

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

SECOND APPEAL NO.98 OF 2014

1. Arvind s/o Dasrao Bokil,
Age 68 years, Occu. Agri.
 2. Murlidhar s/o Dasrao Bokil,
Age 64 years, Occu. Agri.
 3. Uday s/o Dasrao Bokil,
Age 57 years, Occu. Service,
 4. Sunil s/o Dasrao Bokil,
Age 55 years, Occu. Service.
- ... APPELLANTS
(Orig. Plaintiffs)

VERSUS

1. State of Maharashtra,
through Collector, Latur.
 2. Zilla Parishad, Latur,
through the Chief Executive Officer,
Zilla Parishad, Latur.
- ... RESPONDENTS
(Orig. Defendants)

.....

Shri R.B. Deshmukh, Advocate for appellants
Shri Y.G. Gujarathi, A.G.P. for respondent No.1
Shri A.V. Hon, Advocate for respondent No.2

.....

CORAM: A.M. DHAVALÉ, J.

Date of reserving judgment : 1st November, 2018

Date of pronouncing judgment : 10th December, 2018

J U D G M E N T

1. This appeal raises a neat question of law as to whether the landlord can allow the tenant to occupy the premises

after termination of his tenancy and claim damages from him for years together.

2. Shorn of unnecessary details, the facts relevant for deciding this appeal may be stated as follows :

The plaintiffs are owners of house property at Local Fund No.870, situated at Ausa which was let out to Nizam Government, which handed it over to Zilla Parishad (Defendant No.2). The agreed rent was Rs.147/- per month. The defendant No.2 Zilla Parishad was running a primary school there. Defendant No.1 is the State through Collector. The defendant No.2 Zilla Parishad, the tenant, terminated its own tenancy by letters dated 19.11.1990 and 21.5.1991 and directed its officers to hand over possession of the rented premises by the end of May 1991. The direction was not complied. According to the plaintiffs, the possession of the defendants thereafter became wrongful and the plaintiffs got a right to claim damages. The plaintiffs sold western portion of house to Hindustan Education Society by Sale Deed dated 2.9.1991 and the possession thereof was delivered by the tenant. Part of the suit premises remained in possession of the defendant No.2. It is admeasuring 60 ft. x 210 ft. By order dated 23.12.1997, the Deputy President directed the Zilla Parishad officials to hand over the suit premise by removing illegal encroachment, but it was not done. The

plaintiffs filed suit claiming damages @ Rs.2000/- per month. As the notice was disclosing claim of damages at Rs.1000/- per month, the learned Civil Judge, Senior Division, Latur awarded damages at Rs.1000/- per month from 28.8.2000 to 28.2.2001 Rs.6000/-, plus interest Rs.225/- in Regular Civil Suit No.140/2001. In Regular Civil Suit No.1/2002, damages were claimed up to the period 31.12.2001 and thereafter in Regular Civil Suit No.481/2005 damages of Rs.70,000/- were claimed for 35 months ending on 30.6.2005. Learned 3rd Jt. Civil Judge, Senior Division, Latur, by judgment dated 14.10.2009, decreed the suit to the extent of Rs.35,000/- with interest @ 6% p.a. from the date of decree. The damages were awarded @ Rs.1000/- per month.

3. Defendant No.1 did not contest the suit. Defendant No.2 claimed that it was not in possession of the suit premises from 1991 and, therefore, it was not liable to pay damages. The plaintiffs are not entitled to claim damages from defendant No.2.

4. In the first appeal, it was held that the termination was of 1990 and no steps were taken for taking over the possession for 12 years and, therefore, the plaintiffs were not entitled to claim damages.

5. The substantial question of law formulated is as

follows :

Whether the landlord would be entitled for damages after termination of tenancy if he does not take any step for recovery of possession for more than 12 years after termination ?

6. Heard learned Advocate Mr. R.B. Deshmukh for the appellants and learned Advocate Mr. A.V. Hon, for respondent No.2. Learned Advocate Mr. Deshmukh argued that, there were earlier suits between the same parties. He argued that the appellants had earlier filed Regular Civil Suit Nos.140/2001 and 1/2002 and the trial Court has held that the judgments and decrees in those suits have become final. In the earlier suit, the damages were awarded @ Rs.1000/- per month and the same order is passed in the present suit. In these matters, the plaintiffs' contentions have been accepted. Defendant No.2 is now in possession as a trespasser and he is, therefore, liable to pay damages.

