

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

SECOND APPEAL NO. 398 of 2015
WITH
CIVIL APPLICATION NO. 9927 OF 2015
IN
SECOND APPEAL NO. 398 of 2015

Shrikrishna S/o Ramji Parwe,
age 68 years occupation business
R/o Wada of Bhakkad, Ramdev Baba Galli,
behind Dr. R.P. Road, Jalna Taluka and District Jalna.

...PETITIONER

VERSUS

Badrivishal Bankatlal Bhakkad,
age 68 years occupation business
R/o Dr. R.P. Road, Jalna Taluka and Dist. Jalna.

...RESPONDENT

Mr Ravindra Nirmal, Advocate for petitioner.
Mr. A.S. Bajaj, Advocate for respondent sole

CORAM : NITIN W. SAMBRE, J.

DATE :25th September, 2017

ORAL ORDER :

The appellant/defendant and respondent/plaintiff are tenant and landlord. Tenancy was at the rate of Rs. 300/- per month, to be commenced from the 1st day of each calendar month.

2. Before the present proceedings could begin, Regular Civil Suit No. 338 of 2000 was compromised between the parties, which was towards payment of rent.

3. Subsequent thereto, Regular Civil Suit No. 323 of 2008 for recovery of arrears and possession came to be filed on the ground of bonafide requirement.

4. Learned 2nd Joint Civil Judge (Junior Division), Jalna, decreed the suit on March 8, 2011, which was confirmed in Regular Civil Appeal No. 69 of 2011 by the judgment and order dated April 1, 2015. As such, this appeal.

5. Heard learned Counsel for the appellant. According to him, in view of the order passed in Writ Petition, application Exh. 35 should have been dealt with as per provision of Order XLI Rule 27 of the Civil Procedure Code, moved at an Appellate Stage. According to him, the cheque for payment of rent was handed-over to the learned Counsel appearing before the Trial Court, however, the same was not tendered before the Court, hence he should have been allowed to lead the evidence before the Appellate Court to that effect. Contention is also sought to be raised that the respondent/landlord is not in bonafide requirement of suit premises as he is residing at Hyderabad.

6. Per contra, learned Counsel for the respondent/landlord would invite attention of this Court to the concurrent findings and would urge that the contention in application Exh. 35 for production of additional evidence was very much appreciated. According to him, arrears of rent, which should have been paid within 90 days from receipt of notice, was not honoured, and as such, both the Courts below have rightly recorded findings of fact, which can not be gone into under this Jurisdiction having regard to scope of Section 100 of the Civil Procedure Code.

7. The relationship between the parties of tenant and landlord and agreed rent of Rs. 300/- per month, is not an issue under dispute.

8. It should be noticed that before filing the suit, respondent demanded rent for a period from 1st April 2005 to 31st August 2008. The fact remains that the said amount was neither demonstrated to have been paid within 90 days from the date of receipt of notice nor such pleadings were raised in the written statement or in the evidence.

9. An application Exh.35 under Order XLI Rule 27 of the Civil Procedure Code was moved for producing evidence to the effect of non tendering the cheque of rent before Trial Court, in my opinion, same was effectively dealt with by the lower Appellate Court. This Court, upon

re-consideration, noticed that on 14th November 2008 an amount of Rs. 8984/- was paid and on 9th April 2009 amount of Rs. 1500/- was paid towards rent. Said act of petitioner cannot be termed in compliance with the provision of Section 15(3) of the Maharashtra Rent Act. Hence, even if the claim made under application Exh. 35 about attempt to tender rent by petitioner is accepted, still it does not satisfy the statutory requirement under Section 15(3) of the Maharashtra Rent Act.

10. So far as the issue of bonafide requirement is concerned, both the Courts have concurrently held that present appellant has failed to demonstrate his defence that the respondent/landlord is permanently resident of Hyderabad. Rather, both the Courts held that respondent/landlord has established his bonafide requirement. In view of above and having regard to the concurrent findings, I hardly notice involvement of any question of law in the matter. As such, the Second Appeal is dismissed.

11. At this stage, learned Counsel for the appellant/tenant submits, upon instructions, that by 15th November 2017, the appellant shall furnish an undertaking before the Executing Court that he shall surrender the vacant possession of suit premises without damage to it by 28th February 2018. He further undertakes that entire arrears will be

cleared within four weeks from the date of undertaking by depositing said amount including admitted rent upto 28th February 2018, to which decree holder will be entitled to.

12. The statement is accepted as an undertaking. If such undertaking is filed, the Executing Court shall stay away its hands till 28th February 2018. Needless to say that if the undertaking is flouted or if the benefit is sought to be taken of the protection of this Court without executing written undertaking before Executing Court or the rent is not paid including arrears, it shall be open for the respondent to take out Contempt Proceedings and initiate executing proceedings.

13. In the consequence, the Civil Application stands disposed of.

(NITIN W. SAMBRE, J.)

pjm.