

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
CIVIL REVISION APPLICATION NO.128 OF 2017

Smt. Devkabai wd/o Jageshwar Lanjewar
V/s
Sau. Neeta W/o Gajanan Kanher

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri A.S. Deshpande, Advocate for applicant.
Shri P.V. Ghare, Advocate for non-applicant.

CORAM: A.S. CHANDURKAR, J.
DATE: 13-06-2018

The applicant is the original defendant in the suit for eviction filed by the non-applicant. The applicant is occupying one room ad-measuring 9' x 14' owned by the non-applicant on monthly rent of Rs. 350/-. According to the non-applicant, the applicant was in arrears of rent and hence notice was issued to the applicant on 8/3/2007 demanding arrears of rent. Though reply was given, the arrears were not paid. The non-applicant therefore filed suit on 31/10/2007 for eviction of the applicant on the ground that she was in arrears of rent and that the non-applicant had bonafide need of the premises.

In the written statement it was denied that the

applicant was in arrears of rent. It was stated that the arrears were sent by money order and the same were refused. The bonafide need of the non-applicant was also denied.

The trial Court decreed the suit on both the counts. It was held that the arrears of rent had not been deposited despite receipt of suit summons. The bonafide need of the non-applicant was also upheld. The Appellate Court partly allowed the appeal by setting aside the decree on the ground of bonafide need. However, the eviction on the ground of arrears of rent was maintained.

It is submitted by the learned Counsel for the applicant that the finding recorded that the applicant was in arrears of rent is incorrect as substantial payments were made by the applicant from time to time. He submitted that amount of Rs. 4,500/- was paid by way of cheque. Similarly, further amounts were also paid during pendency of the appeal. The applicant did not have proper opportunity to defend the proceedings before the trial Court and therefore a request was made before the appellate Court for remand of the proceedings. It is submitted that

even today the applicant is ready to clear the arrears of rent.

The learned Counsel for the non-applicant supported the decree as passed. He submitted that the provisions of Section 15 (2) of the Maharashtra Rent Control Act, 1999 (for short “the Act”) have not been complied with. The non-applicant was required to make an application under provisions of Order XV-A of the Code of Civil Procedure Code, 1908 for recovery of arrears. The learned Counsel placed reliance on the judgment in case of *Babulal s/o Fakirchand Agrawal v/s Suresh s/o Kedarnath Malpani and Ors reported in 2017 (4) All MR 356 (F.B.)* in support of his submissions.

After hearing the learned Counsel for the parties, I do not find that there is any case made out by the applicant for invoking revisional jurisdiction. It is an admitted position that after the demand notice at Exhibit-31 dated 8/3/2007 was served on the applicant, reply was given on 21/3/2007 as per Exhibit-34. Though it was stated that the arrears would be paid in two instalments, that payment has not been made. After the suit was filed,

the applicant appeared before the trial Court on 11/12/2007 but did not deposit arrears as required by Section 15 (3) of the said Act. The law in this respect is clear as can be seen from observations in para 17 of the decision of the Full Bench. Moreover, the non-applicant was required to move an application at Exhibit-16 for directing the applicant to deposit the arrears of rent. The decree for eviction on that count rightly has been passed.

The Appellate Court has held that the non-applicant has not been able to prove the bonafide need for personal occupation. That finding is not under challenge. In that view of the matter while maintaining the decree for eviction, I am inclined to grant time to the applicant to vacate the suit premises.

Accordingly, the Civil Revision Application stands dismissed. No costs.

The applicant is granted time till the end of December,2018 to hand over vacant possession of the suit premises to the non-applicant.

The applicant shall file an undertaking in this Court within a period of four weeks that she would

continue to pay the agreed rent to the non-applicant till the end of December, 2018. At the end of that period, she shall hand over vacant possession to the non-applicant. Order accordingly.

JUDGE

RKN