

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3204 OF 2015**

Sau, Sunita Sunil Salunkhe

..Petitioner

Vs

Shri Vinayak Ramarao Narvekar

.. Respondent

Mr. R.S.Apte, Senior Advocate, i/b Ms Lalita H. Panchakshari,
Advocate for Petitioner.

Mr. Jaydeep Deo, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 11/01/2016

PC:

1. Heard Mr.R.S.Apte, learned senior counsel for the petitioner and Mr. Jaydeep Deo, learned counsel for the respondent at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'original defendant', has challenged the Judgment and decree dated 13.4.2012 passed by the learned Judge, Small Causes Court, Pune in Civil Suit No.103 of 2010 as also the Judgment and decree dated 23.9.2014 passed by the learned District Judge-12, Pune in Civil Appeal No.1051 of 2012. By these orders, the Courts below decreed the suit instituted by the respondent for possession of Flat No.5, admeasuring 700 sq. ft., situate in Janki Apartment, C.T.S. No.142, Rasta Peth, Pune, and more

particularly described in paragraph 1 of the Plaint, (for short, 'suit premises'). The Courts below decreed the suit on the grounds under Sections 15 and 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

3. Mr. Apte strenuously contended that the respondent, hereinafter referred to as 'plaintiff', had issued demand notice dated 20.9.2009 to the defendant alleging that monthly rent of the suit premises is Rs.5000/- pm and that the defendant is in arrears of rent from 1.7.2005. The said notice was posted on 23.9.2009 and was served on the defendant on 29.9.2009. The plaintiff has terminated tenancy as on 30.9.2009. In the first place, he submitted that the notice is defective as within a day's time the tenancy was terminated. Secondly, notice is defective also on the ground of claiming exorbitant rent. He submitted that the plaintiff, in fact, has admitted during the course of cross examination in C.S.No.153 of 2005 that the monthly rent is Rs. 1000/-. In fact, the defendant has accordingly paid the amount during the pendency of the suit at the rate of Rs.1000/-. He has invited my attention to statement at Exhibit-I, page 84 of Writ Petition. He has further invited my attention to the findings recorded in paragraph 19 of the order dated 3.10.2008 passed by the learned Chief Judge of the Small Causes Court Pune in Civil Suit No.153 of 2005. In paragraph 19, it is recorded that the

plaintiff therein (defendant herein) contended that the monthly rent was Rs. 5000/-. However, the defendant therein (plaintiff herein) in his affidavit-in-examination at Exh.30 deposed that some time he accepted Rs. 1000/- per month some times by cheque or some times by cash. Thus, the plaintiff herein clearly admitted that Rs.1000/- pm was the rent. The Courts below, however, held that monthly rent was Rs.5000/- and the defendant did not comply the demand notice and that she was not ready and willing to pay rent as agreed between the parties and is, therefore, a willful defaulter.

4. Mr. Apte further submitted that as far as bonafide requirement is concerned, the plaintiff has executed Agreement of Sale in favour of one Mr. Arif Sayyed on 14.10.2004. The said Sayyed instituted Civil Suit No.1088 of 2005 against the plaintiff for specific performance of contract and for possession of the suit premises. On 29.9.2006, the suit was decreed. The plaintiff did not file Appeal. In other words, the decree passed in favour of said Sayyed attained finality. The said Sayyed thereafter instituted Darkhast proceedings for execution of the decree passed in a suit for specific performance.

5. Mr. Apte submitted that the plaintiff gave demand notice on 20.9.2009 which was posted on 23.9.2009 and was received by the defendant on 29.9.2009. As on that date, the plaintiff was

not the owner of the suit premises. However, mala fide and with a view to evicting the defendant, the plaintiff entered into compromise with said Sayyed on 14.12.2009 and the present suit is instituted on 3.3.2010. He submitted that if at all the plaintiff really requires the suit premises, he would not have agreed to sell the suit premises to said Sayyed. This reflects on the need of the plaintiff. The need of the plaintiff is neither reasonable nor bona fide. The plaintiff has no locus to institute present suit as he suffered decree of specific performance in suit filed by said Sayyed. He submitted that though this plea was specifically taken up in the written statement, no issue was framed in that regard. The Courts below, however, rejected that contention. Lastly, he submitted that when the suit premises was vacant, the plaintiff did not occupy the same which also adversely reflects on the alleged need of the plaintiff. He, therefore, submitted that the petition requires consideration.

