

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

WRIT PETITION NO.5324 OF 2019

(NILESH NATWARLAL ASHAR AND OTH...VS.. NARESH GYARSILAL AGRAWAL (HUF) & OTH.)

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

Court's or Judge's orders

Shri A.D.Bhate, Advocate for Petitioners.

CORAM : Z.A.HAQ, J.

DATED : AUGUST 01, 2019.

Heard.

The civil suit filed by the respondents praying for decree for eviction and arrears of rent and other reliefs was dismissed by the trial Court. The petitioners (tenants) had challenged the judgment and decree passed by the trial Court by filing appeal under Section 34 of the Maharashtra Rent Control Act 1999 (hereinafter referred to as “the Act of 1999”) before the District Court. This appeal is allowed by the impugned judgment. The learned District Judge has recorded that the plaintiffs have proved and there has been landlord/ tenant relationship between the plaintiffs and the defendants and the defendants had been in arrears of rent. The learned District Judge has further recorded that the defendants (tenants) failed to deposit the amount of rent even during pendency of the civil suit, as required by Section 15(3) of the Act of 1999.

The contention of the petitioners/defendants is that the plaintiffs have failed to prove the landlord/ tenant relationship between the parties and though the defendants

failed to adduce any evidence and to cross-examine the plaintiffs' witness, it was necessary for the plaintiffs to discharge the burden of proving that there was landlord/tenant relationship between the parties. This contention is dealt with by the learned District Judge in para No.11 of the impugned judgment, as follows:

“11. The Trial Court pointed out that the plaintiffs have not demanded the rent for several years, they have not filed any rent receipt or any document showing the tenancy of the defendants. On these counts, the Trial Court disbelieved unchallenged testimony of P.W. 1 Vinod. It is to be noted that the Trial Court held that the suit property/ suit premises are owned by the plaintiffs. Admittedly, the defendants are in possession of the suit premises. In these circumstances, one should have asked to himself the nature of possession of the defendants. There were two adverse pleas before the Court, one claiming the defendants as tenant and other claiming induction of the defendants by third party. The first plea is stated on oath and it remained unchallenged. There is no evidence in respect of second plea. In these circumstances, it has to be held that on the basis of unchallenged evidence, supported by documents and some admissions given by the defendants that they are tenants of the plaintiffs in the suit premises. Therefore, it is proved that there is landlord tenant relationship between the parties. Accordingly, I answer this point in affirmative.”

I find that the conclusions of the learned District Judge are right and there is no reason to interfere with the above conclusions.

As far as issue of arrears of rent and non-payment/ deposit of the amount of rent as per Section 15(3) of the Act of 1999, I find that the learned District Judge has dealt with these issues exhaustively in paragraph Nos. 12 and 13 of the judgment as follows:

“12. AS TO POINT NOS. 2 TO 4:

It is not the case of the defendants that they have paid any rent to the plaintiffs. According to the plaintiffs, they have issued several notices to the defendants and demanded the rent. They have also filed two notices on record. Their postal receipts and acknowledgements are also filed. It appears from notice dated 28.06.2004 (Exh.46), its postal receipts (Exh.47), its postal acknowledgments (Exh.48 to 50), Notice dated 07.01.2005 (Exh.51), its postal receipts (Exh.52), its postal acknowledgment and returned postal packets (Exh.53 to 55) that the defendants accepted the first notice.

13. So far as second notice is concerned, defendant Nilesch accepted it and other two defendants had not claimed it and therefore, registered packet returned to the plaintiffs. This documentary evidence shows that both the notices are duly served some times on 11.1.2005. It is not the case of the defendants that they have paid any rent or amount after receipt of these notices. The suit is filed on 16.02.2006. It is also not the case of the defendants that they have deposited any rent or amount after receipt of suit summons.”

The learned District Judge has dealt with above issues considering the documentary evidence on record and the provisions of Section 15(3) of the Act of 1999. The petitioners/ defendants have not been able to point out any illegality or perversity in the conclusions of the learned District Judge on these issues.

Hence, I see no reason to interfere with the impugned judgment. The writ petition is **dismissed**. No costs.

At this stage, learned Advocate for the petitioners/defendants stated that the amount of arrears of rent will be deposited by the petitioners/defendants till 31st August 2019 and further prayed that time be granted till 31st October 2019 to vacate the premises.

If the petitioners/ defendants deposit the amount of arrears of rent and occupation charges, if any, as per the judgment and decree passed by the learned District Judge , and file an undertaking, before the executing Court till 31st August 2019, that the petitioners/ defendants will handover vacant possession of the suit premises to the respondent/ decree holder peacefully till 31st October 2019, the decree shall not be executed till 31st October 2019.

If the petitioners/ defendants fail to abide by any of the above condition, the respondents/ decree holders will be at liberty to proceed with the execution after 1st September 2019.

JUDGE