

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

WRIT PETITION NO.3376 OF 2019

Bhartiya Kanya Vidyalaya, Rajapeth, Amravati

-vs-

Satish Purushottam Kolhatkar, Amravati

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

Court's or Judge's Orders.

Shri R. M. Sharma, Advocate for petitioner.

Shri A. J. Gilda, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : May 02, 2019

The petitioner is the original defendant in the suit for eviction as filed by the respondent herein. The rent that was payable was Rs.7135/- per month with municipal taxes. It is the case of the original plaintiff that in proceedings for fixation of fair rent the Additional Collector has determined the amount of fair rent at Rs.9795/- per month. As the petitioner was in arrears of rent, the plaintiff on 24/05/2006 issued a notice under Section 15 of the Maharashtra Rent Control Act, 1999 (for short, the said Act) seeking payment of arrears of rent. This notice was not complied by the defendant and hence the plaintiff filed suit on 18/01/2007 for eviction of the defendant. The defendant did not file its written statement and the matter proceeded without the same. The trial Court after considering the evidence on record held that

the defendant had committed default in payment of rent and as there was non-compliance with the provisions of Section 15(3) of the said Act, the defendant was liable to be evicted. The suit was accordingly decreed on 03/08/2009. The appeal filed by the defendant has been dismissed by the appellate Court by its judgment dated 20/12/2018. Being aggrieved the defendant has filed the present writ petition.

2. Shri R. M. Sharma, learned counsel for the petitioner submitted that the Courts were not justified in holding that the petitioner was in arrears of rent. The order determining fair rent was the subject matter of challenge in Writ Petition No.4821/2008 which was pending in this Court. During pendency of the proceedings the defendant has deposited part of arrears and therefore considering the fact that a school was being run in the said premises, the decree for eviction was liable to be set aside. He further submitted without prejudice to his contentions that a larger time to vacate the premises be granted to the petitioner.

4. On the other hand Shri A. J. Gilda, learned counsel for the respondent supported the decree for eviction. He submitted that since the demand notice was duly served on the defendant and the

arrears were not paid in the stipulated period, the decree as passed did not warrant any interference. According to him the defendant was in arrears of rent even though the same were payable at the rate of Rs.9795/- per month. The arrears as determined by the Additional Collector were also not paid. In so far as the request made by the petitioner for grant of further time in view of the fact that school was run in that premises it is submitted that similar request was made even earlier but the petitioner refused to clear the arrears of rent.

5. Heard the learned counsel and perused the impugned judgments. It has been found by both the Courts that pursuant to the demand notice issued by the plaintiff on 24/05/2006 the arrears were not cleared by the defendant. The provisions of Section 15(3) of the said Act are mandatory in nature and compliance thereof is required to be shown for seeking protection from eviction. It is not in dispute that the defendant did not respond to the demand notice. No fault can be found with the decree of eviction as passed. The finding recorded by both the Courts is based on evidence available on record. In absence of jurisdictional error, I do not find any reason to interfere in writ jurisdiction.

6. As regards further time sought by the petitioner to vacate the premises, this Court on 26/04/2019 had called upon the petitioner to file an affidavit indicating its willingness to clear at least part of the arrears. In the affidavit as filed it has been stated that the petitioner would make a payment of Rs.1,00,000/- every year for a period of six years. This manner of clearing the arrears of rent is opposed by the respondent on the ground that the arrears of rent exceed Rs.9,00,000/-. In that view of the matter larger time of two years as sought by the petitioner to vacate the premises cannot be granted.

Accordingly, the writ petition stands dismissed with no order as to costs. The petitioner is granted time to vacate the premises till 15/06/2019. Order accordingly.

JUDGE