

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4704 OF 1991

Tukaram Maruti Dubal	..	Petitioner
vs.		
Tatya Khashaba Khandagale (deceased) through his legal heirs Smt. Farubai Tatya Khandagale & Ors.	..	Respondents

WITH
WRIT PETITION NO. 3894 OF 1991
AND
CIVIL APPLICATION NO. 4827 OF 1991
IN
WRIT PETITION NO. 3894 OF 1991

Tatya Khashaba Khandagale (deceased) through his legal heirs Smt. Farubai Tatya Khandagale & Ors.	..	Petitioners
vs.		
Tukaram Maruti Dubal	..	Respondent

Mr. S. P. Thorat for Petitioner in WP 4704 of 1991 and for Respondent in WP No. 3894 of 1991.
Mr. Prafulla Shah with Mr. Mahesh Rawool for Respondent No. 1B to 1E in WP 4704 of 1991 and for Petitioners in WP 3894 of 1991.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 17 December 2015

Date of Pronouncing the Judgment : 07 January 2016

COMMON JUDGMENT :-

1] The learned counsel for the parties agree that both these petitions can be disposed of with a common judgment and order.

2] The writ petition no. 4704 of 1991 has been instituted by the landlord of the suit property, questioning *inter alia* the orders dated 10 October 1978 and 29 April 1991 made by the Tenancy Aval Karkoon (AK) and the Maharashtra Revenue Tribunal (MRT) dismissing the landlord's application for recovery of possession of the suit property on the ground of bonafide requirement for personal cultivation in terms of Section 33B of the Maharashtra Tenancy and Agricultural Lands Act 1948 (Tenancy Act).

3] The writ petition no. 3894 of 1991 has been instituted by the tenants questioning the orders dated 27 August 1974, 20 January 1990 and 29 April 1991 made by the AK, Sub Divisional Officer (SDO) and the MRT ordering the eviction of the tenants on the ground of default in payment of rents for three years, in terms of Section 25 of the Tenancy Act.

4] Both the petitions concern agricultural land (suit property) which originally belonged to Sitabai Dubal, who expired on 24 February 1969. The landlord claims title to the suit property on the basis of Will dated 16 December 1968 executed by the said Sitabai and the mutation entry in the revenue records bearing no. 931 made about five to six months after the demise of the said Sitabai. The landlord has obtained exemption certificate in terms of section

88C of the Tenancy Act and in terms thereof the provisions contained in Section 32 to 32R (both inclusive) are inapplicable to the suit property. The question of validity of said exemption certificate was agitated right up to this Court, and the same has presently attained finality.

5] Armed with such exemption certificate, the landlord applied under Section 33B of the Tenancy Act, for the recovery of possession of the suit property on the ground that the same was required for personal cultivation. The proceedings, which were numbered as tenancy case No. 2 of 1977, were dismissed by the AK vide judgment and order dated 10 October 1978, *inter alia* on the ground that the conditions stipulated under Section 33B(5)(c) of the Tenancy Act had not been fulfilled and further, even otherwise, the landlord had failed to establish that the suit property was indeed bonafide required for the purposes of personal cultivation. The landlord's tenancy appeal no. 1 of 1979 against AK's judgment and order dated 10 October 1978 was however allowed by the SDO vide judgment and order dated 21 January 1990. The tenants instituted revision application no. 10 of 1990 before the MRT, which, by judgment and order dated 29 April 1991 has set aside the SDO's order and restored the order made by the AK. Hence, the writ petition no. 4704 of 1991 by the landlord.

6] The landlord, without prejudice to his claim for recovery of possession of the suit property on ground of bonafide requirement for personal cultivation, also instituted eviction proceedings no. 2 of 1977 before the AK on the ground that the tenants had defaulted in the payment of annual lease rent for the years 1968-69, 1969-70, 1970-71 and therefore, in terms of Section 25 of the Tenancy Act were liable to be evicted from the suit property. The said proceedings were dismissed by the AK on 11 May 1972. However, in appeal no. 5 of 1973 instituted by the landlord, the AK's order dated 11 May 1972 was set aside and the matter was remanded to the AK for fresh decision. By judgment and order dated 27 August 1974, the AK ordered eviction of the tenants. The tenants appeal and revision were dismissed by the SDO and the MRT by judgments and orders dated 20 January 1990 and 29 April 1991. Hence the writ petition no. 3894 of 1991 by the tenants.

