

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

**CIVIL REVISION APPLICATION NO.654 OF 2016 with
CIVIL APPLICATION NO.719 OF 2016**

Vadnagare Agencies, Malegaon .. Applicant
vs
Rajebahadur Pannalal Manufacturing Co.Ltd .. Respondent

Mr.U.P.Warunjikar a/w Mr.Siddesh Pilankar for Applicant
Mr.R.S.Surana for Respondent

***Coram : G.S.KULKARNI, J.
Date : 4 JANUARY 2018***

P.C

Heard Mr.Siddesh Pilankar along with Mr.Warunjikar learned counsel for the applicant-tenant and Mr.Surana learned counsel for the respondent-landlord.

2. This is a Revision Application of the applicant-tenant who suffers an eviction decree as passed by the learned Civil Judge, Junior Division, Malegaon, District Nasik in the respondent-landlord's suit. The applicant's appeal before the learned District Judge against the judgment and decree of the trial Court has also failed.

3. The respondent-landlord had instituted regular civil suit no.204 of 2012 against the applicant-tenant praying for an eviction decree *inter alia* on the ground of default on the part of the applicant-tenant in payment of rent and on the ground of the applicant-tenant creating a sub-tenancy and/or transferring its interest in the suit premises to a third party namely one Pawar Motors. The learned trial Judge in his judgment and order dated 14.9.2011 held that it stood proved that the applicant was in default in payment of rent. It was also observed that the applicant's witness admitted in his cross-examination that an amount of Rs.91,900/- being the arrears of rent was outstanding and payable by the applicant-tenant to the respondent-landlord. Prior to the institution of the suit, the respondent-landlord had issued a notice dated 17.4.2001 to the applicant-tenant calling upon the applicant to make the payment of the arrears of rent. The applicant-Vadnagare Agencies, Malegaon did not forward the rent within a period of 90 days as required under the provisions of section 15 of the Maharashtra Rent Control Act (for short the MR Act). The

contention of the applicant is that one Pawar Motors had forwarded the rent on receipt of the suit notice which was not accepted by the respondent-landlord as there was no privity between Pawar Motors being a third party and the respondent-landlord. It was observed that the suit in question was thereafter filed on 9.8.2002. Considering the provisions of sub-section (3) of section 15 of the Maharashtra Rent Control Act (for short the 'MR Act') a second opportunity was available to the applicant-tenant to deposit the amount of arrears of rent in Court within a period of 90 days of the receipt of the suit summons. However, even this protection was not availed although the applicant appeared in the suit on 9.11.2002. The learned trial Judge observed that for the first time the application was moved to deposit the amount on 16.7.2003 (about eleven months from the date of filing of the suit) which was beyond the period of 90 days from the receipt of the suit summons as section 15 (3) of the MR Act would contemplate. As regards the contention of the applicant-tenant that the cheque for arrears of rent as issued by Pawar Motors was required to be accepted by the

respondent, as it was required to be treated to have been issued by the applicant-tenant in view of the change of name of the applicant-firm, was also not accepted for lack of evidence in that regard. Accordingly, the learned trial Judge by his judgment and order dated 28.9.2011 decreed the suit in the following terms:

ORDER

- “1) *The suit is decreed with costs.*
- 2) *The defendant shall pay Rs.1,29,100/- to the plaintiff towards the arrears of rent of the suit premises.*
- 3) *The defendant shall hand over the vacant and peaceful possession of the suit premises to the plaintiff within the period of 3 months from the date of this judgment.*
- 4) *Decree be drawn up accordingly.
Judgment dictated and pronounced in open Court.”*

4. In the appeal filed by the applicant-tenant before the Court of District Judge, the learned District Judge has confirmed the findings recorded by the learned trial Judge and dismissed the appeal of the applicant-tenant.

5. Mr.Warunjikar and Mr.Pilankar learned counsel for the applicant-tenant in assailing the concurrent findings of the Courts

below has a two-fold grievance. The contention is that the learned appellate Judge has completely overlooked that there was willingness on the part of the applicant-tenant to make payment of arrears of rent as cheque issued by Pawar Motors was forwarded to the respondent-landlord immediately on receipt of the suit-notice. Forwarding of this cheque ought to have been held as willingness on the part of the applicant to pay the arrears of rent. The second contention as urged by Mr.Warunjikar is that there is a material irregularity in the learned appellate Court exercising the jurisdiction as the judgment lacks elaborate reasons on the issues as urged by the applicant and more particularly in regard to the willingness on the part of the applicant-tenant to make payment of the rent and of legitimately forwarding of the rent by Pawar Motors to the respondent. Mr.Warunjikar in support of these submissions has placed reliance on some documents which are annexed to the Civil Application, the documents are namely a copy of the Partnership Deed dated 7.10.1994 showing the original constitution of the firm as “ Vadnagare Agencies, Malegaon”, the Deed of Retirement dated

