

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 115 OF 2016

Sambhu Shravan Chaudhari
since deceased through LR's.

- 1A] Smt. Surjabai Sambhu Chaudhari
Age : 73 years, Occu. Household,
R/o. Taloda, Tal. Taloda,
District - Nandurbar
- 1B] Prabhakar Sambhu Chaudhari
Age : 58 years, Occu.: Business,
R/o. Shahada Road, Taloda,
Tal. Taloda, District - Nandurbar
- 1C] Jagdish Sambhu Chaudhari
Age : 50 years, Occu.: Business,
R/o. Opp. Maruti Temple,
Main Road, Thakarsi Baba Kirana and
Okh Bhandar Taloda,
Tal. Taloda, District - Nandurbar
- 1D] Ramchandra Sambhu Chaudhari
Age : 47 years, Occu.: Business,
R/o. Opp. S.T. Stand, Taloda,
Tal. Taloda, District - Nandurbar
- 1E] Deepak Sambhu Chaudhari
Age : 42 years, Occu.: Business,
R/o. Maruti Temple, Taloda,
Tal. Taloda, District - Nandurbar
- 1F] Sau. Pratibha Bhatu Chaudhari
Age : 56 years, Occu.: Household,
Through : Bhatu Chaudhari
(Retired Conductor)
Post Akkalkuwa, Tal. Akkalkuwa,
District - Nandurbar
- 1G] Sau. Latabai Ramesh Chaudhari
Age : 53 years, Occu.: Household,
R/o. Jai Hind Colony,
Near Rana Pratap School,
Deopur, Dhule, Dist. Dhule

1H] Sau. Urmila Suresh Chaudhari
Age : 45 years, Occu. Household,
R/o. Lane No.6, Near Kumbhar Khunt,
Opp. Tukaram Vyayam Shala,
Dhule

.. Applicants
(Orig. Defendants)

Vs.

1] Ravindra Sambhu Chaudhari
Age : 45 years, Occu.: Business,
Prop. Kailash Wine, Shop,
S.T. Stand, Taloda,
Tal. Taloda,
District – Nandurbar (Orig. Defendant)

2] Navnitlal Haraklal Wani
Age : 94 years, Occu.: Business,
R/o. Taloda, Tq. Taloda,
District - Nandurbar

.. Respondents

AND

CIVIL REVISION APPLICATION NO. 111 OF 2016

Ravindra Sambhu Chaudhari
Age : 45 years, Occu.: Business,
Prop. Kailash Wine, Shop,
S.T. Stand, Taloda,
Tal. Taloda,
District - Nandurbar (Orig. Defendant)

.. Applicant
(Orig. Defendant)

Vs.

1] Navnitlal Haraklal Wani
Age : 94 years, Occu.: Business,
R/o. Taloda, Tq. Taloda,
District - Nandurbar

2] Sambhu Shravan Chaudhari
since deceased through LRs.

2A] Smt. Surjabai Sambhu Chaudhari
Age : 73 years, Occu. Household,
R/o. Taloda, Tal. Taloda,
District - Nandurbar

- 2B] Prabhakar Sambhu Chaudhari
Age : 58 years, Occu.: Business,
R/o. Shahada Road, Taloda,
Tal. Taloda, District - Nandurbar
- 2C] Jagdish Sambhu Chaudhari
Age : 50 years, Occu.: Business,
R/o. Opp. Maruti Temple,
Main Road, Thakarsi Baba Kirana and
Okh Bhandar Taloda,
Tal. Taloda, District - Nandurbar
- 2D] Ramchandra Sambhu Chaudhari
Age : 47 years, Occu.: Business,
R/o. Opp. S.T. Stand, Taloda,
Tal. Taloda, District - Nandurbar
- 2E] Deepak Sambhu Chaudhari
Age : 42 years, Occu.: Business,
R/o. Maruti Temple, Taloda,
Tal. Taloda, District - Nandurbar
- 2F] Sau. Pratibha Bhatu Chaudhari
Age : 56 years, Occu.: Household,
Through : Bhatu Chaudhari
(Retired Conductor)
Post Akkalkuwa, Tal. Akkalkuwa,
District - Nandurbar
- 2G] Sau. Latabai Ramesh Chaudhari
Age : 53 years, Occu.: Household,
R/o. Jai Hind Colony,
Near Rana Pratap School,
Deopur, Dhule, Dist. Dhule
- 2H] Sau. Urmila Suresh Chaudhari
Age : 45 years, Occu. Household,
R/o. Lane No.6, Near Kumbhar Khunt,
Opp. Tukaram Vyayam Shala,
Dhule
- .. Respondents

