

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

CIVIL REVISION APPLICATION NO. 5 OF 2017
(Converted from Writ Petition No. 983 of 2015)

Rajaram s/o Ganu Tayade,
Age 60 years, occup. Retired,
R/o House No. 4/372, Timber Market,
Bhusawal, Tal. Bhusawal, .. Applicant /
District Jalgaon Orig. Defendant

versus

Ramdas s/o Hajarimal Pasi,
Age 52 years, occup. Business,
R/o Bhagwati Saw Mill,
Timber Market, Bhusawal, .. Respondent/
Tal. Bhusawal, Dist. Jalgaon Orig. Plaintiff

Mr. N. B. Patekar, Advocate h/f Mr. P. R. Katneshwarkar,
Advocate for applicant

Mr. S. S. Patil, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.
DATE : 15th March, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned
counsel for the parties finally by consent.

2. This revision is by the tenant-defendant against the eviction decree passed by the trial court in regular civil suit no. 174 of 2003 and confirmed by appellate court in regular civil appeal no. 319 of 2014, on 08-09-2011 and 13-11-2014 respectively.

3. Shorn off unnecessary factual details, suffice it to refer to that respondent - plaintiff had sought eviction of applicant - defendant on various grounds, *inter alia*, making default in payment of rent a ground referable to section 15 of the Maharashtra Rent Control Act, 1999 ("The Act"). Other grounds viz; bonafide requirement of landlord of the tenanted premises, nuisance although were urged, it appears, respondent had not been able to establish said grounds. Both the courts have, however, concurrently found that since 01-08-1975 onwards till institution of proceedings and even thereafter, tenant had defaulted payment of rent. Though it has been contended on behalf of the applicant that till 1999 earlier landlord was receiving rent, after sale of property by him to present respondent, an attornment as required had not taken place, defendant - applicant had denied the fact of purchase of suit property by present respondent and thus his right to recover arrears of rent for want of knowledge. The applicant-defendant had further pleaded that he had paid rent

regularly to earlier owner till 1999 and thereafter since the owner had refused to accept the same, rent was being sent by money order to the owner. It has been denied by the applicant – defendant, that notice referable to section 15 (2) of the Act had been issued to him.

4. While this was being pleaded, the courts have found that besides the words, the applicant – defendant had not led any evidence depicting payment of rent for earlier period from 1975 onwards till 1999 and further tender of payment by money order after 1999. The courts have considered that even after notice, there had been no tender of rent to present respondent nor the arrears of rent were deposited in the court after the suit summons were served upon the defendant – tenant along with interest within prescribed period stipulated under section 15 (3) of the Act. Aforesaid apart, the appellate court has also recorded that even during pendency of litigation, tender of rent had not been regular.

5. Learned counsel for the applicant purports to refer to that as a matter of fact, the appellate court has observed thus in paragraphs no. 11, 12 and 13.

" 11 It reveals from the findings given by the learned trial court, that the appellant-defendant failed to adduce convincing evidence, on point of regular rent payment. He has neither produced

documentary proof nor adduced supporting oral evidence. Therefore, mere denial on part of appellant -defendant regarding his conduct of willful default is not sufficient, to accept his defence.

12 It reveals from the pleadings and the evidence produced on record that, that there are two parts of willful default, alleged to be committed by the appellant-defendant, firstly between 1975 to 1999 and later on after 1999 till issuance of termination notice and, subsequently, during the pendency of suit. It reveals from the evidence and documentary proof, that appellant-defendant failed to prove payment of rent to the earlier owner with positive evidence. Moreover, on receiving suit summons, the appellant-defendant failed to pay the arrears of rent in the court, within the stipulated period of 90 days. The learned trial court has calculated the conduct of the defendant correctly. It is true the delay is cause of the meager period of 6-7 days and the learned counsel Smt. Acharya attacked on this hyper technical attitude of the learned civil court.

13 However, the opportunity of payment of arrears of rent to avoid the label of willful defaulter, is to be availed promptly on receiving notice, by the defaulter tenant to protect his right of tenancy. In the present case, the appellant-defendant has tried to deny the service of suit summons and, subsequently, admitted the same, during the course of cross examination. Such conduct of the defaulter tenant cannot be viewed leniently to condone the delay by extending time for payment of arrears of rent. The learned counsel Mr. Tiwari has rightly pointed out repeated intervals of 7 to 8 months in depositing the arrears of rent. This conduct of the appellant-defendant is rightly considered by the learned civil court and, therefore, the findings of the trial court while answering issues

No. 1 and 2, deciding the appellant-defendant as willful defaulter need not be interfered. I find no illegality, and any kind of perverseness in considering the aspect of 'willful default' on the part of appellant-defendant. Hence, I answer points no. 1 and 2 in negative. "

6. Having regard to aforesaid, learned counsel for the respondent Mr. Patil contends that may be there is no specific reference by the appellate court to the ground about money order having been tendered and exhibited yet, that hardly would affect the decree of eviction granted by the courts. He submits that it is not at all case of the applicant that payment which has been tendered after suit summons had been served had been within prescribed stipulation of 90 days nor it is the case of the applicant that arrears of rent have been deposited with interest at the rate of 15 per cent per annum then due. What had been tendered, was merely rent for three years period. Further, it is not the case at all of the applicant that he continued to pay or deposit rent regularly during pendency of litigation, He, therefore, submits that the findings recorded by the two courts are not only based on appreciation of evidence but, those are substantiated even by evidence of the applicant himself. He submits, applicant had tried to deny even service of suit summons, however, subsequently admitted the same. The conduct of the applicant has been

dubious all through and as such no credence be given to the submissions advanced on behalf of the applicant.

7. Learned counsel for respondent purports to support his submissions to uphold the decree of eviction, by referring to a decision of the supreme court in the case of *Usufbhai Noormohammed Jodhpurwala vs. Mohammed Sabir Ibrahim Bayavarwala* reported in (2005) 6 SCC 526, putting emphasis particularly on head note reading thus :

" If there is statutory default or neglect on the part of the tenant, whatever may be its cause, the landlord acquires a right under Section 12(3)(a) of the 1947 Act to get a decree for eviction. But where the conditions of section 12(3)(a) of the 1947 Act are not satisfied, there is a further opportunity given to the tenant to protect himself against eviction. He can comply with the conditions set out in Section 12(3)(b) and defeat the landlord's claim for eviction. If, however, he does not fulfill those conditions, he cannot claim the protection of Section 12(3)(b) and in that event, there being no other protection available to him, a decree for eviction would have to go against him. Section 12(3)(b) of the 1947 Act does not create any discretionary jurisdiction in the court. It provides protection to the tenant on certain conditions and these conditions have to be strictly observed by the tenant who seeks the benefit of the section. If the statutory provisions do not go far enough to relieve the hardship of the tenant the remedy lies with the legislature. It is not in the hands of courts. "

8. He also relies on decision of the learned single judge at Nagpur Bench in the case of *Prabhakar Venkobaji Manekar vs. Surendra Dinanath Sharma*, reported in 2015 (4) Mh.L.J. 351.

9. In the present matter, having regard to that indisputably, tender of arrears of rent has been after expiry of stipulated period, may be within a week or two after expiry of period, yet it emerges that tender had only been in respect of past three years and that too without addition of interest as stipulated under the provisions. It further emerges on record that tenant had faltered in discharging his obligation of regular payment of rent during litigation.

10. In the circumstances, it can hardly be said that the matter calls for exercise of revisional powers. Civil revision application as such is not being entertained and is dismissed.

SUNIL P. DESHMUKH,
JUDGE

pnd