6. On the other hand, Mr. Jaydeep Deo supported the impugned orders. He submitted that in the suit instituted by the defendant, viz. Civil Suit No.153 of 2005, she specifically came with the case that monthly rent is Rs.5000/-. In the demand notice dated 20.9.2009 issued by the plaintiff, it is specifically stated in paragraph 2 that the monthly rent is Rs. 5000/-. He submitted that reliance placed on the affidavit on examination-

in-chief at Exh.30 filed in Civil Suit No.153 of 2005 is of no assistance to the defendant herein. The said aspect is fully considered by the Courts below. The Courts below, after appreciating the material on record, have concurrently held that the monthly rent is Rs. 5000/-. He submitted that the plaintiff was paying rent at the rate of Rs.5000/- even prior to institution of Civil Suit No.153 of 2005. He, therefore, submitted that the courts below rightly came to the conclusion that the monthly rent was Rs. 5000/- and not Rs. 1000/- as alleged by the defendant.

7. As far as bonafide requirement is concerned, he submitted that the plaintiff is residing in the rented premises. The Courts below also noted that the defendant has completed four construction projects. As the plaintiff is residing in a tenanted premises, his need is both reasonable as well as bonafide and accordingly held in favour of the plaintiff. As far as comparative hardship is concerned, both the courts below have held in favour of the plaintiff. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

8. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As far as the ground of default is concerned, the defendant contends that the monthly rent is

Rs.1000/- pm. As against this, the plaintiff claims that it is Rs.5000/- pm. Perusal of paragraph 2 of the demand notice shows that the plaintiff came with the case that the monthly Rent is Rs.5000/- and defendant is in arrears from 1.7.2005. The defendant relied upon the affidavit in examination-in-chief at Exh.30 filed by the plaintiff herein in Civil Suit . No.153 of 2005 to contend that the plaintiff herein admitted that the monthly rent is Rs.1000/-. This aspect is considered by the learned trial Judge in paragraph 14. The learned trial Judge observed that in the present suit, the defendant clearly admitted in cross examination that when Civil Suit No.153 of 2005 was filed, that time rent was Rs. 5000/- per month. She further admitted that she had paid Rs. 55000/- as rent for 11 months and Rs. 5000/- towards deposit. The learned trial Judge, therefore, held that from the clear admission of the defendant, the monthly rent is Rs. 5000/-. As far as deposition of the plaintiff herein in Civil Suit No.153 of 2005 that the monthly rent is Rs. 1000/- is concerned, the learned trial Judge observed that during the cross examination of the plaintiff, he was not confronted with the deposition in that suit. Mere contention of the defendant that the plaintiff admitted rent of Rs.1000/- per month is not acceptable. It was further observed that perusal of that deposition shows that suggestion was given to the plaintiff herein as to whether he

used to collect Rs.5000/- per month. Had it been a fact that the rent was Rs.1000/- there was no need to give such suggestion to the plaintiff herein of rent of Rs.5000/- per month. So also there was no need for the defendant to deposit Rs.55000/- towards 11 months rent. In fact, in Civil Suit No.153 of 2005 the defendant never filed any application for fixing standard rent on the ground that the monthly rent of Rs.5000/- is excessive. Consequently there is no decision of the court holding that the monthly rent is Rs.1000/-.

9. In paragraph 15, the learned trial Judge adverted to demand notice dated 20.9.2009 wherein the plaintiff demanded monthly rent at the rate of Rs.5000/-. The learned trial Judge thereafter observed that the defendant falsely claimed in reply that monthly rent is Rs.1000/-. She did not send rent at the rate of Rs.5000/- per month nor she deposited rent at the rate of Rs.5000/-. The learned trial Judge accordingly held that the defendant is a willful defaulter.