Mr. Ameya N. Sabnis, Advocate h/f Mr. N.L. Choudhari, Advocate for the applicants (CRA/115/2016)

Mr. Mahesh Bhosale, Advocate h/f Mr. P.V. Barde, Advocate for the applicant (CRA/111/2016)

Mr. C.R. Deshpande, Advocate for respondent no.2 (CRA/115/2016) and for respondent no.1 (CRA/111/2016)

CORAM : SUNIL P. DESHMUKH, J.
DATE : 25-04-2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard learned counsel appearing for parties finally, by consent.
3. These two revision applications purport to take exception to decisions rendered hitherto by two courts, granting decree of eviction against the present applicants.
4. After hearing learned counsel for parties, it emerges that the suit properties are stated to have been let out to applicants' predecessors for running hotel business. After running business of hotel for some time, it appears that the applicants themselves have started running a liquor shop in the same. Around 1999, a notice

came to be issued from landlord to tenants, seeking payment of arrears of rent, and, eviction on several grounds, *inter-alia*, causing nuisance, carrying out permanent alteration to suit premises, landlord requiring suit premises reasonably and *bonafide* for himself and family members, non-user of suit premises for the purpose for which those were allowed to be occupied for a period of more than six months, tenant having several alternate accommodations available and for sub-letting. In the suit that ensued, predecessors of applicants had resisted claims of land and issues came to be framed by trial court viz.,

“ 1) *Whether defendant no. 1 had unlawfully sub-let the suit premises to defendant no. 2 ?*

2) *Whether the defendants are guilty of causing nuisance and annoyance ?*

3) *Whether suit premises have not been used without reasonable cause for the purpose they were let out for a period of six months ?*

4) *Whether defendant no.1 had caused permanent alteration to the structure of tenanted premises ?*

5) *Whether premises are reasonably and bonafide required by the landlord for himself or any person and to whom greater hardship would be caused ?*

6) *Whether reasonable accommodation is available to plaintiff or defendants ?*

7) *Whether defendant no. 1 committed default in making payment of rent to the plaintiff ?*

8) *Whether the plaintiff issued notice to the defendant ? ”*

Trial court after hearing parties and assessment of evidence, had found that landlord had proved all the grounds alleged against tenants for eviction, except that landlord could not prove causing permanent alteration to structure of tenanted premises without his consent and tenants causing nuisance. As such, suit was decreed by trial court directing handing over of vacant possession of suit property to the landlord and also directing determination of *mesne* profits under its judgment and decree dated 08-12-2014.

5. In the circumstances, the matter was taken in appeals pursuant to section 34 of the Maharashtra Rent Control Act, before district court by present applicants, bearing civil appeal nos. 9 of 2015 and 10 of 2015, which came to be decided by common judgment and order dated 30-04-2016 by district judge - 1, Shahada, dismissing both the appeals, confirming decree passed by trial court.

6. Appellate court framed similar points for determination as were the issues before trial court save issues with regard to permanent alteration and nuisance. Appellate court as well has found that all the grounds for eviction under the points for determination stand proved on assessment of evidence, and, after hearing the parties. The revision applicants are, as such, before this court, as stated hereinabove.

7. Learned counsel Mr. Sabnis appearing for the applicants passionately submits that evidence as appearing on record, to a large extent, would show that the grounds upon which eviction has been sought, can not be said to have been amply proved as are required. He submits that suit premises, according to averments in the plaint, were let out to the applicants' predecessor around 1970 and from 1981 onwards, the suit premises have been continuously used for running a licensed liquor shop. He submits that licence is hardly possible without the consent of landlord and change of user without consent of the landlord being pressed into service for eviction, has no basis. He submits that 18 years down after the premises were being used for the liquor shop, notice for the first time, came to be issued in 1999.

8. He submits that even cause about sub-letting has no basis, for the suit premises are in occupation of wards of original

tenant who are running the business. This aspect as well has not been properly considered. He submits that in the face of such an emerging position about the relationship *inter-se* amongst the persons in occupation, it cannot be said that ground can be said to be proved about sub-letting.