7] Mr. S. P. Thorat, the learned counsel for the landlord submitted that the AK and the MRT have misinterpreted the provisions contained in Section 33B of the Tenancy Act and further, failed to take note of the important circumstance that the late Sitabai, was indeed the ancestor of the landlord. In such circumstances, Mr. Thorat submitted that there was compliance with

the provisions contained in Section 33B(5)(c) of the Tenancy Act and in any case, such compliance was quite unnecessary considering the circumstance that late Sitabai was the ancestor of the landlord and her name clearly figured in revenue records on 1 January 1952 in respect of the suit property. Mr. Thorat further submitted that there are concurrent findings of fact in the matter of default in payment of rents by the tenants and the tenants have not made out any case to interfere with such concurrent findings of fact. He relied upon the decision in the case of *Shaniwar Dhondu Dharnekar vs. Prabhavati Chandrakant Patange*¹, which according to him, is an authority for the proposition that a composite notice terminating tenancy for three consecutive defaults in payment of rents is permissible under Section 25(2) of the Tenancy Act.

8] Mr. Prafulla Shah, the learned counsel for the tenants submitted that there is no compliance with the provisions contained in Section 33B (5)(c) of the Tenancy Act and therefore, the AK and the MRT have rightly dismissed the landlord's claim for recovery of possession on the ground of bonafide requirement for personal cultivation. Mr. Shah placed reliance upon the decision of this Court in the case of *Parvatibai Bhausahab vs. Sitabai Ganpat*², to submit that the landlord who claims title to the suit property on basis of a

1 1979 Mh. L. J. 836

2 1972 Mh. L. J. 357

Will, which is even otherwise not proved in accordance with law, cannot secure eviction of a tenant under the provisions of Section 33B (5)(c) of the Tenancy Act. On the aspect of default in payment of rents, Mr. Shah submitted that there is no compliance with the provisions contained in Section 25(2) of the Tenancy Act, in as much as there was no valid notice / intimation given to the tenants within a period of three months from the date of alleged default in the year 1968-69. Mr. Shah submitted that there is virtually non consideration of the provisions contained in Section 25(2) of the Tenancy Act, which renders the orders of eviction on the ground of default in payment of lease rent, legally infirm and untenable. Mr. Shah placed reliance upon the decision of this Court in the case of *Ravindra Ramchandra Sabnis & Ors. vs. Dinkar Nana Patil & Ors.*³, was in the context of interpretation of the provisions contained in Sections 14 and 25 of the Tenancy Act.

9] Mr. Shah, by reference to civil application no. 4827 of 1991 instituted by the tenants, submitted that the tenants have now obtained documentary evidence in the form of money order receipts / endorsements, from which it is clear that the tenants had tendered the rents to the landlord for the revenue years 1968-69 and 1969-70, which rents, the landlord had declined to accept without any justification. On basis of such evidences, Mr. Shah submitted that

3 Writ Petition No. 3376 of 1991 with Writ Petition No. 3377 of 1991 decided on 11.09.2008.

there was, in fact, no default on the part of the tenants.

10] The rival contentions now fall for determination.

11] For the purposes of present proceedings, we have to proceed on the basis that the landlord is '*certificated landlord*' in terms of the provisions contained in Section 88C and 33B of the Tenancy Act. The landlord therefore notwithstanding anything contained in Sections 31, 31A or 31B of the Tenancy Act, after giving notice and making an application for possession as provided in Section 33B (3), can terminate the tenancy and recover possession, where the landlord bonafide require the suit property for personal cultivation. However, Section 33B (5) of the Tenancy Act provides that the right of the certificated landlord to terminate the tenancy under this section shall be subject to certain conditions, including *inter alia* the condition contained in sub clause (c), which reads thus :

“(c) The land leased stands in the Record of Rights (or in any public record or similar revenue record) on the 1st day of January, 1952 and thereafter until the commencement date in the name of the landlord himself, or of any of this ancestors (but not of any person from whom title is derived by assignment or Court sale or otherwise) or if the landlord is a member of a joint family, in the name of a member of such family.”

