

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

Writ Petition No. 2674 of 2018

Munna Pandurang Rangari

Vs.

Smt. Vimal W/o Vasant Rao Sahu and one another

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

Court's or Judge's orders

Mr H.N. Potbhare, Advocate for petitioner.
Mr. D.R. Bhoyar, Advocate for respondent.

CORAM : MANISH PITALE, J.

DATED : APRIL 26, 2019

By this writ petition (original tenant) has challenged the concurrent orders passed by the Courts below granting a decree of eviction in favour of the respondents (original landlords).

2. The respondents herein filed Reg. Civil Suit No. 39 of 2005 against the petitioner seeking his eviction on account of arrears of rent. It was contended on their behalf that the monthly rent for the suit premises was Rs.550/- per month, which the petitioner had failed to pay from January, 2004 onwards and that he was liable to be evicted on the ground of being in arrears of rent. A prayer was made for direction to pay the outstanding amount. The petitioner filed his written statement and claimed that he was not in arrears of rent and that the respondents

had originally agreed to sell the tenanted premises to him and that in this backdrop, the suit could not be decreed. During the pendency of the suit, the respondents filed an application under Order 15-A of the Civil Procedure Code, 1908 for direction to the petitioner to pay rent at Rs.550/- per month during pendency of the suit.

3. On 12/09/2007, the Trial Court i.e. the Court of Civil Judge (Jr. Dn.), Pulgaon, passed an order allowing the said application of the respondents and directed the petitioner to pay arrears of rent to the respondents at Rs.500/- per month from 01/01/2004 within three months from the date of order. It is an admitted position that the petitioner failed to pay the said amount and the respondents were constrained to file an application for striking out the defence of the petitioner. By order dated 03/07/2010, the Trial Court allowed the said application and struck off the defence of the petitioner. Thereafter, the orders of the Trial Court placed on record show that despite repeated opportunities, the petitioner or his counsel failed to remain present and to advance arguments in the pending proceedings before the Trial Court and ultimately on 30/03/2017 the Trial Court decided the suit on merits. On the said date, the Trial Court passed its Judgment and order holding that the petitioner was in arrears of rent and that the respondents were entitled to evict the petitioner on the said ground.

Accordingly, the suit filed by the respondents was decreed and the petitioner was directed to pay the amount of Rs.57,628/- towards arrears of rent with interest @8% p.a. from the date of suit till recovery of total dues to the respondent and a direction was given to the petitioner to deliver vacant and peaceful possession of the suit property to the respondent within a period of two months from the date of order.

4. Aggrieved by the said decree, the petitioner filed an appeal before the District Judge, Wardha (Appellate Court). The appeal filed by the petitioner was dismissed by the Appellate Court on 22/09/2017, thereby confirming the decree passed by the Trial Court, against which the present writ petition has been filed.

5. The main contention raised on behalf of the petitioner before this Court is that the case of the petitioner was not considered on merits by the both the Courts below. It was submitted that since the defence of the petitioner was struck off, there was no evidence contra to what the respondents had placed on record and that the decree passed by the Trial Court and its confirmation by the Appellate court had caused grave prejudice to him. According to the petitioner, his contention that he was never in arrears of rent and even the quantum of rent claimed by the respondents was not correct, did not receive consideration on

merits by both the Courts below. It was further submitted that during pendency of the appeal, the petitioner had deposited the amounts before the Trial Court showing the petitioner at least deserved consideration of his contentions on merits. On this basis, it is contended that the orders of the two Courts below deserved to be set aside and the matter was required to be remanded to the Trial Court in the interest of justice.

