Non-compliance of the notice issued by the plaintiffs demanding the rent to be deposited within 90 days also appears from the record even after service of suit summons, no amount came to be deposited within the period of 90 days from the service of the summons.

In such circumstances, u/sec. 15 of the Maharashtra Rent Control Act the plaintiffs become entitled for the decree of eviction and possession and the demanded amount of recovery of arrears of 25 months rent from the period of 01.02.2004 to 28.02.2006 @ Rs.500/- per moth i.e. Rs.12500/- along with notice charges of Rs.150/- deserves to be decreed with interest @ 10% p.a. from the date of the suit till its entire realization.”

The findings in respect of default in payment of rent are based upon the evidence available on record. There is no perversity in recording such findings. The decree is liable to be maintained on this sole ground. It is, therefore, not necessary for me to deal with the challenges to the decree passed on the ground of bona fide requirement.

The petition is, therefore, dismissed.

Needless to say that if the petitioners succeed in Special Civil Suit No.306 of 2005, then they would be entitled to possession of the suit property, if it is so permissible in law.

Judge.