[Emphasis supplied]

12] In the facts and circumstances of the present case, there is no dispute that on 1 January 1952 and thereafter until the commencement date, the suit property was recorded in the name of Sitabai Dubal and not the landlord who applied for the recovery of possession under Section 33B of the Tenancy Act. Therefore, in order to comply with the conditions contained in Section 33B (5)(c) of the Tenancy Act, the landlord had to place on record sufficient material to establish that Sitabai Dubal, was indeed the ancestor of the landlord and not merely some person from whom title may have been derived by the landlord by assignment, court sale or otherwise. In the alternate, the landlord was required to establish that he is a member of a joint family along with Sitabai Dubal and therefore, the record of Sitabai's name ought to enure for his benefit as well. It is not even the case of the landlord that he is member of the joint family and record of the name of Sitabai in the revenue records, should therefore enure for the benefit of the landlord.

13] The specific case set out by the landlord was that he has acquired title to the suit property by virtue of Will dated 16 December 1968 made by Sitabai Dubal bequeathing the suit property in his favour. At later stage, the landlord also attempted to suggest that Sitabai Dubal was his ancestor and therefore the provisions of Section 33B (5)(c) stands complied with, even if the

will dated 16 December 1968 is to be ignored.

14] As noted earlier, the provisions contained in Section 33B (5) (c) of the Tenancy Act mandate that the right of a certificated landlord to terminate tenancy under the said Section is subject to the land leased standing in the record of rights, in public record or similar revenue record on 1st day of January 1952 and thereafter until the commencement date in the name of the landlord who applies for recovery of possession or of any of his ancestors, but not of any person from whom title is derived by assignment or court sale or otherwise. In this case, admittedly the name of the landlord did not appear in the record of rights in relation to the suit property on 1st January 1952. The landlord claims that his title is derived from the Will dated 16 December 1968. The question therefore is, whether such derivation of title on the basis of Will dated 16 December 1968, entitles the landlord to seek recovery of possession under Section 33B of the Tenancy Act?

15] The issue does not appear to be *res integra*. In the case of *Parvatibai vs. Sitabai* (supra) this Court has held that the word 'otherwise' as it appears in Section 33B (5)(c) of the Tenancy Act is wide enough to include a person who claims to have derived title 'under a will'. Such person will therefore not be entitled to claim

recovery of possession of the land leased in terms of Section 33B of the Tenancy Act. The relevant discussion on this aspect is contained in paragraphs 6, 7 and 8, which read thus :

“6. I, however, think that it is not necessary to remand the case because, even assuming that respondent No. 1 was the sole legatee under the will, she would be disqualified from terminating the tenancy in view of section 33-B(5)(c), which reads as follows:

“33B (5) The right of a certificated landlord to terminate a tenancy under this section shall be subject to the following conditions, that is to say,-

(a)

(b)

(c) The land leased stands in the Record of Rights (or in any public record or similar revenue record) on the 1st day of January, 1952 and thereafter until the commencement date in the name of the landlord himself, or of any of his ancestors (but not of any person from whom title is derived by assignment or Court sale or otherwise) or if the landlord is a member of a joint family, in the name of a member of such family.”

7. The effect of this clause was considered by this Court in Parvati's case⁴ referred to above. It is observed (p. 388):

"..... It cannot be assumed in the absence of adequate reason that the Legislature did not intend to grant to the successor-in-interest the same limited protection which it granted to a small holder with limited income. There are, on the other hand ample provisions in the Act to

⁴ Parvatibai vs. Mahadu 1967 Mh. L.J. 593

ensure that the successor in interest of a certificated landlord would not be able to secure the benefit conferred by Section , if he is not himself a small holder with limited income. In the first place clause (c) of sub - section (5) of Section 33B provides that such a successor-in-interest would not be able to terminate the tenancy of the excluded tenant if his title is 'derived by assignment or Court sale or otherwise'. A donee or purchaser from a certificated landlord would be unable to terminate the tenancy of the excluded tenant."

