

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

WRIT PETITION NO. 322 OF 1995

Reshmabai w/o Sitaram Patil,
age : 45 yrs., Occu.: Labour
r/o Amalner, Juni Police Line,
Amalner, Taluka Amalner,
District : Jalgaon. **...Petitioner/Org.Defendant**

VERSUS

Ushabai w/o Prabhakar,
Age : 30 yrs., Occu. : Household
work, R/o Patware Housing Society,
Amalner, Taluka : Amalner,
District : Jalgaon. **... Respondent/Org.Plaintiff**

...
Advocate for the Petitioner : Shri B.R. Warma
Advocate for the Respondent : Shri R. M. Deshmukh

...
CORAM : RAVINDRA V. GHUGE, J.
DATED : 19th JULY, 2018.

...

ORAL JUDGMENT :

1. By this petition, the petitioner- original tenant is aggrieved by the judgment of the Trial Court dated 16/09/1985, by which, the Regular Civil Suit No. 158/1982 filed by the respondent landlady has been decreed on the ground of default in payment of rent and for bonafide use of the suit property. The petitioner is also aggrieved by the judgment dated 25/11/1994 delivered by the Appellate Court,

by which, Civil Appeal No. 393/1989 (old No. 295/1985) filed by this petitioner has been dismissed.

2. The petitioner has contended that she had occupied a small room admeasuring about 8 x 10 ft. bearing Town Planning No.179/1A. The rent agreed was @ Rs. 12 % per month. The original plaintiff purchased the suit property on 03/11/1981 when the petitioner was already in possession of the suit room. The petitioner contends that she was never informed about such sale transaction and there was no service of notice of attornment by the previous landlord or the present respondent.

3. The new landlady/respondent preferred RCS No. 158/1982 and the said suit was decreed by the Court on 16/09/1985. The petitioner/tenant, therefore, preferred her Appeal contending that the grounds on which the suit has been decreed, are unsustainable. The Trial Court has wrongly concluded that the tenant was in arrears of rent. Similarly, the Trial Court has erroneously concluded that the landlady required the tenanted premises for bonafide use.

4. The learned Advocate for the petitioner has strenuously submitted that the ground of bonafide use would not be available to the landlady for the reason that the petitioner was occupying the suit premises for a long duration. She was continuously making the payment of rent to the original landlord Shri Bhalerao. After the suit property was purchased by the plaintiff/respondent herein on 03/11/1981, a ground raising the need of bonafide requirement within 8 to 10 months, is unbelievable. A bonafide need would not occur suddenly when a new purchaser has purchased the tenanted property.

5. In so far as the default in the rent is concerned, the petitioner has taken a stand that there was no default as the rent was being regularly paid to the earlier landlord Shri Bhalerao. Unless the new landlady proves that the tenant was informed about the change in the landlord, there was no occasion for the tenant to stop paying the rent to the earlier landlord and commence the payment of rent to the new landlady so as to avoid be termed as being a defaulter.

6. The learned Advocate has drawn my attention to the 15 grounds formulated by him in the memo of the petition and has prayed that this petition be allowed and the impugned judgments of the Courts below, be quashed and set aside.

7. The learned Advocate for the respondent/landlady has vehemently opposed this petition. While supporting the impugned judgments, he submits that as the landlady was earlier residing in rented premises and was being evicted, she had no option, but to seek eviction of the tenant so as to be able to occupy her own property in which the petitioner was a tenant. It is for the landlady to establish the bonafide requirement of the property and the landlady has proved the said requirement by leading oral and documentary evidence before the Trial Court.

8. To the extent of the default in the payment of rent is concerned, the learned Advocate for the landlady submits that the petitioner has violated Section 12(3) of the Bombay Rent Act, 1947 which was applicable to the litigating sides at the relevant time. Neither did the petitioner pay the rent to the

original plaintiff, nor was the said rent deposited before the Trial Court as is expected to be done under Section 12(3) so as to entitle the tenant to the protection provided under Section 12 of the Bombay Rents, Hotel and Lodging House Rates, Control Act, 1947 (hereinafter referred to as 'the Bombay Rent Act').