7. Per contra, learned Advocate for defendant No.2 argued that the alleged termination took place long back on 29.11.1990. Defendant No.2 has taken a stand that it is not in possession. The appellant has not filed a suit for possession and is only filing suit for damages. The learned first appellate Court

has rightly held that, after period of 12 years, he is not entitled for damages.

8. Learned Advocate Mr. R.B. Deshmukh has relied on **M.C. Chockalingam and others Vs. Manickavasagam and others [AIR 1974 SC 104]**, wherein it is held that a tenant on the expiry of lease cannot be said to continue in lawful possession of the property against the wishes of the landlord if such a possession is not otherwise statutorily protected under the law against even lawful eviction through Court process, such as under the Rent Control Act. Section 6 of the Specific Relief Act does not offer such protection, but only, as stated earlier, forbids forcible dispossession, even with the best of title.

9. This judgment was delivered in the light of grant of Cinema Theatre licence, which was to be granted only for lawful occupant. This judgment does not deal with the right for entitlement of damages. In the present case, there was no termination of tenancy by the landlord nor there was termination of tenancy by the tenant communicated to the landlord, The letters dated 29.11.1990, 21.5.1991, 11.7.1991 and 23.12.1997, relied upon by the plaintiff, are the letters executed by one officer to other officials. Defendant No.2 in the written statement has taken contradictory defences. At one place, it is claimed that they have delivered the possession when the other substantial

part of the leased property was sold by the plaintiff to Hindustan Education Society. At the same time, they are claiming that the Vice President issuing the letters had no authority to terminate the tenancy. The defendants have not filed any reliable material to show that they have surrendered the possession of the suit land to the plaintiff.

10. Mr. R.B. Deshmukh, learned counsel for the appellants relied on the case of **Tilak Raj Bhalla Vs. Ulhas Narayan Sanvordekar [2005(4) Bom.C.R. 16]**. In this case, the plaintiff entered into agreement with the defendant and handed over management of his business of Bar and Restaurant to the defendant. The agreement provided that defendant was to pay royalty of contractual amount of Rs.2500/- per month and in case he would fail to pay the said amount for 5 months, the agreement would come to an end and the defendant would hand over vacant possession. The plaintiff alleged that, the defendant was defaulter and claimed him to be trespasser and claimed mesne profits. The defendant claimed that he was permanently inducted in the premises on payment of agreed compensation amount and the terms were incorporated so as to avoid the clutches of Rent Act. Though there was no specific prayer for possession, there was issue to that effect. This Court held that, the trial Court had allowed the application for amendment, but it

was not carried out before passing judgment. The prayer for mesne profit was allowed by the trial Court. The decree for delivery of possession was passed in absence of specific prayer along with mesne profits and enquiry into future mesne profit. The said case can be easily distinguished on facts. In that case, the defendant was merely conducting the business of the plaintiff on agreed royalty. In the present case, the defendant is a tenant. In that case, perpetual injunction was claimed and, therefore, decree for possession was passed. In the present case, the suit is filed only for mesne profits and, therefore, Order XLI Rule 33 cannot be stretched too much to grant a decree for possession in such matter.

11. In **Smt. Chander Kali Bai and others Vs. Shri Jagdish Singh Thakur and another [(1977) 4 SCC 402]**, the issue has been decided by the Apex Court. It is observed that, if a tenant continues in possession after termination of contractual tenancy, he would not be liable for damages till the decree for eviction is passed.

In this case, there was no termination of tenancy by the order of Court or even as per the terms of contract. There was suo moto order of the tenant – Zilla Parishad, directing its officers to vacate the premises. The decision was subsequently changed. In any case, the landlord was bound to file suit for

possession. He cannot go on filing suit for damages for the amount not agreed under the contract. The damages by way of mesne profit can be awarded under Order XX Rule 12 only from the date of decree for possession for the period for which the possession is wrongfully retained in spite of decree for possession.

12. Though there are findings in Regular Civil Suit Nos.140/2001 and 1/2002 about right to get damages, there cannot be res judicata against the Statute.

13. In the light of these facts, though the first appellate Court has dismissed the appeal on some other grounds, the dismissal is proper. Though this point was not raised, this is a pure question of law and can be considered at any stage. Hence, the substantial question of law is answered accordingly. Hence, I pass the following order.

ORDER

The Second Appeal is dismissed. No order as to costs.

**(A.M. DHAVALÉ)
JUDGE**

fmp/