In that case this Court dealt with two petitions. In the petition in Special Civil Application No. 1878/1964 it appears that the certificated landlord died leaving behind him as his only heir his widow. She was held to be entitled to make an application under Section 33-B as the successor-in-interest of her husband, notwithstanding the provisions of Section 33-B(5) (c). In the other Special Civil Application No. 1962 of 1964 a certificate under Section 88-C was obtained by one Vithabai the widow, and on her death in September 1961 her husband's sister Kamalabai claimed to be the legatee under Vithabai's will. It was contended on her behalf that besides being the legatee under the will, she was also the nearest heir of Vithabai and, therefore, the matter was remanded to the Maharashtra Revenue Tribunal keeping open the contention urged on behalf of the tenant that Kamalabai being the legatee under the will executed by the widow Vithabai, did not fulfill the requirement of Section 33-B(5)(c) and was not entitled to terminate the respondent's tenancy. Mr. Gole, who also appeared in that case, says that at p. 389 of the report of that case clause (b) actually stands for clause

(c) of sub-section (5) of Section 33-B.

8. It is, therefore, clear that in that case this Court held that a person who derived title by assignment, or Court sale or otherwise, through or from the certificated landlord, would not be able to terminate the tenancy of the excluded tenant. It is also clear that the point as to whether a legatee under the will did or did not fulfill the requirements of clause (c) of sub-section (5) of Section 33-B was not decided. The passage quoted above shows that the successor-in-interest who derives title through or from the certificated landlord by assignment, or Court sale or otherwise was expressly held to be not qualified to apply under Section 33-B. The word 'otherwise' in my judgment is wide enough to include 'under a will'. This Court has held, as pointed out earlier, that a donee or purchaser from a certificated landlord would be unable to terminate the tenancy of the excluded tenant. I cannot see any reason to distinguish a case of a donee or a purchaser from the case of a legatee under a will. I am, therefore, of the opinion that respondent No. 1 could not terminate the tenancy of the petitioner or make an application under Section 33-B as the sole legatee under the alleged will of Ganpat Chavan even assuming that such a will was executed, as stated by respondent No. 1."

[Emphasis supplied]

16] The alternate submission that Sitabai was the ancestor of the landlord and therefore the provisions contained in Section 33B (5) (c) stood fulfilled, cannot be accepted at this stage. In the first place, there do not appear to be any factual foundational pleadings in

support of this plea in the proceedings instituted by the landlord seeking recovery of possession under Section 33B of the Tenancy Act. Secondly, there is no reliable or verifiable material on record on this aspect. In the pleadings, there was no reference to any genealogy or family tree. No evidence was lead to establish the ancestry. In the affidavit filed by the landlord before this Court, there is reference to genealogy and an attempt to establish that Sitabai was indeed the ancestor of the landlord. The issue as to whether Sitabai is ancestor of the landlord or not, is a pure question of fact. For this, it was incumbent upon the landlord to have pleaded this fact in the proceedings instituted by him before the Aval Karkoon and thereafter established the same with cogent evidence. A disputed question of fact of this nature, cannot be attempted to be proved by filing affidavit before this Court. Further, even on the basis of genealogy set out in the affidavit, the claim that Sitabai was the ancestor of the landlord appears to be a convulated claim. At least at this stage, there is no question of placing any reliance upon such a belated claim. Accordingly, there is no case made out by the landlord to interfere with the judgments and orders made by the AK and the MRT, in the matter of non compliance with the mandatory condition specified in Section 33B (5)(c) of the Tenancy Act. The writ petition no. 4704 of 1991 is therefore liable to be dismissed and is hereby dismissed.

17] In so far as writ petition no. 3894 of 1991, instituted by the tenants is concerned, there are concurrent findings of defaults in the payment of annual lease rent for the years 1968-69, 1969-70 and 1970-71. However, that by itself, is not sufficient for evicting the tenants from the suit property, particularly if regard is to be had to the provisions contained in Section 25(2) of the Tenancy Act.

18] Section 25(1) of the Tenancy Act provides that where any tenancy of any land held by the tenant is terminated for non payment of rent and the landlord files any proceedings to eject the tenant, the Mamlatdar shall call upon the tenant to tender to the landlord the rent in arrears together with the costs of proceedings within three months from the date of the order, and if the tenant complies with such order, the Mamlatdar shall in lieu of making an order for ejectment, pass an order directing that tenancy had not been terminated and thereupon the tenant shall hold the land as if the tenancy had not been terminated. There is proviso to Section 25(1), with which we are not concerned in the present matter. However, the provisions contained in Section 25(2) of the Tenancy Act are important and they read thus :

“(2) Nothing in this section shall apply to any tenant whose tenancy is terminated for non-payment of rent if he has failed for any three years to pay rent and the landlord has given

intimation to the tenant to that effect within a period of three months on each default.”

