

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8096 OF 2016

Shri Jay @ Jayprakash Shamsundarji
Mandora, Age 66 years, Occ. Business,
R/o Final Plot No.9, T.P. Scheme No.2,
174, "Rajdeep Building", 2nd Floor,
Visanji Nagar, Jilha Peth, Jalgaon. ..Petitioner

Versus

Shri Nikhil Suresh Chandiwal,
Age 31 years, Occupation Business,
R/o R/o Final Plot No.9, T.P. Scheme No.2,
174, "Rajdeep Building", 2nd Floor,
Visanji Nagar, Jilha Peth, Jalgaon. ..Respondent

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Advocate for Petitioner : Shri Navandar Manish N.
Advocate for Respondent : Shri Deshmukh B.S.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 11, 2017
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner has challenged an interlocutory order dated 21.7.2016, by which, the petitioner has been directed to pay interim standard rent at the rate of Rs.8,000/- per month to the respondent in respect of the suit property, with effect from 1.1.2010 till the final disposal of the main application.

5. I have heard the learned Advocates for the respective sides at length and have gone through the petition paper book with their assistance.

6. The petitioner submits that he is the tenant of the suit premises from 1971. The residential accommodation, which is the rented premises, consists of one hall, one living room, one bed room, one kitchen and one sanitary block. Initially the rent paid was at the rate of Rs.150/- per month, inclusive of all municipal taxes. Subsequently, the rent was enhanced to Rs.228/- per month and then to Rs.400/- per month. It is stated that the said premises were transferred by the landlord in his wife's name during his life time.

7. The respondent has made a claim that the whole building inclusive of the rented premises was purchased on 17.10.2012. A consideration of Rs. 48,50,000/- was paid by the respondent to

the original landlord. Thereafter, the new landlord claimed rent at the rate of Rs.15,437/- per month and also claimed arrears of Rs.4,94,000/- vide notice dated 11.8.2015. This prompted the petitioner to prefer Civil Misc. Application No.339 of 2015.

8. It is undisputed that the petitioner filed application Exhibit 5, praying for fixation of the standard rent. The respondent submitted its written say and indicated that the premises were in the heart of the city and was surrounded by the commercial establishments and a market. It was also brought on record that the said premises and the total building of about 395 sq. meters of constructed area was purchased at the price of Rs. 48,50,000/-. After considering the submissions of the learned Advocates and upon taking into account the prime location of the building as well as the ever increasing municipal taxes, the trial Court has passed an interlocutory order fixing the interim standard rent at the rate of Rs.8,000/- per month, inclusive of the municipal taxes.

9. The petitioner has placed reliance upon Section 8(3) of the Maharashtra Rent Control Act ("the said Act") and has specifically relied upon Section 7(14)(b)(ii) to contend that there can be an increase of only 5 per cent in the rent, if such

premises have been let out before 1.10.1987.

10. In so far as the reliance of the petitioner on Section 8 is concerned, it is with regard to the jurisdiction of the Court in fixing the standard rent. It was on account of this provision that the petitioner had moved an application praying for the fixation of interim standard rent till the main application was decided.

11. The reliance of the petitioner on Clause (ii) below sub-section (b) of sub-section (14), is misplaced. Section 7(14)(a) defines 'standard rent'. Sub-clause (b) deals with a situation where 'standard rent' or 'fair rent' is not fixed and then subject to the provisions of Sections 6 and 8, the rate of the rent and increases have to be computed.

12. It is obvious that while fixing the interim 'standard rent' the Court is also required to consider the passage of time, growing costs and ever increasing municipal taxes. The claim of the petitioner that since rent of Rs.400/- was lastly paid in 2009, the trial Court should have enhanced the rent by 5 per cent only, while fixing the interim standard rent, can surely be said to be a fallacious submission. The municipal taxes have grown manifold times and so have the prices of amenities. It would be a mockery

to fix interim standard rent by adding 5 per cent of Rs.400/-, which would amount to an increase of Rs.20/- for a flat which has four rooms and is in the heart of the city adjacent to a market and surrounded by a commercial establishments. The landlord would not be able to pay even the municipal taxes, out of such a rent.

13. Considering the above, I find that the trial Court has pragmatically granted interim standard rent at the rate of Rs.8,000/- per month, inclusive of taxes. The said order cannot be termed as being perverse or erroneous. Considering the law laid down by the Honourable Apex Court in the matters of Syed Yakoob Vs. K.S. Radhakrishnan and others [AIR 1964 SC 447] and Surya Dev Rai Vs. Ram Chander Rai [(2003) 6 SCC 682], merely because a second view is possible or a different view could be taken and that too with regard to an interlocutory order, no interference is permitted.

14. As such, this petition being devoid of merits is dismissed. Rule is discharged.

15. At this juncture, learned counsel for the petitioner submits that he is willing to deposit 'standard rent' at the rate of Rs.400/-

per month and, therefore, this order may be stayed.

16. Learned counsel for the respondent submits that Rs.400/- has no value today and as such, occupancy of a flat of the size of which is on record, the landlord will be unable to pay even the municipal taxes.

17. I called upon the learned counsel to make a statement as to whether he would deposit the arrears of the interim standard rent fixed by the Court. He submits he cannot make such a statement. Considering this situation, the request for staying this order is rejected.

(RAVINDRA V. GHUGE, J.)

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