

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.93 OF 2018
(Suresh Krushnaji Dasare, died, through LR's Vs.Latika Prabhakar
Kothawale and others)

Mr.R.R.Mantri, Advocate for the applicants.
Mr.P.R.Katneshwarkar h/f Mr.S.R.Andhale, Advocate for respondent
Nos.2 to 4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 15/06/2018

PER COURT :

1. The applicants are aggrieved by the judgment delivered by the Trial Court dated 06/05/2006 by which RCS No.424/1999, preferred by the landlord seeking eviction of the applicants, has been allowed. The applicants are also aggrieved by the judgment of the District Court dated 05/02/2018 by which Civil Appeal No.237/2006 filed by the applicants has been dismissed.

2. I have heard the learned Advocate for the applicants and the learned Advocates for the respondents, extensively. After the submissions concluded alongwith the rebuttal by the applicants and upon considering the judgments cited and the record before me, I expressed my view that I would be dismissing this civil revision

application for being devoid of merits. Learned Advocate for the applicants was called upon to state whether the applicants would file an individual affidavit stating as to what would be the period within which they would vacate the suit premises. Initially, learned Advocate for the petitioners stated that they would take 6 months to vacate the suit premises as they would have to search for an alternate accommodation. When called upon to file an undertaking affidavit, the learned Advocate for the applicants stated that the applicants may not agree to file an undertaking affidavit and may choose to assail this judgment. In this backdrop, I have dictated the order in open Court.

3. The contentions of the applicants can be summarized as under :-

[a] These applicants and their predecessors have occupied the suit premises from 1962. They have been paying rent regularly by money order from 03/08/1962 till 13/11/1990.

[b] Since the landlord made an oral statement in 1990 that the money order may not be sent and the rent may not be paid until demanded, the tenants stopped paying the rent by money order.

[c] A notice was issued by the landlord on 07/07/1999 which was received by the applicants on 19/07/1999.

[d] The suit was instituted on 13/08/1999 without waiting for one month to expire.

[e] The suit was not tenable in law.

- [f] The rent of the property was paid in cash regularly.
- [g] The plaintiff did not issue any receipt.
- [h] Section 12(2) of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 and Rules, 1948 has been violated by the landlord.
- [i] The rent for the unpaid period was deposited on 14/10/2004 before the Trial Court.
- [j] Rent for the further period till December 2006 was deposited in the Court.
- [k] Lumpsum rent used to be deposited in the Court during the trial for the block periods.
- [l] The judgment of the Full Bench of this Court in the matter of Babulal Fakirchand Agrawal Vs. Suresh Kedarnath Malpani and others [2017(4) Mh.L.J.406 : 2017(4) AIR Bom R 661] is not applicable to this case.
- [m] The rent was not paid by money order after November 1990 only because the landlord stated that rent need not be paid by money order.
- [n] The applicants were always willing and ready to pay the rent on regular basis.
- [o] The suit has been decreed on the ground of default in payment of rent.
- [p] Exhaustive grounds raised by the applicant were not considered by the Appellate Court.
- [q] Pleadings by the landlord in the suit were vague and no specific pleadings touching the notice dated 07/07/1999 have been put forth.
- [r] Specific denial is set out in the written statement.
- [s] Paragraph No.2 of the written statement filed by the

applicants would indicate that it was pleaded that the suit was not maintainable.

[t] In paragraph No.12 of the written statement, the notice was denied.

[u] Both the Lower Courts have failed to appreciate the specific defence and pleadings of the applicants and have delivered perverse and erroneous orders.

4. Learned Advocate appearing on behalf of the landlord has submitted as under :-

[a] After the notice of default in payment was issued on 07/07/1999, as the default continued, a suit was filed on 13/08/1999 before the Trial Court.

[b] After notice was issued to the tenant and an appearance was caused in the court, the rent was not deposited.

[c] The record reveals that the rent for the period Sept.1991 to July 1999 was deposited in the Trial Court by these applicants on 14/10/2004.

[d] For the period August 1999 to December 2006, the rent was deposited in the Court on 21/03/2006.

[e] Issues were cast on 02/09/2000 and the recording of oral evidence of the landlord commenced on 15/12/2000.

[f] Even after the trial commenced, the rent was not deposited though recording of oral evidence had commenced.

[g] There was no specific challenge to the notice through the written statement.