[Emphasis supplied]

19] From the aforesaid, it is clear that nothing contained in Section 25(1) of the Tenancy Act shall apply to any tenant whose tenancy is terminated for non payment of rent if he has failed for any three years to pay rent and the landlord has given intimation to the tenant to that effect within period of three months of each default. In this case, the landlord has purported to terminate the tenancy for non payment of rent for three years and therefore, the provisions of Section 25(2) of the Tenancy Act are attracted. These provisions no doubt entitle the landlord to secure eviction of the defaulting tenant, provided the landlord has given intimation to the tenant to that effect within a period of three months of each default.

20] Section 14 of the Tenancy Act is concerned with termination of tenancy for defaults on the part of the tenant. Sub section (1) of Section 14 provides that notwithstanding any law, agreement or usage or the decree or order of a court, the tenancy of any land shall not be terminated unless the tenant, *inter alia*, has failed to pay rent for any revenue year before the 31st day of May thereof and further, unless the landlord has given three months notice in writing informing the tenant of his decision to terminate the

tenancy and the ground for such termination, and within that period the tenant has failed to remedy the breach for which the tenancy is liable to be terminated.

21] Upon conjoint reading of the provisions contained in Sections 14 and 25 of the Tenancy Act, it is clear that the landlord, if he has to secure the eviction of the tenant on the ground of default in payment of rents for any three years, has to establish that he has given intimation to the tenant to that effect within a period of three months of each default. Further, the tenant can be said to be in default of payment of lease rent where there is failure to pay the rent for any revenue year before 31st day of May thereof.

22] In the facts and circumstances of the present case, even if we assume that there was default in payment of rent for the revenue year 1968-69, the default would commence on 1st June 1969, since in terms of Section 14(1)(a)(i), the tenant had time to pay the rent before 31st day of May 1969. Thereafter, the landlord was required to establish that he had given the necessary intimation to the tenants within a period of three months from the date of such default i.e. between 1st June 1969 and 1st September 1969.

23] Admittedly, there is no written intimation ever given by the

landlord to the tenants, in so far as default for the revenue year 1968-69 is concerned. Mr. Thorat is however right, that there is no requirement in Section 25(2) of the Tenancy Act that the intimation as contemplated by the said provision has to be in writing. Such intimation may even be oral. However, the intimation has to be after the tenant is in default and not at any stage prior to the same. This is important, because the landlord has not pleaded with precision compliance with the predicates of Section 25(2) of the Tenancy Act. There is no clear pleading as to the precise manner and date of the impart of intimation to the tenants, in the matter of default for the year 1968-69. In the depositions of landlord and his son, there is a vague statement that the said two witnesses had approached the tenants in the month of April – May 1969 and demanded the rents for the revenue year 1968-69. If these statements are accepted as correct, it indicates that the demands for payment of rent or for that matter intimation with regard to the non payment of rent was given by the landlord to the tenants latest by end of May 1969. As noted earlier, in terms of the provisions contained in Section 14(1)(a)(i) of the Tenancy Act, the tenants cannot be said to have been in default until 1st June 1969. Therefore, any alleged intimation prior to the said date, would hardly constitute compliance with the provisions contained in Section 25(2) of the Tenancy Act. The said Section requires giving of intimation by

the landlord to the tenant within a period of three months of each default. If therefore, the factum of such intimation within three months of the default for the year 1968-69 is not established, there is no question of eviction of the tenants under Section 25(2) of the Tenancy Act.

