

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6734 OF 1998

Kacharabai D/o. Sukaji Rokade	...Petitioner
<i>Versus</i>	
Sou. Sushilabai W/o. Narayan Ghayawat	...Respondent

....
Mr. P.N. Joshi, Advocate for the Petitioner.
None for the Respondent.

....
CORAM : R. G. KETKAR, J.

DATE : 22nd JUNE, 2018

JUDGMENT

1. Heard Mr.P.N. Joshi, learned counsel for the petitioner, at length.
2. Office remark shows that the respondent is duly served. However, despite service, none appears for the respondent.
3. By this Petition under Article 227 of the Constitution of India, the petitioner hereinafter referred to as the 'plaintiff', has challenged the judgment and decree dated 1.8.1990 passed by the learned Civil Judge, Junior Division, Igatpuri in R.C.S. No.78/1983 as also the judgment and decree dated 30.9.1996 passed by the learned IIIrd Additional District Judge, Nashik in Regular Civil Appeal No.420/1990. By these orders,

the Courts below dismissed the suit instituted by the plaintiff for recovery of possession of Municipal House No.129 situate in ward No.1 of Igatpuri, District – Nashik (for short, 'suit premises').

4. The plaintiff instituted the suit *inter alia* contending that the respondent, hereinafter referred to as the 'defendant', was inducted in the suit premises on 1.6.1980. The monthly rent was Rs.20/- + 0.80 towards permitted increases. The defendant failed, avoided and neglected to pay rent from 1.6.1980 to 31.7.1983. The plaintiff issued demand notice dated 30.6.1983 (Exhibit-56) to the defendant asking to pay the arrears of rent. Despite service, the defendant did not give reply. Apart from this, the plaintiff further contended that she requires the suit premises reasonably and bonafide for herself and for her members of family for their personal use and occupation and that the present accommodation in possession of the landlady is not sufficient. Thus, the plaintiff invoked the grounds under Sections 12 and 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act').

5. The defendant filed written statement admitting the relationship of landlord and tenant and denied all adverse allegations made against him. He admitted that the monthly rent is Rs.20/-. He

further contended that though he was paying regularly rent to the landlady, she never issued any rent receipts. In the month of June, 1983 she had gone to the landlady for paying the rent. However, the landlady refused to accept the same. The defendant, therefore, sent money orders covering the rent for June, July and August, 1983.

6. On the basis of the pleadings of the parties, the learned trial Judge framed necessary issues. The parties adduced the evidence. After considering the evidence on record, the learned trial Judge dismissed the suit. Aggrieved by that decision, the plaintiff preferred appeal, which was also dismissed by the District Court. It is against these decisions, the plaintiff has instituted present Petition.

7. In support of this Petition, Mr. Joshi invited my attention to paragraph-7 of the District Court judgment and submitted that the learned District Judge committed error in holding that the plaintiff did not establish that the defendant is a willful defaulter. The learned District Judge observed that not a single rent receipt was filed on record either by the plaintiff or by the defendant. The defendant had proved refusal of Money Orders by producing Money Orders at Exhibits-52 and 53 covering the period from June, 1983 to August, 1983. He submitted that the findings recorded by the learned District Judge are based upon

surmises and conjectures. In any case the learned District Judge should have considered whether the defendant has complied the conditions stipulated in Section 12(3)(b) of the Act. Insofar as the ground of bonafide requirement is concerned, the learned District Judge observed that there is no iota of evidence to substantiate that plea.

8. As none appears for the respondent, with the assistance of Mr. Joshi, I have gone through the impugned orders. While declining to pass decree under Section 12 of the Act, the learned District Judge observed in paragraph-7 thus:

“7. It will have to be first found since what period the tenant is staying up in the suit premises. It is the contention of the landlady that the tenant was induced on 1.6.1980 over the suit premises and right from the day one she did not pay any rent. As against this, the tenant says that she is staying there for the last more than 25 years and in support of her claim she has examined D.W. Vimalalabi, who says on oath that for the last more than 25 years she is seeing the tenant putting up in the suit premises. Before the lower Court voters' list was filed by the tenant and from the voters' list it can be easily concluded that the tenant is putting up in the suit premises since long before 1.6.1980. If the tenant is really putting up in the suit premises even prior to 1980 as a tenant, then naturally a question comes up whether she had paid rent to the land lady or not. The only answer is in the affirmative for the simple reason that the landlady would have not allowed her to stay there without paying rent. Thus, it is to be held that the tenant was staying in the suit premises prior to 1980 and she must have paying rent to the land lady upto 1980. The land lady claims that she has not paid rent from 1.6.1980. There is not a

single rent receipt filed on record either by the tenant or by the land lady. The tenant has proved the refused M.O. coupons Exhs. 52 and 53 in respect of rent connected with June, July and Aug. 1983. The very refusal of these M.Os. go to show that the land lady is against creating any written record in respect of payment of rent. From the evidence of the landlady as well as the tenant it is crystal clear that the tenant had made in the past payment of rent, but no rent receipts were passed by the land lady despite the legal obligation cast upon her. If the land lady does not issue the rent receipt for the rent received by her, then she is estopped from making any claim against the tenant in respect of habitual and willful default. The matter does not end here. After filing of the suit, the tenant has deposited all the arrears due in the Court, which goes to show that the tenant is not a willful and habitual defaulter. If it is so, then it hardly matters whether or not the suit notice was served upon her by the postman P.W.1. The issue of arrears for more than six months must go in favour of the tenant and against the land lady.”

9. A perusal of the above extracted paragraph shows that the findings recorded by the learned District Judge are based on surmises and conjectures.

10. As far as the ground of bonafide requirement under Section 13(1)(g) of the Act is concerned, the learned District Judge has dealt with that issue in paragraph-8, which is to the following effect :

“8. Coming to the bonafide requirement of the suit premises, the evidence on record shows that the family of the brother of the land lady is perhaps staying at Bombay where her brother is having a quarter. Normally, the landlady or landlord does not spare any ground that is

available under the Rent Act for evicting the tenant. Many a time by way of idle formality the plea of bonafide requirement is raised. The case at hand is one such case. There is absolutely no iota of evidence to show that the land lady requires the suit premises u.s. 13(1)(g). Moreover, it has been brought on record that one room presently occupied by one Julekhabai was vacant during the relevant period, but the land lady did not occupy that room. This goes to show that her requirement is neither urgent nor genuine. Hence, this issue melts away.”

11. After perusing the above extracted paragraphs, I find that the learned District Judge has not satisfactorily dealt with the ground under Section 13(1)(g) of the Act. In view thereof, the impugned order passed by the learned District Judge is set aside and appeal is restored to the file of the learned District Judge. The learned District Judge will issue fresh notices to the parties and thereafter endeavor to dispose of the appeal within six weeks from the date of appearance of the parties. All contentions of the parties on merits are expressly kept open.

12. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)