[h] There is not a single averment in the written statement that the notice issued on 07/07/1999 was received by the

tenant on 19/07/1999 and that Section 12(2) stood violated thereby rendering the suit untenable.

[i] Even in the appeal before the Appellate Court, the abovesaid ground was not specifically pleaded, except that a bald statement was made in the written statement that the suit is not maintainable.

5. Reliance is placed on the judgment of the Hon'ble Apex Court in the matter of Dharam Pal Vs. Harbans Singh [2006(9) SCC 216] wherein it has been concluded in paragraph No.8 that without a specific plea in the written statement as regards an objection to the validity or sufficiency of the notice, the Trial Court has rightly not framed an issue and no fault can be found with the judgment of the two Courts as well as of the High Court.

6. Reliance is placed on the judgment of the Full Bench of this Court in the matter of Babulal Fakirchand Agrawal Vs. Suresh Kedarnath Malpani and others [2017(4) AIR Bombay 661], in support of the contention that if the tenant fails to pay the rent regularly from the date of appearance and during the trial, he cannot be entitled to the protection that is normally granted to the tenant.

7. In the light of the above submissions of the learned Advocates

for the respective sides, I have considered the material placed before me. The judgment of the Appellate Court dated 05/02/2018 was challenged in this CRA filed on 27/03/2018 and this case is circulated for the first time by the applicant tenants today after facing an eviction notice which is to take effect from 18/06/2018.

8. In so far as the issue of insufficiency of the notice period is concerned, there is no dispute that the notice is dated 07/07/1999 and the suit has been instituted on 13/08/1999. There is no avernment in the written statement as to on what date, the tenant received the said notice. In the reply to the notice, it is stated that the said notice was received on 19/07/1999. It is a matter of circumspection as to what prevented the tenants from specifically pleading in the written statement that the notice suffers the completion of 30 days in relation to the date of filing of the suit. For the reasons known to the tenant, a specific pleading is not put forth that the suit is pre-mature and is not tenable on account of non expiration of 1 month after the notice has been served. In Dharam Pal (supra), the Hon'ble Apex Court has observed in paragraph No.8 as under :-

“8. Obviously for want of specific plea in the written statement, the trial court has not framed any issue reflecting an objection to

the validity or sufficiency of notice. The plea in the manner in which it is sought to be urged before us. The plea as to insufficiency of notice should be deemed to have been waived by the appellant and cannot be allowed to be urged at this stage. No fault can be found with the judgment and decree of the High Court as also of the two courts below upholding the termination of tenancy and the plaintiff-respondent's entitlement to evict the tenant."

9. It was recorded by the Hon'ble Apex Court in Dharam Pal (supra) in paragraph No.7 that the pleading that the notice was insufficient in the sense that it does not give 15 days to the tenant to vacate or that the notice did not terminate the tenancy with the expiry of the month of the tenancy, has not been taken in the written statement.

10. In the light of the above, when the aforesaid ground of objection was not specifically pleaded in the written statement and was not specifically raised before the Appellate Court, in my view, the law laid down in Dharam Pal (supra) would be applicable to this case.

11. It requires no debate that no litigant can argue against the record. It is a part of the record that the rent for the period Sept. 1991 to July 1999 was deposited on 14/10/2004. For the block of

about 8 years, the rent has been deposited after 5 years of the institution of the suit. For the period August 1999 to December 2006, the rent was deposited on 21/03/2006. For the period January 2007 to December 2017, the rent @ Rs.75/- per month, equal to an amount of Rs.9,900/- was deposited on 13/10/2017. It was on these facts that the Trial Court as well as the Appellate Court concluded that the tenants were not entitled to the protection under Section 12 of the Bombay Rent Act.

12. With regard to the aforesaid issue and as regards the eligibility of a tenant to the protection of Section 12, the Full Bench of this Court (to which I am a party) and the learned Advocate for the tenant in this proceeding had appeared for the tenant and the learned Advocate for the landlord in this proceeding had appeared for the landlord. The issue referred to the Full Bench is as under :-

“If the tenant complies the notice issued by the landlord demanding arrears of rent and pays the entire amount as demanded within the time stipulated under section 15(2) of the Maharashtra Rent Control Act, then whether the landlord can still file a suit for eviction on the ground of arrears of rent and whether the eviction can be ordered by invoking provisions of section 15(3) of the Maharashtra Rent Control Act ?”

