

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5300 OF 2017

Abdul Aziz s/o Sheikh Karim
-vs-
Chetan s/o Babulal Patel and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A. B. Mirza, Advocate for petitioner.
Shri A. Shelat, Advocate for respondent Nos.1 and 2.

CORAM : A.S.CHANDURKAR, J.
DATE : April 16, 2019

The petitioner is a tenant who is aggrieved by the decree for eviction as passed by the trial Court and confirmed by the appellate Court.

2. It is the case of the respondent-landlord that the suit property which is a house was purchased on 06/08/2005 by virtue of a registered sale-deed. The defendant was occupying the premises as a tenant and hence notice of attornment dated 08/08/2005 was issued to the defendant calling upon him to pay rent to the plaintiffs. On that basis on 19/08/2006 demand notice seeking arrears of rent from August 2005 to September 2006 was issued. Despite that the arrears were not paid. The defendants denied the title of the plaintiffs as landlord and took the stand that rent at the rate of Rs.40/- per month was being paid to the predecessor of the plaintiff.

3. The trial Court after considering the evidence on record held that the defendant was in arrears of rent and having failed to

pay the arrears despite the notice of demand, a further finding was recorded that even arrears at the rate of Rs.40/- per month were not being paid. After finding that the plaintiffs had a bonafide need of the suit premises the suit was decreed. The appellate Court has confirmed the decree for eviction on the ground of the tenant being in arrears of rent.

4. Shri A. B. Mirza, learned counsel for the petitioner submitted that in absence of any evidence as regards the tenant being in arrears of rent, the eviction was not warranted. The plaintiffs failed to prove that the rent was Rs.1000/- per month. According to him the plaintiffs had admitted that the rent for the suit premises was Rs.40/- and hence the demand of arrears at the rate of Rs.1000/- per month was unwarranted. Hence the finding in that regards was not liable to be recorded against the defendant.

5. Shri A. Shelat, learned counsel for the respondents supported the impugned judgment. He submitted that both the Courts recorded a finding that the defendant was in arrears of rent having not responded to the notice of demand. Even during pendency of the suit, the arrears were not paid and only during pendency of the appeal, some amount of arrears came to be paid.

6. On hearing the learned counsel for the parties and after perusing the impugned judgment it can be seen that after purchasing the suit property the plaintiffs had given notice of attornment to the tenant on 21/09/2005. Thereafter arrears were demanded vide notice dated 19/08/2006. The same were not paid and hence provisions of Section 15(3) of the said Act

were not complied with. The appellate Court in paragraphs 20 to 23 of its judgment on appreciation of the documentary evidence held that the tenant was in arrears of rent and that the mandatory provisions of Section 15(3) of the said Act warranted eviction of the tenant. The aforesaid findings are based on documentary evidence on record. There is no jurisdictional error found in the impugned judgment. On that count no interference is warranted.

7. However, considering the fact that the petitioner is in possession since long he is granted time till the end of September 2019 to hand over possession of the suit premises. The petitioner shall file undertaking in this Court within period of six weeks stating therein that he shall hand over vacant possession by the end of September 2019. The same be subject to the payment of rent of Rs.1000/- per month regularly to the respondents.

JUDGE