

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

**WRIT PETITION No.3702 OF 2015**

Mohammad Ishaque s/o Mohammad Ibrahim

**..vs..**

Ali Asghar s/o Abdul Hussain

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

Court's or Judge's Order

.....  
 Mr. S.Raisuddin, advocate for petitioner.  
 Mr. Noorul Hasan Shams, advocate for respondent sole.

**CORAM : A.S. CHANDURKAR, J.**  
**DATED : 28<sup>th</sup> JUNE, 2016.**

The petitioner who is the tenant of the premises owned by the respondent has challenged the decree for eviction passed by the trial court which has been confirmed by the Appellate Court.

2. The respondent is the owner of Municipal House No.730 in which a shop block has been let out to the petitioner. According to the respondent, the rent payable was Rs.500/- per month. As the petitioner was in arrears of rent, a notice of demand came to be issued on 1.7.2007. Thereafter another notice dated 29.12.2008 came to be issued to the petitioner. The suit was filed on 20.4.2009 seeking eviction of the petitioner on the ground that he was in arrears of rent and that the respondent required the premises for his bonafide need. The trial court passed a decree for eviction on both the counts. The Appellate Court,

.....2/-

however, maintained the decree for eviction only on the ground of arrears of rent.

3. Shri Raisuddin, the learned counsel for the petitioner, submitted that the petitioner was not in arrears of rent. According to him, after receiving the suit summons the petitioner had moved an application seeking permission to deposit the amount of arrears and accordingly an amount of Rs.3,053/- came to be deposited. He submitted that this amount covered the entire arrears of rent and therefore a decree on that count could not have been passed. He submitted that the arrears of rent have been wrongly calculated and, therefore, it could not be said that the petitioner was a habitual defaulter. He then submitted that the notice of demand was not received by the petitioner and therefore the suit for eviction on the ground of arrears of rent could not have been filed.

4. Shri N.H. Shams, the learned counsel for the respondent, supported the impugned order. According to him, the demand notice was returned with the endorsement that it was not claimed. He submitted that after receiving the suit summons, it was incumbent upon the petitioner to pay entire arrears along with 15% interest. He submitted that the appellate court rightly found that the amount of Rs.3,053/- paid by the tenant was not covering the entire amount of arrears. According to him, in view of the

provisions under Section 11 of the Maharashtra Rent Control Act, 1999, 4% interest annually is required to be paid by the tenant.

5. I have heard respective counsel for the parties at length. Perused the impugned judgment. Both the Courts have found that though notice at exh.45 in the envelope at Exh. 44 was returned with endorsement 'not claimed', no evidence was led by the petitioner to prove that this endorsement was incorrect. The Appellate Court in para 16 of the judgment has taken into consideration the amount of arrears deposited by the petitioner after receiving the suit summons and has thereafter recorded finding that this amount was short by Rs.5,185/-. It is on this count that the decree has been passed against the petitioner. Considering the provisions of Section 11 of the said Act, the calculations made in para 16 of the judgment of the Appellate Court cannot be said to be illegal or contrary to the provisions of the said Act. It is, therefore, clear that provisions of Section 15(3) of the said Act have not been complied with.

5. In that view of the matter, I do not find that any case has been made out to interfere in writ jurisdiction at the instance of the petitioner.

6. For the aforesaid reasons, the writ petition stands dismissed. However, the possession of the petitioner is protected till the end of December, 2016 subject to filing

an undertaking that he would handover vacant possession to the petitioner by the end of December, 2016 and he would also clear all the arrears of rent by end of August, 2016. Undertaking be filed within period of six weeks from today in this Court.

**JUDGE**

Hirekhan

...../-