24] In the case of *Ravindra Sabnis* (supra) this Court, has held that the tenant is expected to pay rents for each revenue year, on or before 31st May. The expression '*revenue year*' has not been defined under the Tenancy Act but has been defined under Section 2(32) of the Maharashtra Land Revenue Code 1966 to mean the year commencing on such date, as the State Government may, by Notification in the Official Gazette appoint. The State Government has notified a revenue year as 1st August to 31st July. In any case, it has been held that there can be no default before 31st May of any revenue year, having regard to plain language of Section 14(1)(a)(i). Therefore, where the landlord seeks to evict a tenant under Section 25 of the Tenancy Act, such landlord is obliged to give intimation to the tenant within a period of three months of each default, so that the tenant is afforded an opportunity to remedy the default by paying the rent due within period of three months from notice given by the landlord. Further, the intimation or notice can be given only after the tenant is in default and not at any stage prior thereto. The

relevant discussion on this aspect is contained paragraphs 7 and 8, which reads thus :

*“7. On plain language of this provision, the landlord is obliged to give intimation to the tenants within a period of three months on each default. The question is: when the default in payment of rent by the tenants would commence? To answer this query, it will be useful to advert to Section 14(1)(a)(i). It stipulates the period before which the tenant is expected to pay the rent. By this provision, the tenant is expected to pay the rent for any revenue year before 31st day of May thereof. The expression revenue year has not been defined in this Act of 1948, but has been defined in Section 2(32) of the Maharashtra Land Revenue Code, 1966 to mean the year commencing on such date, as the State Government may, by Notification in the Official Gazette, appoint. The Notification issued by the Revenue Department provides revenue year as 1st August to 31st July. There is substance in the argument canvassed on behalf of the Respondents that at any rate, there can be no default before the 31st day of May of any revenue year, having regard to the plain language of Section 14(1)(a)(i). Section 25(2) has been interpreted to mean that the landlord is obliged to give intimation to the tenant within a period of three months on each default. This proposition is reinforced by the decision of the Division Bench reported in **1970 (LXVIII) BLR 285 in the case of Dattu Subrao Patil vs. Dattatraya Pandurang Patil**. The relevant discussion is found at pages 289 to 290, where the Division Bench of our High Court has held that if the landlord wants to rely on the failure or default, the landlord is required to give specific notice of termination of tenancy on the basis of "that*

default", and the tenant has been afforded an opportunity to remedy the default by paying the rent due within a period of three months from the notice given by the landlord.

8. As is noted earlier, the period of default would commence only from 1st of June of the relevant revenue year; and the landlord is obliged to give notice within three months therefrom. In other words, the view taken by the Revisional Authority in the fact situation of the present case will have to be upheld."

[Emphasis supplied]

25] In the case of *Rama Genu Karale & Anr. vs. Smt. Battajabai Banshilal & Anr.*⁵, this Court, again in the context of the provision contained in Section 25 (2) of the Tenancy Act, has observed thus :

"In order to satisfy the requirement of sub-section (2) of section 25, the intimation, whether oral or in writing, must amount to a communication by the landlord to the tenant that the tenant has failed to pay the rent of a particular year. Such an intimation can only be given after the last date in which the rent was payable had elapsed and the intimation must being the fact of the failure in the payment of rent to the notice of the tenant. The mere statement of respondent No. 1 that she demanded rent every year and that the rent was not paid does not amount to such an intimation. Turning to the Money Orders, the reason why they were refused was not stated in the endorsement made by the postman. Hence the endorsement made by the postman cannot amount to an intimation proceeding from respondent No. 1 that the

5 Special Civil Application No. 1815 of 1965 decided on 29.09.1967.

petitioners had failed to pay the rent. There is no evidence on record to show that any other intimation of the default in the payment of rent was given by respondent No.1 to the petitioners. I am accordingly of the view that no intimation as required by sub section (2) of section 25 were given by respondent No. 1, that the finding in that behalf given by the Deputy Collector was wrong in law, and that the Revenue Tribunal was also wrong in law in confirming that finding”.

