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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6396 OF 1996**

**SHIRAZ AHAMAD S/O MUMTAZ
AHAMAD**

Adult, Occupation: Business,
residing at M.H. No. 421, Khan Compound,
Nagaon, Bhiwandi, District Thane.

...PETITIONER

Versus

RASHID KHAN S/O YUSUF KHAN, since
deceased through legal heirs:

- 1a. ASIF RASHID KHAN**,
Age 52 years, Occupation: Business
- 1b. ARIF RASHID KHAN**,
Age 42 years, Occupation: Business
- 1c. KAUSAR SABA ABDUL HASIB
KHAN**,
Age 40 years, Housewife.
- 1d. TANVIR NAZ MEHER ALAM**,
Age 30 years, Housewife,
All Residing at Khan Compound,
Nagaon Bhiwandi, District Thane

...RESPONDENTS

APPEARANCES:

Ms Gauri Godse, *for the Petitioner.*

Mr Piyush Shah, *for Respondent No. 1.*

CORAM: G.S. PATEL, J
DATED: 3rd November 2017

ORAL JUDGMENT:-

1. The petition was admitted on 13th January 1997. The petitioner is the original defendant/tenant. The respondent is the landlord. The premises in question is Room No. 8, Municipal House No. 421 at Nagaon, Bhiwandi. The plaintiff/respondent filed Regular Civil Suit No. 340 of 1984 against the petitioner/defendant before the Civil Judge Junior Division, Bhiwandi seeking possession on the ground of unpaid arrears of rent. The defendant contested the suit. He filed a written statement and, within one month, the statutory period provided, also filed an application for fixation of standard rent. This was done within 30 days from the date of receipt of the notice. The Trial Court framed issues and considered the evidence. After an elaborate judgment on 28th April 1989, it partly decreed the suit for the claim of arrears of rent and permitted increases for the period 1st April 1983 to 31st March 1984. It also fixed the standard rent at Rs 30/- per month plus permitted increases at Rs 4/- per month. However, it dismissed the suit to the extent of the claim for possession.

2. The landlord appealed, and by its impugned order dated 11th October 1996 the Appeal Court reversed the Trial Court. It allowed the appeal and directed delivery of possession to the plaintiff/respondent within two months.

3. In my view and having carefully considered the material on record, the impugned order of the Appeal Court cannot be sustained. On the material before it, it was not possible for the Appeal Court to arrive at a conclusion that it did, viz., that because “the defendant did not pay the rent regularly as and when accrued, but paid the same after the intervals of 3 to 4 months”, therefore there was sufficient ground to pass a decree of eviction. The Appeal Court also said that the irregularity in payment was material but the plaintiff’s acceptance of the rent at these irregular intervals was completely inconsequential. That cannot be.

4. The Appeal Court relied on a decision of the Supreme Court in *Mranalini B Shah & Anr v Papalal Mohanlal Shah*.¹ In that decision the word “regularly” under Section 13(3)(b) was held to mean not at irregular intervals. What the Appeal Court failed to notice was the decision of the three-Judge Bench of the Supreme Court in *Mohan Laxman Hede v Noormohamed Adam Shaikh*.² In that decision, *Mranalini Shah*’s case is considered in paragraph 6. The exact portion relied upon by the Appeal Court was considered. What the Larger Bench in *Mohan Laxman Hede* says is that regularity does not mean punctuality, clock-like precision and exactitude but reasonable conformity, and substantial proximity to the sequence of times or intervals at which the rent was due.

5. Now it so happens that the petitioner has been depositing with some punctuality though perhaps irregularity in the Trial Court. In fact, as Ms Godse for the petitioner points out, there is

1 AIR 1980 SC 954.

2 AIR 1988 SC 1111.

more than one occasion when he has paid in advance and currently seems to be fully covered till 2022.

6. Having regard to these circumstances, it is not possible to sustain the impugned decision. The petition succeeds. Rule is made absolute in terms of prayer clause (a).

7. The petition is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)