13. While deciding the issue addressed, the Full Bench referred to the decision of the Hon'ble Apex Court in relation to the Bombay Rent Act and noted in paragraph No.13 as under :-

"13. While dealing with the provisions of the Bombay Rent Act in the matter of Ganpat Ladha Vs. Sashikant Vishnu Shinde, 1978 Mh.L.J. 550, the Apex Court has observed that "Bombay Rents, Hotel and Lodging House Rates Control Act interferes with the landlord's right to property and freedom to contract only for limited purpose of protecting tenants from misuse of landlord's power to evict them in these days of scarcity of accommodation by asserting his superior rights in property or trying to exploit his position by extracting too high rents from helpless tenants. The object was not to deprive the landlord altogether of his rights to property which have also to be respected. Another object was to make possible eviction of tenants who fail to carry out their obligation to pay rent despite opportunities provided by law in that behalf. " It is, thus, clear that the rent control legislation does put an embargo only to the limited extent on the right of landlord to seek eviction of tenant. The right to sue for possession in respect of the property belonging to the landlord is inherent however, it is made subject to certain limitations by the rent control legislation. Chapter III of the Maharashtra Rent Control Act, more particularly, [section 15](#) provides for relief against forfeiture to the tenant. It is provided that ejectment of tenant ordinarily shall not be made if the tenant pays or is ready and willing to pay standard rent and permitted increases. The protection extended to the tenant is so long as he complies with

the terms of the tenancy in respect of payment and pays the rent and is ready and willing to pay standard rent and permitted increases. The phrase "tenant pays" shall have to be read in harmony with his "readiness and willingness" to pay standard rent and permitted increases. Protection afforded to the tenant is to such a tenant who observes the terms of the tenancy and pays the rent regularly. Readiness and willingness to pay standard rent and permitted increases is a state referable to the conduct of a tenant who is regular in payment of rent."

14. After relying upon two judgments of the Hon'ble Apex Court in the matter of Mistry Premjibhai Vithaldas Vs. Ganeshbhai Kshavji [AIR 1977 SC 1707] and Vora Abbasbhai Alimanhomed Vs. Haji Gulamnabi Haji Safibhai [AIR 1964 SC 1341], the Full Bench dealt with the ingredients of the protection to be granted to the tenant and concluded in paragraph Nos.16 and 17 as under :-

"16. It is, thus, clear that the tenant who "pays" or "is ready and willing to pay" is only required to be protected on recording findings in that regard. Sub-section (1) of section 15 of the Maharashtra Rent Control Act provides that the landlord shall not be entitled to recovery of possession of any premises so long as tenant pays or is ready and willing to pay the amount of standard rent and permitted increases if any, and observes and performs the other conditions of tenancy in so far as they are consistent with the provisions of the Act. Protection is extended to the tenant who pays or is ready and willing to pay the amount of

standard rent and permitted increases. The latter part of the sub-section also mandates the tenant to observe and perform other conditions of tenancy in so far as they are consistent with the provisions of the Act. The term "tenant pays or is ready and willing to pay" read with observance and performance of other conditions of tenancy would surely include observance of the terms of the tenancy and, one of the terms of tenancy which is consistent with the provisions of the Act is regularity in payment of rent. A tenant who is irregular in payment of rent and pays the amount only under the threat of action of eviction or only after issuance of notice for recovery of rent cannot be considered to have complied with the mandate of sub-section (1) in respect of payment of rent and readiness and willingness on the part of the tenant so as to claim relief against forfeiture cannot be presumed. The only limitation that has been put on the entitlement of the landlord to avail of the remedies for enforcing his right to recover possession is to be found in sub-section (2) of [section 15](#). Sub-section (2) of [section 15](#) mandates that no suit for recovery of possession shall be instituted by the landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until expiration of 90 days next after notice in writing for payment of standard rent or permitted increases has been served upon the tenant in the manner provided in [section 106](#) of the Transfer of Property Act, 1882. A suit by the landlord is thus not entertainable on the ground of recovery of possession for non-payment of the standard rent or permitted increases without transmitting a notice to the tenant 90 days before institution of such suit, in the manner as provided in [section 106](#) of the

Transfer of Property Act, 1882. Sub- section (3) of [section 15](#) provides that the Court shall not pass a decree of eviction on the ground of arrears of standard rent and permitted increases if within a period of 90 days from the date of service of summons of the suit, the tenant pays or tenders in the Court standard rent and permitted increases then due together with simple interest on the amount of arrears at the rate of 15% per annum and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the Court. It is, thus, clear that if the tenant pays the amount demanded within the time stipulated and further continues to pay the amount of standard rent and permitted increase during the pendency of the proceeding regularly, the tenant is not liable to be evicted and no decree shall be passed. There is no whisper in the provisions of [section 15](#) putting an embargo on the entitlement of the landlord to file a suit for eviction against a tenant except subject to compliance of the preconditions specified in sub-section (2) of section 15 of the Maharashtra Rent Control Act.