3.12.1994 by which one of the partners Deepchand Vadnagare retired from the firm and the last document being a supplementary agreement of Partnership of Pawar Motors dated 1.4.1999. Mr.Warunjikar would submit that reading of these documents would clearly reveal that it was the same business of the applicant-M/s Vadnagare Agencies, Malegaon which was taken over by M/s Pawar Motors, a new partnership firm being formed. Thus an opportunity ought to be granted to the applicant- tenant to go back before the appellate Court and raise a defence as would be available referring and relying on these documents. It is submitted that if the case of the applicant-tenant as pleaded in the written statement is taken into consideration alongwith with these documents, there are fair chances of the applicant-tenant succeeding before the appellate Court.

6. On the other hand, Mr.Surana learned counsel for the respondent-landlord in supporting the concurrent findings of the Courts below against the applicant has opposed the submissions as made on behalf of the applicant on all the counts. On the last submission of Mr.Warunjikar, Mr.Surana learned counsel for the

respondent-landlord submits that the suit in question was instituted in August 2002 and all these documents now are being relied for the first time pertain to a period much prior the institution of the suit being the documents of the years 1994 and 1999. It is submitted that nothing precluded the applicant-tenant to defend the suit notice or the suit on the basis of these documents which were never brought on record of the suit or the appeal. Mr.Surana would submit that the attempt on the part of the applicant-tenant to bring these documents on record for the first time in this proceeding is not innocuous. He makes this submission on the basis of some recitals and more particularly clause 21 of the partnership deed dated 7 October 1994 which according to him show that in fact the business of the applicant-tenant was itself transferred to a new partnership firm. According to Mr.Surana thus, what would have been clearly evident was that the applicant-tenant has created third party rights. This is a consequence which was avoided by the applicant by not bringing on record these documents before the Courts below.Mr.Surana learned counsel for the respondent-landlord further submits that the

observations of the learned trial Judge as also of the appellate Court in regard to non-compliance of the obligation on the part of the applicant-tenant of non-payment of rent and being a defaulter are crystal clear. It is submitted that also the applicant-tenant has also defaulted in depositing the rent in the Court within a period of 90 days from receipt of the suit summons as section 15 of the MR Act would stipulate, which would show that the applicant-tenant was not ready and willing to pay the rent. It is submitted that being guilty of such a default the applicant-tenant can have no defence to the eviction decree as passed against the applicant-tenant and confirmed by the appellate Court.

7. I have heard learned counsel for the parties. With their assistance, I have perused the judgments passed by the Courts below as also the documents as placed on record. It is not in dispute that the applicant-tenant "Vadnagare Agencies, Malegaon" was the tenant of the respondent-landlord. It also appears to be an admitted position that there were arrears of rent by virtue of which suit notice dated 17.1.2001 was issued by the respondent-landlord demanding

the arrears of rent which were not paid within a period of 90 days from the receipt of suit notice by the applicant-tenant. Consequently, on 9.8.2002 the respondent-landlord instituted the suit in question seeking eviction of the applicant-tenant on the ground of non-payment of the rent as also another ground for having created third party rights in the suit premises. Admittedly, even after the suit was filed and though the applicant-tenant appeared in the suit on 9.11.2002 in response to the suit summons, the applicant did not deposit the arrears of rent in the Court which at the relevant time were Rs.1,65,500/-. However, the amount was deposited after the expiry of the period of 90 days which was beyond the protective period as granted under section 15 (3) being a deposit as made on 16.7.2003. Section 15 of the MR Act stipulates specific time limits for such deposit for a tenant to avail a protection to show that the intention of the tenant is bonafide as regards willingness to pay the rent. Section 15 reads thus :

15. “No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases-
(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the 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 this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increase has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882 (IV of 1882).

(3) No decree of eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in Court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent 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.

(4) Pending the disposal of any suit, the Court may out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the Court thinks fit”.