9. He submits that rent in respect of suit premises has been duly and regularly paid, yet, two courts hitherto have erroneously observed that there is default in payment of rent. For said purpose, he purports to refer to certain statements as would be appearing in the cross-examination of the plaintiff by the defendant, which according to him, evince that the tenants are not sure about the tenancy from month to month or for there had been a practice of tendering rent regularly. According to him, there are admissions about rent being tendered and accepted by the landlord. He, thus, urges to overturn the decisions thus far rendered by the two courts and allow the revision applications.

10. Countering aforesaid submissions, learned counsel for respondent Mr. C.R. Deshpande contends that on the assessment of evidence, as has been adduced on either side, two courts have appreciated that almost all the grounds of eviction as have been taken in the suit, stood proved save and except nuisance and permanent alteration. These are questions of facts and hardly

amenable for re-examination in revisional jurisdiction unless it is such a case that jurisdiction vested in the court remains to be exercised or for that matter, there has been exercise of jurisdiction beyond precincts of Maharashtra Rent Control Act or for that matter, there subsists any material irregularity in passing the orders hitherto.

11. He submits that the findings as are recorded by the courts are concurrent and unimpeachable. Stray statements, as are contended to be appearing in the cross-examination by the defendant of the plaintiff, would not tilt the scale in favour of the applicants at all. He submits that the stray statements will have to be appreciated in the context of the form in which the questions had been asked, and, had been answered. Over and above this, the entire evidence has been appreciated and scanned, and, according to him, evidence firmly establishes that there has been default in payment of rent, the landlord requires the suit premises bonafide and comparatively hardship would be suffered more by landlord than the tenant. He purports to point out enormous properties which are contended to be possessed by tenants in the city and that they have been running several other businesses, and, have alternate accommodation easily available. He, therefore, submits that there is no substance in the revision applications, and, deserve to be dismissed in *limine*.

12. While submissions as aforesaid have been so advanced, keeping at the back of the mind, eviction is possible on any one of the grounds for eviction taken by the plaintiff, for the purpose of decision in the revision applications, the ground of default may be pertinent to be referred to.

13. It is an admitted position that, in 1999, the landlord had issued notice to the tenant seeking arrears of rent and eviction on several grounds. The notice came to be replied by the tenants on 05-10-2001 with tender of amount of rent for the period of 15 months upto end of January, 2001. It does not appear that while the purported reply to the notice of 1999 was being issued in October, 2001, there had been tender of rent from February, 2001 to October, 2001 alongwith the reply nor it does appear that while the suit had been instituted, there has been payment of arrears of rent alongwith 15% interest, as is required under section 15 of the Maharashtra Rent Control Act. Further, although, it is being contended that there had been regular tender of rent during the suit, yet, the position appears to be that, such contention, the applicants have not been able to prove with any material evidence. On the contrary, two courts have appreciated during the litigation which had been initiated in 2002, tender of payment for specific period from 2010 to 2012, had been for the first time sought permission about, in 2012. The courts have further observed that there does not appear to be any

tender of rent during the litigation for the period from 2002 to 2010. Trial court in this respect, has observed in paragraph no. 41, reading, thus,

“ 41. Apart from the inheritance of tenancy the defendants made default in payment of rent in court after institution of suit also. The defendants tried to take the protection of Rent Act, by depositing the rent of years together. The conduct of defendants is not ready and willing to deposit the rent regularly of suit property. Moreover, the defendants has not prayed for depositing the amount of interest @ 15% p/a on rent as per the provision of Rent Act. Therefore, I am of the opinion that, the defendants had committed the willful default for payment rent. Hence, I have recorded my findings as to issue nos. 8 & 9 in affirmative. ”

and the appellate court has quite elaborately observed, as would emerge from paragraphs no. 42 and 44, reading, thus,

“ As to point No.6 :-

42] The plaintiff had issued notice dated 05-04-1999 stating that defendant No.1 has committed willful default in making payment of rent. He has not paid the rent from 18 months up to 31-05-1999. By issuing notice dated 24-09-2009 plaintiff has contended that after issuing the notice, he has paid rent upto October 2000 and since November, 2000 the defendant No.1 has not paid any rent and he is willful defaulter. Admittedly, defendant No.1 has received the notice and replied the notice by reply dated 05-10-2001 stating that he had sent rent by money order from 1, November 2000 to 31