[Emphasis supplied]

26] Similarly in the case of *Sajarbai Damodar Narkhedkar (deceased) vs. Dnyanoba Namdeo Gade & Anr.*⁶, this Court, again in the context of Section 25 (2) of the Tenancy Act has held that the onus is always on the landlord or the landlady to prove compliance with the provisions contained in Section 25(2) of the Tenancy Act and where the landlady fails to discharge such onus, there is no question of making eviction order. The relevant discussion is contained in paragraph 8, which reads thus :

“8. The judgment which has been passed by Awal Karkun, Barshi shows that after considering the evidence on record he rightly concluded that only one intimation was given in respect of the defaults alleged by the landlady against the tenant. The provisions of Section 25(2) of the Bombay Tenancy Act provides that separate intimation has to be given by the landlord or landlady for each default and that too within a period of three months of such default. After such compliance, thereafter only, the landlord or landlady can claim

6 2003 (2) LJ SOFT 152

the possession from the tenant in view of the provisions of Section 25 of the Bombay Tenancy Act. The onus is always on the landlord or landlady to prove such compliance. In this case landlady failed in it. Therefore the judgment of Awal Karkun, Barshi was correct, proper and consistent with material on record....."

[Emphasis supplied]

27] The case of *Shaniwar Dhondu Dharnekar vs. Prabhavati Chandrakant Patange* (supra), upon which reliance was placed by Mr. Thorat, does not really assist the landlord. That decision, is an authority for the proposition that the intimation as contemplated by Section 25(2) of the Tenancy Act has to be given to the tenants within a period of three months of each default, however, it is not necessary that such intimation has to be served upon the tenant within a period of three months. If the intimation is given within a period of three months there is sufficient compliance even if intimation is served beyond that period. Further, in the said decision it is also held that a composite intimation and notice of termination of tenancy is valid. The decision is not an authority for the proposition canvassed by Mr. Thorat that even a single intimation given at the end of three annual defaults, is sufficient compliance of the provisions contained in Section 25(2) of the Tenancy Act. If the fact situation in case of *Shaniwar Dharnekar* (supra) is perused, it is clear that three separate intimations in

respect of the three defaults had been given by the landlord to the tenants. The only question was the intimations, though given within three months from the date of default, were actually received by the tenant after period of three months from the date of default. This is not a fact situation with which we are concerned.

28] Accordingly, even on the basis of the material produced by the landlord, it is quite clear that there is no compliance with provisions contained under Section 25(2) of the Tenancy Act, in as much as necessary intimation of default for the year 1968-69 was never given by the landlord to the tenants. The orders impugned in the writ petition no. 3894 of 1991 are therefore liable to be set aside as they fail to take note of the non compliance with the provisions contained in Section 25(2) of the Tenancy Act.

29] The tenants, have taken out a civil application no. 4827 of 1991 seeking leave to produce certain money order receipts which establish that the rents for revenue years 1968-69 and 1969-70 were in fact despatched by the tenants to the landlord and the same were refused by the landlord. The postal evidences, indeed make out a case that the tenants had tendered the lease rents for the years 1968-69 and 1969-70 within the period prescribed. The rents for the year 1968-69 were tendered on 7 April 1969. If such material

is taken into consideration, it is clear that the landlords cannot be said to have made out a case of three consecutive defaults. Civil application no. 4827 of 1991 was taken out by the tenants on 17 September 1991 or thereabouts. The landlord, despite service of the civil application, as also the order made by this Court on 9 June 2004 that the civil application is to be heard along with main writ petition no. 3894 of 1991 have not bothered to file any reply contesting the veracity of the postal evidences. As such, there is no reason not to take into consideration the said postal evidences. However, it is made clear that even if such postal evidences are not taken into consideration, on the basis of material already on record, it is clear that there was no compliance with the provisions contained in Section 25(2) of the Tenancy Act.

30] This is a case where the Authorities under the Tenancy Act have completely misread the evidence of the landlord and further put an incorrect interpretation upon the provisions contained in Section 25(2) of the Tenancy Act. Even if the statements of the landlord and his son, in the course of their evidence are to be accepted as they are, it is clear that there was no intimation with regard to default given by the landlord to tenants between the period 1st June 1969 and 1st September 1969, in so far as the alleged default for the year 1968-69 is concerned. In view of this

position, the order of eviction under Section 25 of the Tenancy Act could not have been made against the tenants. The orders impugned in writ petition no. 3894 of 1991 are therefore liable to be set aside and are hereby set aside.

31] In the result, whilst Rule is discharged in writ petition no. 4704 of 1991, the same is made absolute in terms of prayer clause (b) in writ petition no. 3894 of 1991. There shall however be no order as to costs. The civil application no. 4827 of 1991 also stands disposed of in the aforesaid terms.

(M. S. SONAK, J.)

Chandka