(Emphasis supplied)

8. As seen from the above provision a two fold protection is granted and made available to a tenant, firstly sub-section (2) of section 15 prohibits institution of a suit by the landlord till expiration of a period of ninety days from the date of service of a notice of the landlord in writing demanding the standard rent or permitted increases and secondly sub-section (3) prohibits the Courts to pass a decree of eviction in a landlords' suit if within a period of ninety days

from the date of service of the summons of the suit, the tenant pays or tenders in Court the arrears of standard rent and permitted increases with simple interest at 15% p.a. and thereafter continues to pay or tenders in Court regularly such standard rent, till the suit is finally decided.

9. In view of the clear findings of the learned trial Judge that admittedly there was a default committed by the applicant-tenant to pay arrears of rent at the first instance, as also further protection granted under section 15 (3) of the Maharashtra Rent Control Act was also not availed by the applicant by deposit of the rent within 90 days of the receipt of the suit summons, I find that there is no merit in the contention as urged on behalf of the applicant-tenant that there was willingness on the part of the applicant to pay the rent.

10. The contention as urged on behalf of the applicant that Pawar Motors had forwarded the arrears of rent on receipt of the suit-notice also cannot be accepted. In fact, the fact of Pawar Motors forwarding the arrears of rent has rightly been held to be

unacceptable and irrelevant in view of the clear position that there was no privity between the respondent-landlord and Pawar Motors or any legal obligation for the respondent-landlord to accept the rent as made by Pawar Motors. Assuming that the respondent-landlord was to accept the rent from Pawar Motors the consequence would have been recognition of some rights of Pawar Motors in the suit premises when no such rights were created in Pawar Motors in the suit premises by the respondent.

11. As regards the contention of Mr.Warunjikar learned counsel for the applicant-tenant, that the documents annexed to the Civil Application *inter alia* pertaining to Partnership Firm –'Pawar Motors' became relevant and an opportunity be granted to the applicant to defend the suit on these documents, also cannot be accepted. Admittedly, these documents were never attempted to be brought on record by the applicant-tenant before either of the Courts below. Mr.Surana learned counsel for the respondent-landlord would also be right in his contention that nothing precluded the applicant to bring these documents on record and defend the

proceedings before the Courts below when these documents clearly pertained to a period much prior to the filing of the suit in question. On this count there appears to be much substance in the contention of Mr.Surana that intentionally are for oblique motive, these documents were suppressed and not brought on record before the Courts below by the applicant-tenant. It would not be fair in law, fair to the Courts below who have rendered a complete adjudication on the materials as stood on record, as also not fair to the respondent to accept such plea being made by Mr,.Warunjikar. If this submission is accepted it would amount to an abuse of the process of law. It would amount to a premium on the dishonesty of the applicant. Thus, in my opinion, the applicant-tenant cannot sustain a plea that now the applicant-tenant should be permitted to refer these new documents.

12. It is significant to note that though the suit was defended by the applicant "M/s Vadnagare Agencies, Malegaon" the relevance of referring to Pawar Motors as being insisted by the applicant is only for the fact that Pawar Motors had forwarded the cheque as arrears of rent on receipt of suit-notice on 17.1.2001. It is

clear from the findings as recorded by the trial Court that the applicant-tenant has defended the suit in its capacity of “Vadnagare Agencies, Malegaon”. Further the appeal before the Court of learned District Judge as also this revision application is instituted by the applicant-tenant in the name of Vadnagare Agencies, Malegaon, which clearly shows the contradictory stand of the applicant of any change of nomenclature of the applicant firm. However, in any case applicant never supported such plea on any material/evidences before the Courts below and for a calculated purpose and with a dishonest intention as Mr.Surana would submit.

13. The contention of Mr.Warunjikar that the reasons and observations as made by the learned appellate Judge are not elaborate and does not take into consideration the submissions and grounds as raised by the applicant-tenant also cannot be accepted. A perusal of the reasons and observations made in para nos. 8 to 10 of the impugned judgment of the appellate Court in my opinion, are sufficient for the Court to come to a conclusion that there was no substance in the appeal of the applicant.

14. In view of the above discussion, I do not find that any material irregularity or perversity in the Courts below exercising jurisdiction vested in them when it is held that the respondent is entitled to a decree of eviction against the applicant-tenant.

15. Resultantly, there is no merit in the civil revision application. It is summarily dismissed with costs.

16. The applicant-tenant shall hand over possession of the premises to the respondent-landlord within a period of four months from today. In the meantime, the applicant-tenant shall not create third party rights or any interest of any nature or part with possession of the suit premises.

17. Civil Application would also not survive in view of dismissal of the revision application. It is disposed of.

{G.S.KULKARNI, J}