9. I have perused the impugned judgments in the light of the submissions of the learned Advocates and I have gone through the record and proceedings of the Courts below, which are made available.

10. Since Section 12(3) of the Bombay Rent Act has been relied upon by the litigating sides, it needs mention that both the learned Advocates have carefully perused the R & P. After scanning the R & P, both submit that there is no evidence, either documentary or oral before the Trial Court to indicate that the tenant had paid the rent as is required under Section 12(3) at the stage as is provided. It is, therefore, conceded that the petitioner has not paid the rent to the landlady even before the Trial Court, which would have entitled her to the

protection under Section 12(3).

11. The thrust of the petitioner's submissions is that as she did not have the knowledge of any landlord stepping into the shoes of the earlier landlord, she continued to make the payment of rent to the earlier landlord Shri Bhalerao. Being oblivious of the sale of the suit property on 03/11/1981, by which, the plaintiff became the owner of the said property, no fault can be found with the tenant. There is no notice of attornment and hence this ground cannot be raised by the petitioner-landlady.

12. I find from the analysis of the evidence made by the Trial Court that there was a shortfall in the payment of the rent even to the earlier owner Shri Bhalerao. Lumpsum arrears for the period 01/09/1981 to 31/08/1982 were sought to be paid to Shri Bhalerao. He refused to accept the same as the suit property was already sold to another person, who is the present landlady.

13. In so far as the issue of notice to intimate the tenant of

the change of ownership of the suit property is concerned, the new landlady issued a notice to the tenant which is at Exhibit 10. The tenant refused to accept the said envelop containing the notice. The envelop was returned to the landlady with the endorsement that this petitioner has refused to accept the said envelop. After the evidence is brought on record, the petitioner could not establish that the notice was never issued to, much less accepted, by her. The Trial Court, therefore, arrived at a conclusion on the basis of oral and documentary evidence that such an envelop containing the notice was tried to be served upon this petitioner by the landlady and the petitioner refused to accept it. As such, it is proper service.

14. It was contended before the Trial Court by this petitioner that lump-sum rent was sought to be deposited in the Court as arrears. After perusing the R & P, the learned Advocate for the petitioner conceded that such rent amount intended to be paid to the landlady was never deposited in the Court. Consequentially, in my view, the Trial Court as well as the Appellate Court have rightly concluded that the plaintiff has not deposited the arrears of rent in the Court and hence, she

was disentitled to the protection provided under Section 12(3) of the Bombay Rent Act. This conclusion is squarely in tune with the judgment of the Full Bench of this Court in the matter of *Babulal s/o Fakirchand Agrawal Vs. Suresh Kedarnath Malpani and others passed in CRA No. 76/2010, dated 12/06/2017*.

15. As regards the bonafide requirement was concerned, the landlady has brought evidence on record to indicate that she was herself residing in a rented premises. Her elder son was about 14 years of age and was a school going boy. She was herself residing in a rented premises with her family, owned by one Shri Limba Laxman Patil and the husband of the landlady was paying a rent of Rs. 100/- per month. Her family was growing and she did not have any other place owned by her where she could reside without seeking eviction of this petitioner.

16. In view of the above and after hearing the learned Advocates, I called upon the petitioner- tenant to make a statement as to whether, she would prefer to vacate the suit

premises and conclude this litigation. The learned Advocate for the petitioner-tenant stated that the tenant would vacate the suit premises by the end of September-2018. Since I noticed that the month of August and September 2018 are festive months and fall in the rainy season, I called upon the learned Advocate for the landlady to state as to whether, the petitioner could be permitted to stay and occupy the premises and vacate the same on or before 31/10/2018, instead of 30/09/2018. The learned Advocate for the landlady agreed to the petitioner voluntarily vacating the suit premises on or before 31/10/2018.

17. In view of the above, this petition is dismissed. Rule is discharged.

18. The statement of the petitioner-tenant is recorded that she would vacate the suit premises on or before 31/10/2018. Until then, she shall ensure that no third party interest or encumbrances are created on the property and the property is kept peacefully without any damage to the respondent landlady.

19. Record and Proceedings shall be returned to the Trial Court.

(RAVINDRA V. GHUGE, J.)

shp/-