10. As far as ground of bonafide requirement is concerned, the learned trial Judge has considered this aspect from paragraph 25 to 33 and held that the plaintiff has established bonafide requirement as also hardship will be caused to him in case eviction decree is not passed. The learned trial Judge noted that the plaintiff is residing in one room on rent basis. The defendant

gave suggestion to the plaintiff whether Chadrakant is residing in one flat and one flat is vacant for occupation of the plaintiff. In cross examination she admitted that Chandrakant is occupying one flat and plaintiff's sister is occupying another flat and third flat is in possession of the defendant. In paragraph 28, the learned trial Judge observed that the defendant clearly admitted that the flat in possession of the plaintiff's mother is now in possession of his sister. Thus, the plaintiff is not in possession of the flat admeasuring 700 sq.ft as alleged by the defendant. The learned trial Judge thereafter considered that the defendant has completed 4 development schemes before her marriage and she is carrying on business in the name and style of Sunita Constructions. After considering the material on record the learned trial judge answered issue of banafide requirement in favour of the plaintiff as also hardship.

11. As far as appellate court is concerned, the appellate court has confirmed the order passed by the learned trial Judge on both counts. The ground of arrears of rent is considered from paragraphs 8 to 13. The appellate court held that the monthly rent was fixed at Rs.5000/-. It was further observed that inspite of notice dated 20.9.2009, the defendant has not paid rent as demanded in the said notice. Even after receipt of suit summons and appearing in the present proceedings, the defendant did not

deposit rent. The appellate court, therefore, held that from the record it emerges that the defendant has not complied the provisions of Section 15(3) of the Act. During the pendency of the suit the defendant did not deposit arrears of rent.

12. As far as the ground of requirement is concerned, the appellate court considered this from paragraphs 15 to 24. The appellate court noted that the plaintiff is residing in one room on rental basis. During the course of cross examination of the defendant it has come on record that there are three flats in the name of Narvekar's family. Out of three flats, one flat is in the name of brother of the plaintiff (Chandrakant). The other flat was in possession of the plaintiff's mother and is now in possession of his sister. The third flat is occupied by the defendant as tenant. The defendant further admitted that the plaintiff is residing in the rented premises. In paragraph 24, the appellate court observed that the defendant admitted in his cross examination that she had completed four development schemes before her marriage. She is presently also doing business of construction. In such circumstances, if the decree of eviction is passed, no hardship will be caused to the defendant. On the other, if the decree of eviction is not passed, greater hardship will be caused to the plaintiff.

13. After considering the material on record, I do not find that the courts below committed any error in passing the impugned order. Mr Apte was not in a position to demonstrate that the findings recorded by the courts below are perverse being based on no evidence or that they are contrary. In view thereof, no case is made out for invocation of powers under Article 227 of the constitution of India. Petition fails and the same is dismissed.

14. At this stage Mr. Apte orally applies for continuation of interim arrangement wherein Mr. Deo's statement that he will not execute the decree was recorded, for a period of eight weeks from today. Mr. Apte states that the defendant is in possession and nobody else is in possession. The defendant has so far not created third party interest and will hereafter neither create third party interest nor part with possession. Statements made by Mr. Apte are recorded. Mr. Apte states that defendant is ready and willing to file usual undertaking to the effect that she alone is in possession and nobody else is in possession. She has not created interest so far and will hereafter neither create third party interest nor part with possession. He further states that the defendant is not ready to make further statement that in case she does not get suitable order from higher court, she will hand over possession to the plaintiff.

15. Mr. Deo submitted that the impugned order is passed by

the learned District Judge on 23.9.2014 and because of the statement made by him, for more than one year the decree could not be executed. He further submitted that in case the defendant is ready and willing to make further statement that in case she does not get suitable order from higher court within eight weeks from today, she will hand over possession of the suit premises to the plaintiff, in that event, the plaintiff is ready and willing to continue the statement for a period of eight weeks. However, as the defendant is not making statement, he is opposing the continuation of ad-interim arrangement.

16. Mr. Apte does not want to make statement to this effect. In my view, the approach of the defendant is unreasonable. If she does not get suitable order from the higher court within eight weeks, she has to hand over possession to the plaintiff. By adopting such attitude, it is apparent that she wants to delay handing over possession to the plaintiff by compelling him to resort to execution proceedings. Mr. Deo is also not ready to make that statement. In view thereof, oral application made by Mr. Apte for continuation of interim arrangement for a period of eight weeks is rejected. Order accordingly.

(R.G.KETKAR, J.)