

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6841 OF 2014

M/s. Lomanya Sahakari Bhandar Ltd

...Petitioners

Versus

Morarji Hariram And Ors

...Respondents

Mr.Kuldeep U.Nikam, for the Petitioners.

Mr.Sanjay Jain with Ms.Sarika Mehta i/b. L.J.Law, for Respondent nos.1A to 1C.

Mr.Ganesh Ambekar i/b. M/s.Thakore Jariwala & Associates, for Respondent Nos.2(A) to 2(B).

CORAM : G. S. KULKARNI, J.**DATE : DECEMBER 19, 2017**

PC.:

Heard the learned Counsel for the parties. This petition impugns the judgment and order dated 4 March 2014 passed by the appellate bench of the Small Causes Court at Bombay in Appeal No.322 of 2008 which confirms the eviction decree as passed against the petitioners/tenants on the ground of arrears of rent, as passed by the learned Judge of the Small Causes Court in suit being R.A.E. & R.Suit No.547/950 of 2001. There is also a challenge raised to the order dated 4 March 2014 by which the petitioners' revision application No.138 of 2008 challenging the order passed by the learned trial Judge on an application

below 'Exhibit 16' seeking setting aside of an order directing closure of evidence, has been rejected by the appellate bench.

2. There are concurrent findings of facts by the courts below against the petitioners who suffer a decree on the ground of arrears of rent. The learned trial Judge considering the evidence on record has clearly observed that the petitioners were in arrears of rent as also the mandatory compliance required under the provisions of Sections 15(2) and 15(3) of the Maharashtra Rent Control Act, 1999 (for short 'the Rent Act') namely either to remit the rent within 90 days of a demand notice of the landlord or deposit the same in the Court within 90 days from the receipt of the suit summons, was not complied with by the petitioners and thus, it is held that respondents-plaintiffs need to succeed in their suit on the ground of arrears of rent. These findings are confirmed by the appellate bench in the impugned judgment and order.

3. Learned Counsel for the petitioners taking exception to the orders passed by the appellate bench would submit that there was breach of principles of natural justice inasmuch as before the trial Court, the petitioners were prevented from cross examining the witness of the respondents-plaintiffs. It is contended that closure of evidence itself was not acceptable to the petitioners-tenants and thus the petitioners had

moved a necessary application in that regard. It is submitted that the application below Exhibit 16 as filed by the petitioners for the said purpose, has been dismissed on the same day on which the suit came to be decreed. It is the petitioners' submission that such a course of action ought not to have been adopted by the learned trial Judge. It is submitted that this aspect has also been overlooked by the appellate bench inasmuch as the revision application filed by the petitioners assailing the orders on the application of the petitioners below Exhibit 16, has also been decided on the day the appeal came to be decided and the judgment thereon was pronounced. Thus the contention in short is that if a proper opportunity was to be granted to the petitioners to lead evidence and/or to cross examine the witnesses of the respondents/plaintiffs, it would have met the ends of justice. Learned Counsel for the petitioners submits that by leading such evidence, the petitioners could have demonstrated that they were not in arrears of rent and that the rent was deposited in the Court, and to some extent there was a compliance of the provisions of Section 15(3) of the Rent Act. The other submission is that in pursuance of the subsequent order passed by the Court (which admittedly was beyond the prescribed period of 90 days as Section 15(3) would provide), the petitioners have deposited the amount of rent, and thus in such a situation the eviction decree could not have been passed against the petitioners.

4. On the other hand Mr.Jain, learned Counsel for the respondents 1A to 1C would submit that the concurrent findings as arrived by the Courts below are clearly on evidence. Mr.Jain submits that it is a clear case where the petitioners have defaulted on two counts, firstly in not complying with the obligation and the protection Section 15(2) of the Act would confer on the petitioners-tenant namely to remit the amount of arrears of rent within 90 days of the receipt of the landlord's notice, and secondly having not deposited the arrears of rent within 90 days from receipt of the suit summons as Section 15(3) of the Act would provide and therefore, the petitioners clearly lost the protection of the Act, and the decree granted by the learned trial Judge cannot be faulted. Mr.Jain also pointed out the relevant averments as made in the plaint in regard to arrears of rent as also the averments in the written statement how the petitioners on its own showing is in arrears of rent. Mr.Jain referring to the pleadings and the evidence, would submit that perusal of the written statement was sufficient to show that the petitioners were in arrears of rent. Mr.Jain would submit that even the ground as urged on behalf of the petitioners that the opportunity of cross examination was denied to the petitioners and thus there is a breach of principles of natural justice before the trial Court or before the appellate Court, is misconceived. It is submitted that the conduct of the petitioners is clear from the record itself that the petitioners were negligent. It is also pointed out that even at an

earlier point of time the Court had an occasion to consider the situation of the defendant not proceeding in the matter and trial Court had closed evidence in the suit. However, again an opportunity was granted to the petitioners by recalling the earlier order and proceeding with the evidence in the suit. It is thus submitted that the findings which are recorded by both the Courts below are on the basis of evidence and thus ought not to be interfered. As regards the impugned order dismissing the revision application filed by the petitioners, Mr.Jain would submit that throughout the revision application was listed alongwith the appeal before the appellate bench. It is submitted that at no point of time an application was moved on behalf of the petitioners that the said application be independently heard prior to the decision in the appeal. He therefore, submits that the petition ought not to be entertained.

5. Having heard the learned Counsel for the parties, I find much substance in the submissions as urged on behalf of the respondents. A perusal of the orders passed by both the Courts below clearly indicate that the petitioners were in arrears of rent. It is also quite clear that the protection which Sections 15(2) and 15(3) of the Rent Act as conferred on the petitioners as tenant also was not availed due to non deposit of arrears of rent within ninety days of receipt of the eventualities. Contemplated by the said provisions namely to make payment of the arrears of rent within

90 days of the receipt of the landlord's notice demanding arrears and secondly if not so paid to deposit the same in the Court within 90 days of the receipt of the suit summons. Further a perusal of the written statement as rightly pointed out by Mr.Jain also would indicate that it is a vague assertion on the part of the petitioners and petitioners were not in arrears of rent. There are no details of the payment of rent in respect of total arrears which are claimed for the period 1994-2000, however an attempt is tried to be made by the petitioners raising a plea that the amounts came to be deposited however without any evidence in that regard to show that the amount was actually deposited in respect of the disputed period and as required by law. There are clear findings of fact in this regard of the courts below. I do not find any perversity in the observations so as to grant indulgence in the limited jurisdiction of this Court under Article 227 of the Constitution. As regards the contention as urged on behalf of the petitioners in regard to the breach of principles of natural justice, I am not persuaded to accept this submission. This for the reason that the conduct of the petitioners was quite negligent in defending the suit as the record indicates. Further even if an opportunity was to be granted by the Court, it appears that there was no foundation to accept such a plea and turn back the clock after the suit came to be decreed on clear evidence on record of the petitioners being in arrears of rent. The appellate bench of the Small Causes Court has appropriately considered the plea in rejecting the revision

application of the petitioners and to refuse to reopen the matter. Surely no case is made out to interfere with the impugned orders passed by the courts below.

6. The petition is devoid of merits. It is accordingly dismissed. No costs.

7. The petitioners are directed to hand over possession of the suit premises to the respondents within a period of ten weeks.

(G.S. KULKARNI, J.)