

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3954 OF 1994

Rajasbai W/o Gaba Patil,
Age 59 years, Occu.: Household
work and Agriculture,
Resident of Amalner,
Tal. Amalner,
Dist. Jalgaon

.. Petitioner
(Orig. Plaintiff)

Versus

Late Gangaram Sampat Patil,
deceased heirs :
Chindhabai W/o Gangaram Patil,
since deceased, her name is
deleted and her legal Heirs are
as under :

1. Himmat Gangaram Patil,
Age 36 years, Occu.: Service
2. Gulab Gangaram Patil,
Age 29 years, Occu.: Labourer

Both residents of Amalner,
Taluka Amalner, District : Jalgaon

.. Respondents
(Orig. Defendants)

WITH
WRIT PETITION NO. 3962 OF 1994

Rajasbai W/o Gaba Patil,
Age 59 years, Occu.: Household
and Agriculture,
R/o Amalner, Tal. Amalner,
Dist. Jalgaon

.. Petitioner
(Orig. Plaintiff)

Versus

Late Gangaram Sampat Patil,
deceased heirs :
Chindhabai W/o Gangaram Patil,
D.H.,

1. Himmat Gangaram Patil,
Age 36 years, Occu.: Service
2. Gulab Gangaram Patil,
Age 29 years, Occu.: Labourer

Both R/o Amalner, Taluka Amalner,
District : Jalgaon

.. Respondents
(Orig. Defendants)

...
Mr. Girish Rane, Advocate h/f Mr. V.T. Choudhari, Advocate for
petitioner in both Writ Petitions
None present for respondents in both Writ Petitions though served
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 14-06-2018

ORAL JUDGMENT :

1. Writ petition no. 3954 of 1994 has been moved against dismissal of regular civil suit no. 166 of 1986 by trial court and maintained by appellate court in regular civil appeal no. 528 of 1989.
2. Under the decisions, the suit of the petitioners for eviction on the ground of willful default stands dismissed.
3. Writ petition no. 3962 of 1994 has been moved against decisions dated 09-06-1986 and 20-01-1994 by trial and revisional courts in the matter of fixation of standard rent.

4. Learned counsel for petitioners Mr. Girish Rane h/f Mr. V.T. Choudhari submits that approach of both the courts hitherto had been rather pedantic. While the evidence as appearing sufficiently bears that there had been default committed for the period alleged, however, for erroneous reasons, the suit has been dismissed.

5. Perusal of the decisions show that *albeit* the trial court has reasoned out the decision considering that evidence adduced on behalf of the plaintiff does not deserve consideration in view of the fact that the witness on behalf of the plaintiff does not seem to have been authorised to give deposition and evidence on behalf of the plaintiff. While doing so, the trial court had indeed adverted to that simultaneously, the defendants had been paying rent during the course of litigation regularly and in the circumstances, it could not be said that the tenant had willfully caused default in not paying the rent.

6. The appellate court, however, considered the evidence on record and found that there is no credible material made available on record on behalf of the plaintiff to lend credence to the contention that the rent agreed had been at the rate of Rs.50/- per month and the witness having stated that he used to sign the

diary maintained by the tenant in token of receipt of rent, however, there had been no effort whatsoever on behalf of the plaintiff to procure said evidence. In the face of situation, learned judge of the appellate court has observed that evidence by respondent that he has paid rent upto 10-10-1985 may have to be given its due. The court further found that although it has been contended by plaintiff that rent has been due from 01-05-1983, yet, for a long period thereafter, the plaintiff or for that matter, her witness had remained silent. There is no logical reason given for such delayed action in respect of default. The court further found that simultaneously in the proceedings upon an application by tenant for fixation of standard rent pursuant to the orders passed in those proceedings, the tenant had been depositing amount in court from time to time. Both the courts, as such, adjudged on evidence that plaintiff has failed to prove default and much less a willful one and the adjudication twice on the reasons, do not appear to be worthy of finding fault.

7. Learned counsel Mr. Rane submits that in revisional powers, the appellate court could not have reduced the rate of rent claimed by tenant and proved at the initial stage before the civil judge junior division, Amalner, wherein application of tenant had been rejected and standard rent of Rs.50/- had been considered to

be appropriate as claimed by landlord. Learned counsel submits that the court could not dabble with the rate in the revisional powers, since it had not been a court of appeal.

8. Although, it is being so submitted, looking at the reasons, particularly in paragraphs no. 9 and 10 of the judgment of appellate court, which takes stock of the situation, the factual and legal position, it does not appear that the submissions would carry any substance.

9. The writ petitions, therefore, are dismissed accordingly.

10. Rule stand discharged.

[SUNIL P. DESHMUKH]
JUDGE

arp/