6. On the other hand, it was pointed out on behalf of the respondents that the order dated 12/09/2007, passed by the Trial Court under Order 15-A of the Civil Procedure Code, 1908, directing the petitioner to deposit the arrears of rent from January, 2004 had attained finality. It was also submitted that by the subsequent order dated 03/07/2010, passed by the Trial Court striking off the defence of the petitioner on account of non-compliance of the earlier order dated 12/09/2007, had also attained finality. On this basis, it was contended that the petitioner was not justified in making a grievance that his contentions were not considered on merits by the Courts below. As regards amounts deposited before the Trial Court and during pendency of the appeal, it was pointed out that such deposit would not result in any benefit to the petitioner because in order to take advantage of Section 15 of the Maharashtra Rent Control Act, 1999, the petitioner ought to have deposited the arrears of

rent either within 90 days upon receiving notice in writing from the respondents under Section 15(2) of the said Act or on depositing arrears of rent within 90 days from the date of service of summons of suit on the petitioner under Section 15(3) of the said Act. It was contended that having failed to make deposit of amounts, the petitioner could not get rid of decree of eviction by claiming that he had deposited the amounts before the Trial Court after decree of eviction was passed against him and during pendency of the appeal before the Trial Court. The learned counsel also emphasized that the petitioner was in arrears of rent even afterwards for which a further suit was filed and a decree had been passed against the petitioner, which was also put to execution. On this basis, it was submitted that since the petitioner was a repeat offender, there was no question of the petitioner claiming any sympathy before this Court.

7. Heard the counsel for the parties and perused the material on record. The facts of the present case clearly show that the petitioner cannot take benefit of either Section 15(2) or 15(3) of the aforesaid Act, because he failed to deposit the arrears of rent when the notice in writing was issued by the respondents and thereafter when the suit summons were served upon him. Therefore, the petitioner cannot claim any benefit on the basis that he had deposited the amounts before the Trial Court during

pendency of the appeal.

7. The order passed by the Trial Court on 12/09/2010⁷ under Order 15-A of the Code of Civil Procedure, 1908, directing to deposit arrears of rent from January, 2004 and subsequent order dated 03/07/2010, passed by the Trial Court striking out defence of the petitioner had attained finality. The petitioner failed to show that the said orders were challenged at any point of time other than showing that it was contended on his behalf before the Appellate Court that the said order of striking out of defence was made subject matter of challenge in an appeal. The proceedings before the Trial Court show that the petitioner failed to get order dated 03/07/2010, striking out his defence set aside by any competent Court but he continuously indulged in actions that demonstrate that he was delaying the proceedings before the Trial Court. A perusal of the orders dated 03/10/2011 and 15/10/2011, passed by the Trial Court in the aforesaid suit show that the petitioner and his counsel repeatedly remained absent and failed to advance arguments before the Trial Court. Since the defence of the petitioner had been struck off, the Trial Court correctly proceeded on the basis of the material available on record and found that the petitioner was indeed in arrears of rent and that the decree of eviction was required to be passed against him.

8. In these circumstances, the petitioner is not entitled to claim that he did not get sufficient opportunity to place on record his contentions or that the Trial Court proceeded without taking into consideration his defence. The petitioner in the facts and circumstances of the present case certainly does not deserve sympathy of this Court while exercising writ jurisdiction. The Appellate Court also correctly appreciated the facts of the present case while passing the impugned Judgment and order and confirming the decree passed against the petitioner. As noted above, deposit of amounts before the Trial Court by the petitioner during pendency of the appeal could be of no avail because the petitioner was unable to demonstrate before the Appellate Court any error committed by the Trial Court while passing the decree of eviction. Although the learned counsel for the respondents has emphasized that the petitioner is a repeat offender because in a subsequent suit for arrears of rent a decree has been passed which has been put into execution by respondents, but, this Court refrains from making any observation on the same because even on the facts and circumstances brought on record in the present writ petition, in view of the proceedings before the Courts below, it is more than evident that the petitioner has been in default and he must suffer decree of eviction for having failed to pay arrears of rent. This Court is of the opinion that there is no

substance in the contention raised on behalf of the petitioner that the matter needs to be remanded to the Trial Court in the interest of justice. In fact, the interest of justice would be better served by dismissing the present writ petition and confirming the concurrent orders passed by the two Courts below against the petitioner.

9. In view of the above, the present writ petition is found to be without any merit and it is dismissed.

JUDGE