

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

WRIT PETITION NO. 813 of 1995

Daulatbi Hussain Sayyad,
age 57 years occupation labourer
R/o Kamathipura Zendi Gate, Ahmednagar
through her general power of attorney holder
Sayyad Rafik Hussain, age 42 years
occupation service R/o Kamthipura, Zendi gate,
Ahmednagar Taluka and District Ahmednagar ...**Petitioner**

VERSUS

1. Mahdav Gangaram, Yadav (Jadhav) (died)
through legal representatives:
- 1/A. Nigambabai Madhav Yadav,
age 65 years occupation household
- 1/B. Subhash Madhav Yadav,
age 40 years occupation business
- 1/C. Prakash Madhav Yadav,
age 35 years occupation fitter
- 1/D. Shobha D/o Madhav Yadav,
age 33 years occupation household
2. Vasantrao Hardasmal Hemchandani,
age 45 years occupation business
R/o Kamathipura, Zendi Gate, Ahmednagar. ...**Respondents**

Mr V.S. Bedre, Advocate for petitioner

*Mr R.S. Wani, Advocate, holding for Mr A.S. Bajaj, Advocate
for respondents No. 1/A to 1/D.*

CORAM : SUNIL P. DESHMUKH, J.

DATE : 23rd August, 2018

ORAL JUDGMENT :

1. Heard learned counsel for the parties.

2. Writ petitioner purports to take exception to eviction decree dated 29th November, 1988 passed by the learned II Joint Civil Judge (Junior Division), Ahmednagar, in regular civil suit No. 73 of 1981 and maintained by the 4th Additional District Judge, Ahmednagar, under his judgment and order dated 30th January, 1995 in regular civil appeal No. 328 of 1989 on the grounds of wilful default in payment of rent, property being required by landlord bonafide for personal use and tenant having ceased to occupy the premises. The trial as well as appellate court have concurred on commission of wilful default by petitioner-tenant and on that the premises being required bonafide and reasonably for occupation by respondent-landlord. The finding recorded by the appellate court, however, is divergent so far as issue of cessation of occupation of premises by petitioner-tenant.

3. Learned counsel Mr Bedre vehemently submits that evidence on record would not be said to be sufficient to prove commission of wilful default by petitioner. According to him, it has emerged from evidence that landlord has not been certain about arrears of rent and in such a case, non appearance of defendant No.1/petitioner as a witness is of no significance since the landlord had not been able to bring evidence giving credibility to alleged commission of wilful default by petitioner-tenant. He submits that basic principle in this respect about burden to be discharged would not be said to have been discharged. He submits that even ground

of bonafide and reasonable requirement of the premises by the landlord had not been subsisting on the date of the suit as would emerge, since the said ground has been set up under amendment application Exhibit - 29 in 1988. Such a ground for eviction allegedly occurring during the pendency of litigation would not be available for eviction of the tenant. He submits that appellate court has rightly discarded the ground for eviction about cessation of occupation of the premises by the petitioner.

4. On the other hand, learned counsel Mr Wani submits that while there are concurrent findings recorded on appreciation of evidence by the two courts in respect of commission of wilful default and premises being required bonafide and reasonably by respondent, exercise of extra ordinary powers of this court would be refrained from. In absence of any material depicting that findings reached and appreciation of facts and evidence being perverse, those would be impregnable. He submits that in the face of evidence available on record, submissions on behalf of the petitioner are of no significance, as it is sufficiently proved that there has been wilful default committed by the petitioner in payment of rent. Without accepting position that there has been any weakness, alleged so called weakness in the evidence of respondent-landlord in such a case, would not be of any significance for attending circumstances and evidence on record sufficiently shows that there has been commission of wilful default

by the tenant in making payment of rent. Learned counsel further refers to that evidence with regard to requirement of the premises by landlord being bonafide and reasonably has gone un rebutted. He submits that there is evidence on record to indicate that the tenant has not been residing in suit premises for over six months before institution of the suit. However, appellate court has refused to give decision thereon considering that it does not arise from the pleadings. He submits that, however, on other two grounds the decree has been sustained.

5. The two courts have considered that even after demand, petitioner has not paid rent within a month as required and the concerned record shows that payment has been tendered in the sums of Rs. 50/-, 75/-, and 100/- on 3rd January, 1981, 6th February, 1981 and 7th March, 1981 for a period from 1st November 1980 to 28th February, 1981. The courts have, although respondent-landlord had refused to accept money orders, appreciated that such tender of payment was not in compliance of requirement of section 12 of the Bombay Rent Act, after receipt of notice which is placed on record at Exhibit - 34 and further she had not availed of benefit of relief against against forfeiture of tenancy for non-payment of rent. The evidence does not give any room for presumption about readiness and willingness to pay the rent. The courts upon appreciation of evidence have held that the tenant had fallen in arrears of rent for more than six months on the date of

notice. The tenant has also not raised any dispute in respect of standard rent in order to support her contention about quantum of rent being demanded by the respondent-landlord.

6. It may have to be taken into account that subsequent to induction of other tenants, daughter of the landlord was required to be accommodated in her parents' i.e. landlord's house. As such, bonafide and reasonable requirement of the landlord had cropped up. That evidence as well has been appreciated by the two courts and findings have been recorded.

7. On perusal of the decisions, appreciation of evidence on the two grounds about tenant having committed wilful default in payment of rent and the landlord's bonafide and reasonable requirement, does not appear to be bad or for that matter is perverse. The courts have taken into account that there has been notice demanding arrears of rent. Evidence by the tenant, in fact, even corroborates the ground showing there had been no timely tender of rent and tenant had fallen in arrears of rent. There is no evidence with regard to payment of rent for the period for which demand had been made by the landlord in the notice. After induction of tenants, husband of daughter of landlord had died and said position has not been denied nor any other evidence has been given on behalf of the tenant in respect of same.

8. It is not a case wherein it can be said that appreciation

of evidence recorded by the court in respect of tenant having fallen in arrears is liable to be interfered with. So, is the case with regard to premises being required by the landlord.

9. In the circumstances, the decisions rendered by the courts hitherto appear to be proper, reasonable and not liable to be interfered with.

10. The writ petition, therefore, fails and is dismissed.

11. Rule stands discharged.

**(SUNIL P. DESHMUKH)
JUDGE.**

Madkar