

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

Civil Revision application No.126/2019
Rajesh Dubey Vs. Nandkishor Sharma

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

Court's or Judge's orders

Mr.P.K. Mishra, Advocate for applicant
Mr.J.J. Chandurkar, Advocate for respondent

CORAM : MANISH PITALE, J.

DATED : DECEMBER 13, 2019

By this revision application, the applicant (original defendant) has challenged eviction decree passed against him concurrently by the two Courts below on the ground of arrears of rent.

2. The respondent (original plaintiff) had filed a suit for eviction of the petitioner and recovery of possession in respect of suit property. The suit was filed in pursuance of a notice issued by the respondent on 04/11/2009, calling upon the petitioner to pay rent in respect of the suit premises. It was claimed in the notice that on 07/07/2008, the suit premises was purchased by a registered sale deed by the respondent from original landlord of the petitioner and that that the monthly rent of the suit premises was Rs.800/-. It was further stated that since the petitioner had not paid rent to the respondent from 07/07/2008 to 30/11/2009, i.e. for a period of 17 months, the

petitioner was in arrears of rent. In the notice, a demand was made for payment of rent at the prevailing letting value of Rs.2000/- per month.

3. In response to the said notice, the petitioner had sent reply on 07/12/2009, denying that the petitioner was liable to pay the rent to the respondent, much less at the rate of Rs.800/- per month. It was stated that the suit premises originally belonged to one Sushila Choudhary, who died in the year 2005 and thereafter the rent was collected by her grandson at the monthly rent of Rs.400/- including electricity and water charges. It was stated in the reply to the notice that the demands made by the respondent were not sustainable and that the notice was illegal.

4. Pursuant to the aforesaid reply filed by the petitioner, the respondent was constrained to file the suit for ejectment and possession before the Small Causes Court. In the said suit, apart from the ground of arrears of rent, a ground pertaining to bonafide need was also raised on behalf of the respondent. The parties led oral and documentary evidence in support of their respective stands.

5. By judgment and order 22/06/2016, the Small Causes Court found that the respondent had failed to make out his case on the ground of bonafide need, but, it was found that the ground of ejectment on

the basis of arrears of rent was made out and, therefore, a decree of ejectment was passed against the petitioner.

6. Aggrieved by the same, the petitioner filed appeal before the District Judge, Nagpur (Appellate Court). The respondent also filed counter claim seeking to press ground of bonafide need, as also claim for monthly rent at Rs.800/-.

7. By the impugned judgment and order, the Appellate Court dismissed appeal and confirmed the decree passed against the petitioner.

8. The learned counsel appearing for the applicant submitted that the decree concurrently passed by the two Courts below on the ground of arrears of rent was unsustainable because the notice on the basis of which the eviction was sought by the respondent itself could not be said to be legal and that once it was found that the claim of monthly rent raised on behalf of the respondent was unsustainable, the subsequent proceedings in the suit were also rendered unsustainable. It was submitted that when the respondent had come up with the case that the petitioner was liable to pay rent at the rate of Rs.800/- per month and it was found that the said claim was not made out, the suit for ejectment ought to have been dismissed on this short ground. It was submitted that

the true purport of Section 15 of the Maharashtra Rent Control Act, 1999, was not appreciated in the proper perspective by the Courts below while granting decree in favour of the respondent on the ground of arrears of rent. The learned counsel relied upon judgments of this Court in the cases of **Vinayak Narayan Deshpande and others Vs. Deelip Prahlad Shisode 2010(3) Mh.L.J. 807** and **Arun Bhikaji Pandit Vs. Daulat Madhavrao Gaikwad 2016(1) Mh.L.J. 269**.

9. On the other hand, the learned counsel appearing for the respondent supported the findings rendered by the Courts below and requested that the revision application be dismissed.

10. Upon hearing the learned counsel for the rival parties and on perusing the material on record, it is evident that the decree in the present case has been passed against the petitioner only on the ground of arrears of rent. The case of the respondent before the Courts below on the aforesaid issue was that having purchased the suit premises on 07/07/2008, he was entitled to collect rent from the petitioner. In the notice issued on 04/11/2009, the respondent claimed rent at the rate of Rs.800/- per month and demanded that the petitioner pay arrears of rent from 07/7/2008 to 30/08/2009, i.e. for a period of 17 months. In the very same notice, the respondent also claimed that he was entitled to recover rent at the rate of Rs.2000/- per

month, which was allegedly prevailing letting value in the locality.

