

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

CIVIL REVISION APPLICATION NO.107 OF 2016

Amlokchand S/o Bhagalchand
Bhalgat (Deceased) through
L.Rs.

1-a) Smt.Mainabai Amlokchand
Bhalgat, Age 75 years,
Occ.Household, R/o 724B,
Central Bank Road,
Manik Chowk, Ahmednagar.

1-b) Sau.Shaila Prakash Bora,
Age 60 years, Occ.Household,
R/o Gujrathi Mangal Karyalaya,
Ward No.2, Shrirampur,
Dist.Ahmednagar.

1-c) Abhay S/o Amlokchand Bhalgat,
Age 58 years, Occ.Business,
R/o Samadhan General Stores,
Kinetic Society, Kedgaon,
Ahmednagar.

1-d) Rajendra S/o Amlokchand Bhalgat,
Age 56 years, Occ.Service,
R/o Samadhan General Stores,
Kinetic Society, Kedgaon,
Ahmednagar.

1-e) Santosh Amlokchand Bhalgat,
Age 52 years, Occ.Self Employed,
R/o 724B, Balghat Classes,
late Galli, Manik Chowk,
Ahmednagar.

... Applicants.
(Orig.Defendant)

Versus

Shripad S/o Narhar Dharmadhikari,
Age 65 years, Occ.Retd.,
R/o Kendriya Vihar,
Sec.-4, Pradhikaran, Moshi,
Pune, through GPA Arvind
Vasudeo Deshmukh, Age 70 years,
Occ.Retd., R/o Bramhangaon,
Tq.Newasa, Dist.Ahmednagar. ...Respondent.

...
Mr.A.M.Gholap, advocate for the applicants.
Mr.M.G.Deokate, advocate for Respondent.
...

CORAM : N.W.SAMBRE, J.

Date : 13.07.2017.

PER COURT :

1. Heard.

2. This Revision is by the original defendant-tenant. The non-applicant plaintiff filed RCS No.577/1981, stating that from 1.2.1981 to 31.5.1981 rent at the rate of Rs.50/- p.m. i.e. total Rs.200/- (Rupees two hundred) and rent for a period from 1.6.1981 to 31.7.1981 at the rate of Rs.55/- p.m. was not paid. Along with the said suit the present applicant-tenant filed Misc. Application No.149/1981 praying fixation of standard rent. The interim rent was fixed at

Rs.30/- and the standard rent was fixed at Rs.50/- p.m. vide order dated December 21, 1988 passed by 2nd Joint Civil Judge (J.D.), Ahmednagar. Against which a Revision was carried.

3. The suit for arrears of rent and possession filed by the non-applicant was resisted by the present applicant vide W.S. Exh.16 and additional W.S. Exh.32. Pursuant to the pleadings, issues were framed at Exh.22 and the issue of arrears of rent was answered against the applicant. It was held that the rent was Rs.50/- p.m. and the present applicant pursuant to the provisions of Section 12(3)(a) and 12(3) (b) of the Rent Act failed to deposit the arrears of rent.

4. Since the judgment was upset in appeal, this Court in W.P.No.1911/2001 vide judgment dated 14.8.2014, remanded the matter back directing re-hearing. The learned appellate Court in RCA No.567/1990 decided on 29.1.2016, dismissed the appeal of the applicant and allowed

cross-objection of the landlord directing the present applicant to deliver the possession. As such this Revision.

5. Shri Gholap, learned counsel for the applicant while inviting attention of this Court to the provisions of Section 12 of the Bombay Rent Act would urge that once the applicant-tenant filed an application for fixation of standard rent, he cease to operate as defaulter tenant as he has shown his bonafides by showing his willingness to pay standard rent. According to him, as immediately after receipt of notice from the Respondent in Application No.149/1981 was filed for fixation of standard rent i.e. before the suit was brought into action. In support of above proposition he would draw support from the judgment of this Court in the matter of **"Rahanabai Shaikh Farid Vs. Laxman Piraji Kumbhar"** reported in **BLR 1998 100**.