January 2001 on 5/10/2001. According to defendants they are ready and willing to pay the rent and they have also paid the rent but the plaintiff has refused to accept the rent and therefore they have sent rent by money order. It appears that after filing of the suit first time the defendant No.2 has filed application vide Exh.189 on 25/10/2012 for depositing the rent amount from 1st March, 2010 to 31st December, 2012 and permission was granted to deposit the said amount. Thereafter, the defendant No.2 made application Exh.196 on 14/02/2013 for depositing the rent amount from January 2013 to December 2014 and as per the objection of plaintiff the learned Trial Court has kept the application pending for decision alongwith the suit. From the record it appears that it is the specific contention of the plaintiff that the defendant No.1 has made willful default in paying the rent. It appears that the defendant No.1 has not deposited the rent amount after filing of the suit within a period of 90 days from the date of service of summons together with simple interest on the amount of arrears @ 15% per annum as per the provisions of Section 15(3) of the Rent Act. From the applications given by the defendant No.2 itself it shows that after filing of the suit also the defendant has not paid or deposited the rent month to month continuously. The defendants have not produced money orders receipts to show that they have continuously paid month to month rent to the plaintiff and even during pendency of the suit the defendant have not paid month to month rent as per the provisions of Section 15 of the Act. The defendant No.1 and 2 were served with suit summons vide Exh.5 on 25-06-2002. The defendant No.1 has not paid the arrears of rent with simple interest at the rate of 15% per annum within the period of 90 days. The

defendants have not produced the receipts of money order before the learned Trial Court showing that he has continuously paid the rent. Even on perusal of copies of receipts of money orders produced in this appeal it shows that the defendant No.1 or 2 had not paid the rent regularly month to month. It appears that first time the application was filed for depositing the rent on 25-10-2012 vide Exh.189 from 1st March, 2010 to 31st December, 2012. It is pertinent to note that in the cross examination of defendant No.2 he has admitted that he has not personally paid the rent and his father was looking after the said work. He has admitted that before filing application Exh.189 he has not paid the rent to the plaintiff on every month or deposited the rent in the Court. Defendant No.5 has also deposed that he had no concern with paying rent to the plaintiff. He has admitted that he had not sent education cess to the plaintiff by money order. He has deposed that he cannot tell as to what compliance has been made by him for paying the rent after filing of the suit. He has deposed that his brother defendant No.2 was responsible to pay the rent. Considering the record of the case as well as the admissions of defendant No.2 and defendant No.5 it appears that after filing of the suit the defendant No.1 or defendant No.2 has not paid the arrears of rent within 90 days with simple interest at the rate of 15% per annum in the court. The applications made by defendant No.2 itself goes to show that the defendant No.1 was a willful defaulter.

44] The suit came to be filed on 25-02-2002. The defendant No.1 and 2 had replied the notice on 05-10-2001. Thus, the suit was filed after 90 days period of the receipt of

notice by defendant No.1. The restriction of stipulated period of 90 days is for the filing of the suit within 90 days of the notice under Section 15(2) of the Act. There is no bar for filing the suit after statutory period of 90 days of the notice. Merely because in the notice period of 90 days is not mentioned but the period of 90 days has been observed for filing the suit, it cannot be said that the notice issued by the plaintiff is illegal. The record clearly goes to show that the defendant No.1 who was tenant in the suit premises had not deposited the rent amount as provided under Section 15(3) of the Act and thereafter defendants have not deposited or paid the rent of the suit premises regularly month to month. The defendants have not produced any convincing evidence that they have regularly paid the rent by sending money orders month to month. Therefore, I am of the view that the defendants have made willful default in payment of rent. The conduct of the defendant does not show that they were continuously ready and willing to pay or deposit the rent amount and they have paid or deposited the rent month to month regularly and observed the other conditions of tenancy. Hence point No. 6 is answered accordingly. ”

14. The findings so recorded and the observations as have been made are concurrent and do not appear to be in any way away from the facts pleaded, and, the evidence on record.

15. In the circumstances, as observed hereinabove, there does not appear any substance in the contentions in respect of

above. Civil revision applications, as such, stand dismissed.

16. Rule stands discharged.

[SUNIL P. DESHMUKH]
JUDGE

arp/