11. For appreciating the contentions raised on behalf of the petitioner, the reply sent on his behalf to the notice assumes significance. The petitioner denied that the rent for the suit premises was Rs.800/- per month and it was also stated that since there was no written intimation about the purchase of the suit property by the respondent, the notice was being denied. It was conceded in the said reply filed on behalf of the petitioner that rent at the rate of Rs.400/- per month was being paid to the landlady and upon her demise to her grandson.

12. In the present case, as correctly held by the two Courts below, since there was no written agreement much less registered agreement as contemplated under Section 55 of the aforesaid Act, under subsection (2) thereof, the terms and conditions of the tenancy as claimed by the petitioner in the present case would prevail. On this basis, the Appellate Court gave a detailed finding as to why it was to be held that the rent for the suit premises would only be Rs.400/- and not Rs.800/- per month as claimed by the respondent.

13. Having come to the said conclusion on the basis of evidence and material on record, the Appellate

Court, while confirming the findings of the Trial Court, found that the petitioner was in arrears of rent from 07/07/2008 onwards. It is upon rendering the said positive finding that the Appellate Court confirmed the decree of eviction passed by the Trial Court against the petitioner.

14. This Court is unable to appreciate the specific contention raised on behalf of the petitioner before this Court that initial notice dated 04/11/2009, sent by the respondent was itself illegal and invalid and, therefore, all the proceedings undertaken on the basis of the same were rendered unsustainable. The emphasis placed on the judgments of this Court in the cases of **Vinayak Narayan Deshpande and others Vs. Deelip Prahlad Shisode** and **Arun Bhikaji Pandit Vs. Daulat Madhavrao Gaikwad** (supra) is misplaced because in the present case the Courts below, particularly the Appellate Court analyzed the contents of the notice sent by the respondent and the reply sent by the petitioner thereto, to come to a conclusion that the notice itself could not be said to be invalid. The reasoning attributed by the Appellate Court while reaching the said conclusion was perused by this Court and it was found to be in accordance with law and the same could not be said to be erroneous. It cannot be said that the initial demand made by the respondent was illegal, thereby rendering notice itself invalid.

15. This is because there is no denial about the fact that the respondent indeed became owner of the suit premises by virtue of registered sale deed dated 07/07/2008. There is also nothing on record to show that after the said notice was issued and it was conceded on behalf of the petitioner in the reply to the said notice that there was indeed tenancy in the suit property and that monthly rent was Rs.400/-, any effort was made by the petitioner to show his bonafide or to clear the arrears of rent. In such a situation, it cannot be said that the findings rendered by the two Courts below concurrently against the petitioner suffered from any glaring error, justifying the interference in limited revisional jurisdiction of this Court.

19. The learned counsel for the petitioner emphasized that the Courts below failed to appreciate the true purport of Section 15(1) of the Act while giving supplementary directions in Clause 6 in the order of the Appellate Court, pertaining to payment of arrears of rent for specific periods. But, the said contention deserves to be rejected because Section 15(1) of the Act requires the tenant to be ready and willing to pay the amount of rent. In the present case, even as per the stand of the petitioner, the monthly rent was Rs.400/- and there is nothing on record to show that the petitioner was ready and willing to part with the said amount per month to continue his

tenancy.

20. In view of above, this Court finds that there is no substance in the present application. Accordingly, it is dismissed and the decree granted by the two Courts below is confirmed.

21. At this stage, a request is made on behalf of the petitioner for grant of reasonable time for vacating the premises. The same is opposed by the respondent. In the facts and circumstances of the present case, the petitioner is directed to vacate the suit premises on or before **31st March, 2020**.

22. Needless to say, the petitioner shall not create any third party interest in the suit property, till handing over vacant and peaceful possession to the respondent within the aforesaid period of time.

JUDGE