"6. In so far as the present case is concerned, it is an admitted position that after receiving notice

on 21.4.1983 the respondent-tenant made an application on 27.4.1983 for fixation of the standard rent. The moment that application for standard rent was filed by the tenant a statutory pre-sumption was raised in his favour that he is ready and willing to pay the rent and therefore, on 27.4.1983 the landlord lost the cause of action in terms of the provisions of sub-section 1 of the sub-section 12 of the Act to file suit for recovery of the possession against the tenant on the ground that the tenant is not ready and willing to pay the amount of rent and therefore, in such a suit no decree of possession could have been passed by the Courts. Once such a statutory presumption is raised, what happened subsequently to the application of the standard rent is not to be considered by the Court. The moment, an application for fixation of the standard rent is

filed, the notice of demand issued by the landlord loses its efficacy. Therefore, a suit based on such a notice would not be tenable in the eye of law. Therefore, decree under section 12(3)(a) can not be passed against the tenant.

Now considering the provision of Section 12(3)(b) of the Act is is to be seen that though the suit has been filed in the year 1984, it is clear from the order of the Trial Court that the tenant started depositing the agreed rent in the Court from 13.6.1983 itself. This aspect of the matter has been rightly considered by the Appellate Court. No fault can be found in the reasoning adopted by the Appellate Court."

According to him, the said aspect of the matter is lost sight by the learned Court below.

6. While opposing the claim, the learned

counsel for the Respondent-land owner would urge that the Respondent though demanded the rent by virtue of the notice dated June 14, 1981, part compliance is made as he has paid rent for a period of four months. According to him, the rent for a period of February 1981 and after fixation of standard rent the difference in rent and regular rent during pendency of this proceedings is not paid till date. According to him, the appellate Court has duly considered the said issue and recorded finding against the present applicant being defaulter, as such sought dismissal of this Revision.

7. Having considered rival submissions, it is required to be noted that the non-applicant landlord issued notice dated June 14, 1981 stating that there was arrears of rent from 1.3.1981. The present applicant then filed Application No.149/1981 of illegal rise of rent and sought fixation of standard rent. The non-applicant filed RCS No.577/1981, alleging change of user, bonafide requirement, securing alternate accommodation and defaulter in payment of rent

for a period from 1.2.1981 to 31.5.1981, permissible increase of Rs.20/- i.e. Rs.5/- p.m. and Rs.110/- for a period from 1.6.1981 to 31.7.1981. In the application for fixation of standard rent, the learned 2nd Joint Civil Judge (J.D.), Ahmednagar, fixed standard rent of Rs.50/- which order was subject matter of challenge in Revision No.19/1981.

8. In the meantime, RCS No.577/1981 came to be decreed in favour of the non-applicant plaintiff on 18.9.1990 with a observation that present applicant should deliver vacant possession of the suit premises within two months from the date of order and there should be an inquiry in the mesne profit. The trial Court noticed that the present applicant is in arrears of rent as rent only for the month of March, April and May 1981 was paid, however, rent for the month of February 1981 and after fixation of standard rent the differences were not paid. The appellate Court endorsed the said finding by noting that the demand notice Exh.42 dated June 14, 1981 was not complied with by making payment

of arrears of rent. The appellate Court noticed that from March 1981 to June 1981 inspite of notice and adjudication, the applicant remained in arrears.

9. Though while pendency of application for fixation of standard rent vide interim order dated July 21, 1981, the applicant was directed to pay interim rent at the rate of Rs.30/- along with arrears, if any, before 10th of every month. The present applicant has not paid rent at the rate of Rs.50/- along with difference till date. However, the interim rent was deposited for various period at the rate of Rs.30/- as is reflected in para 20, 21 of the judgment.

10. Even during the course of hearing of present application, the applicant is not in a position to demonstrate that in view of position of law that he has to pay regular rent pursuant to the provisions of Section 12(1)(b) during pendency of the proceedings, has not paid the said rent.

11. As such the findings recorded by both the Courts below ordering his eviction for arrears of rent by decreeing the suit for possession of the Respondent appears to be just and proper. No interference is warranted. The application fails and is rejected.

12. Before dictating the order of rejection an offer was given to the applicant-tenant to vacate the premises provided he furnishes an undertaking of vacating the premises. An adjournment was sought for making such statement, however, the applicant-tenant refused to vacate the premises.

(N.W.SAMBRE, J.)

