

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:**NAGPUR BENCH : NAGPUR****Writ Petition No. 4191 of 2016****[Jaidayal Nanakchand Pophali Vs. M/s. Bhaiyalal Udaichand & company & others]**

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

Mr. A. M. Sudame, Adv., for the petitioner.
Mr. A. Gharote, Adv., for respondent nos. 1 to 5.

CORAM : A.S. CHANDURKAR, J.**DATE : 05th August, 2016****01.** Heard.

02. The petitioner, who is the original plaintiff, has filed a suit for eviction of the respondents under the provisions of Section 16 (1) (g) of the Maharashtra Rent Control Act, 1999. The premises in occupation of the respondents is a shop block on the ground floor of the building owned by the petitioner. During pendency of the suit, the respondents filed an application seeking a direction to the petitioner under Section 14 of the said Act, to repair the suit property, or, in the alternative, permit them to carry out repairs. This application was opposed by the petitioner, and by the impugned order, the Trial Court permitted the respondents to carry out necessary repairs without making any structural change

in the suit property. It was further observed that in case it was necessary, repairs could be carried out from the first floor premises that were in occupation of the petitioner.

03. Shri Sudame, the learned counsel for the petitioner, submitted that the respondents did not give any notice under the provisions of Section 14 (1) of the said Act before moving the application in question. He submitted that unless such notice of fifteen days was issued by the tenant, it would not be open for the Court to direct such repairs to be made. In that regard, he placed reliance upon the Judgment of learned Single Judge in **Najama Gulab Bagwan & others Vs. Laxmibai Rangildas Gujar, since deceased by her heirs and LRs Vinodkumar Rangildas Gujar & others** [2006 (1) Mh. L. J. 273]. He further submitted that the entire building was an old structure and there was difficulty in repairing the same. By the impugned order, the respondents had been permitted to carry out repairs by entering the first floor premises, which course was not permissible. He, therefore, submitted that the Trial Court was not justified in allowing the application in question.

02. On the other hand, Shri Gharote, the learned counsel for the respondents, supported the impugned order. According to him, in the application moved before the Trial Court, it was stated that on account of Monsoon season, water was percolating from the upper

floors and was entering the shop premises occupied by the respondents. It was submitted that the repairs were urgent and, therefore, the application, in question, came to be moved. He referred to the averments made in the reply filed on record, and submitted that after the impugned order was passed, an attempt was made to repair the premises from the ground floor; but the same could not be done without entering the first floor. He referred to the First Information Report dated 26th June, 2016 that was lodged against the respondents. He, therefore, submitted that there was no reason, whatsoever, to interfere in the writ jurisdiction.

03. Under the provisions of Section 14 (1) of the said Act, it is the duty of the landlord to keep the premises in good and tenantable repair. If there is failure on the part of the landlord to make any repair which he is bound to make within a reasonable period after notice of fifteen days is served upon him, then it is open for the tenants to make such repairs as are necessary, and deduct the expenses from the rent recoverable. In the present case, admittedly, no such notice was given when the application dated 29th June, 2016 came to be moved. In the reply filed to the aforesaid application dated 4th July, 2016, there is no plea raised that in the absence of such notice, the application, in question, was not maintainable. In *Najama Gulab Bhagwan & others* [supra] on which reliance was placed by the learned counsel for the petitioner, the facts therein indicate that no notice came to be given by the tenant therein before

carrying out repairs. It was the stand of the tenants that the repairs were urgent and, therefore, the same were carried out. In para 11 of the said decision, it was found that the repairs carried out were of a permanent nature and further that there was nothing on record to point out that the repairs were so urgent that it was not possible for the petitioner to wait for some period of time. On that basis, the stand taken by the tenants was not accepted.

04. In the present case, it has been stated in the application that on 26th June, 2016, a complaint was filed with the police authorities raising a grievance that due to various acts committed by the petitioner resulting in leakage to the roof, the respondents could not enjoy the suit property. A reference is also made to the leakages due to the Monsoon season. In that background, therefore, it can be seen that the repairs that were sought were of an urgent nature, so as to prevent the damage to the shop premises. If, in such urgent situation, the respondents moved the application seeking permission to repair the premises at their own expenses without giving notice of fifteen days as contemplated by Section 14 (2) of the said Act, it cannot be said that the Court was precluded from considering the said application. The object behind giving such notice of fifteen days is to enable the landlord to carry out necessary repairs as contemplated by Section 14 (1) of the said Act. In the present case, when it is found that due to Monsoon season, there was leakage in the

premises occupied by the respondents, the insistence for issuance of such notice cannot be accepted. Moreover, in the reply filed on behalf of the petitioner to the application in question, such stand was not taken. The decision in *Najama Gulab Bagwan & others* [supra] does not lay down that in each and every situation, issuance of such notice is mandatory. In fact, the observations in para 11 of the said decision take into account a case where repairs are urgent. In that background, therefore, in the facts of the present case, I am not inclined to accept the submission made on behalf of the petitioner that failure to issue such notice precluded the respondents from moving the application in question. I am satisfied that the repairs, as sought, were urgent in nature requiring immediate steps to be taken.

05. By the impugned order, the Trial Court has permitted the respondents only to carry out necessary repairs, with a clear direction not to make any structural changes or a permanent change. In that view of the matter, I do not find any case made out to interfere in writ jurisdiction. Writ Petition stands **dismissed** with no order as to costs.

06. At this stage, Shri Sudame, the learned counsel for the petitioner, on instructions, submits that the petitioner would carry out necessary repairs on the first floor of the suit premises within a period of fifteen days from today, so that the purpose of moving the

application below Exh.27 would be served. The statement is accepted. The petitioner shall carry out necessary repairs on the first floor of the suit premises and ensure that there are no leakages on the ground floor. In that event, it would not be necessary for the respondents to enter the first floor premises to carry out repairs.

07. In the facts of the case, the proceedings in Regular Civil Suit No. 428 of 2014 are expedited and the Trial Court shall decide the suit by the end of January, 2017.

Judge

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C E R T I F I C A T E

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.

Uploaded by : R.B. Hedau,
Pvt. Secretary.

Uploaded on : 09th Aug., 2016

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