17. On consideration of provisions of section 15 of the Maharashtra Rent Control Act which provide for relief against forfeiture to the tenant, it is clear that the tenant has been extended protection from eviction so long as he performs his obligation in respect of payment of rent as well as observance and performance of other conditions of the tenancy. The provisions, thus, protect the tenant who is paying rent or has established his readiness and willingness to pay. Further protection is also provided in sub-section (3) of [section 15](#) if the

tenant pays entire arrears of rent on receipt of notice within contemplation of sub- section (2) of [section 15](#) before the period prescribed under sub- section (2) together with interest and cost as may be ordered by the Court and continues to pay rent and the permitted increases regularly until the decision in the suit. If the tenant does not pay rent regularly and offers to pay only after issuance of notice within contemplation of sub-section (2) of [section 15](#) and does not observe the other terms and conditions which include regular payment of rent, the landlord is not disabled from proceeding against such tenant. In nutshell, to derive that if tenant offers or pays the amount recorded in the notice issued in pursuance to sub-section (2) of [section 15](#), together with permitted increases, the landlord is disabled from proceeding against the tenant is not within contemplation of [section 15](#) of the Act. The right to seek remedy and claim possession of the premises owned by the landlord is inherent in him however, initiation of such proceedings is subject to fulfilment of certain pre-conditions such as issuance of notice in accordance with [section 106](#) of the Transfer of Property Act as provided under [section 15\(2\)](#). It is, thus, clear that the tenant who disobeys the provisions of [section 15\(1\)](#) can be evicted independently though such tenant may not necessarily pay any arrears of rent on the date of institution of the suit. Sub-section (3) of [section 15](#) shall have to be construed independently and if the tenant does not observe the mandate of sub-section (3) in respect of payment of amount of rent and permitted increases regularly till disposal of the proceedings before the Court, is also liable to be evicted.”

15. After a conscious analysis of Section 15, the Full Bench concluded in paragraph No.20 as under :-

“20. On the analysis of the provisions of [section 15](#) as well as various judgments, it must be concluded that the provisions of sub-sections (1), (2) and (3) of [section 15](#) shall be read independently. In order to claim relief against forfeiture, the tenant must satisfy all the conditions in respect of payment of rent or tender in Court all the arrears then due on the first day of hearing of the suit or within contemplation of provisions of law and to deposit the rental liability regularly in the Court till the suit is finally decided and there is no extinction of the cause of action by reason of payment of existing arrears by the tenant. It is, thus, clear that in order to avoid decree, once the notice is issued within contemplation of sub-section (2) of section 15 of the Maharashtra Rent Control Act by the landlord, the tenant shall have to fulfill the conditions laid down under sub-section (3) of section 15 of the Maharashtra Rent Control Act and there is no escape therefrom.”

16. In the light of the above, I do not find that the concurrent findings of the Courts below could be termed as being perverse or erroneous. The Hon'ble Apex Court in the matter of Syed Yakoob Vs.K.S.Radhakrishnan and others [AIR 1964 SC 477] and Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682], has laid down the law that this Court while exercising its revisional jurisdiction, cannot

interfere with the impugned judgments unless they are found to be perverse or erroneous and against the scheme of the Law.

17. This Civil Revision Application filed by the applicants/tenants being devoid of merit, is therefore, dismissed.

18. At this juncture, learned Advocate for the applicants prays for protection. Learned Advocate for the landlord submits that the landlord present in the Court was agreeable to grant even 6 months time to the applicant for vacating the premises so as to be able to search for an alternate accommodation. The said concession was boldly rejected by the applicants and the landlord is litigating for almost 19 years.

19. Considering the fact situation as above, the prayer of the applicants is rejected.

(Ravindra V.Ghuge, J.)