

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

Writ Petition No.5805/2016
Shobha Sirsath Vs. Prafulla Moharil

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

Court's or Judge's orders

Mr. P.S. Chawhan, Advocate for petitioner
Mr. A.A. Naik, Advocate for respondent

CORAM : MANISH PITALE, J.

DATED : DECEMBER 10, 2019

By this writ petition, the petitioner (tenant) has challenged concurrent orders passed by the two Courts below granting decree of eviction in favour of the respondent (landlord), on the ground of arrears of rent.

2. The suit property in the present case consists of two rooms that were given on rent originally to the husband of the petitioner. These rooms are situated in Moharil Wada at Buldhana. The monthly rent was Rs.100/- and the tenancy has commenced on the basis of oral agreement.

3. Initially, the respondent No.1 filed a suit for recovery of rent since the petitioner had been in arrears of the same. The same was decreed and thereafter the respondent was constrained to file the present suit seeking eviction of the petitioner on the

ground of default in payment of rent as well as bonafide need. It is an undisputed fact that the ground of bonafide need was not accepted by the two Courts below and decree was granted by the Trial Court and confirmed by the Appellate Court only on the ground of default in payment of rent. The Courts below concurrently found that the despite statutory notice under Section 15(2) of the Maharashtra Rent Control Act, 1999, the petitioner had defaulted and, therefore, she was liable to be evicted from the suit property.

4. While challenging the concurrent findings rendered by the two Courts below, the principal ground raised in the present writ petition was that since the notice under Section 15(2) of Act was not received, the findings rendered by the two Courts below were vitiated. On this basis, notice was issued by this Court on 19/10/2016 and the decree granted in favour of the respondent was stayed.

5. Mr. P. S. Chawhan, learned counsel for the petitioner submitted that the findings rendered by the two Courts below on the question of service of statutory notice under Section 15(2) of the said Act were perverse. It was submitted that although the respondent had placed on record material to show that notice by registered post AD was dispatched, but, admittedly, there was no proof of any acknowledgment issued by the petitioner regarding service of such notice by registered post. It was submitted that in the

face of such material, the Courts below ought not to have held that the notice was served and that there was default on the part of the petitioner, despite service of notice contemplated under Section 15(2) of the said Act. It was further submitted that although there might have been some irregularities in payment of rent, but, there was sufficient material on record to show that the petitioner had indeed paid / deposited rent with regard to the aforesaid property. On this basis, it was submitted that the impugned judgment and decree passed by the Trial Court and confirmed by the Appellate Court deserved to set aside.

6. On the other hand, Mr. A.A. Naik, the learned counsel for the respondent (landlord) submitted that the petitioner had been irregular in payment of rent for a long period of time. It is submitted that there is sufficient material to show that the petitioner had defaulted in payment of rent thereby exposing herself to decree of eviction passed by the two Courts below. On the question of service of notice, the two Courts below have considered the oral and documentary evidence on record in the correct perspective to reach the findings against the petitioner which do not deserve interference under writ jurisdiction by this Court.

7. Heard learned counsel for the rival parties and perused the material on record. The only question raised on behalf of the petitioner in the present writ

petition is, as to whether the decree of eviction passed against her could be confirmed in absence of cogent material to show that she was indeed served with statutory notice under Section 15(2) of the aforesaid Act.

8. Perusal of Section 15(2) of the said Act shows that the tenant is expected to be regular in payment of rent and that if there is default then subject to the regime prescribed under the said provision, the landlord would be entitled to a decree of eviction in his favour. Section 15(2) of the said Act mandates that the notice is to be served on the tenant regarding non-payment of rent and a suit can be filed by the landlord for eviction on the said ground only after expiry of 90 days from service of notice in writing.

9. In the present case, it was the specific case of the respondent that such a notice was indeed issued by registered post AD to the petitioner on 01/03/2001, which was duly served on the petitioner on 02/03/2001. This fact has been disputed by the petitioner. In such a situation, the Courts below were expected to consider the oral and documentary evidence on record to give a finding of fact. The Appellate Court, being the last Court on facts, has discussed this fact in paragraph 14 onwards. It is found that the respondent had filed on record documentary evidence regarding receipt issued by the Postal Department, pertaining to issuance of notice by

registered post AD on 01/03/2001 and that a notice was also issued to Postal Department to provide the postal acknowledgment of service of notice on the petitioner. It is also an admitted position in the present case that postal acknowledgment regarding service of notice on the petitioner was not on record. Under these circumstances, the respondent examined officials of the postal department, who in the usual course of their official duties were able to depose regarding exhibited documents placed on record on behalf of the respondent on which the seal and stamp of the postal department were also affixed. After taking into consideration the said documentary evidence and oral evidence of the officials of the postal department, the Appellate Court came to a conclusion that the respondent was able to prove the fact that the notice was served on the petitioner on 02/03/2001. A perusal of the material appreciated by the Appellate Court and reasoning adopted to hold in favour of respondent while confirming the decree passed by the Trial Court cannot be said to be erroneous or perverse in any manner. This Court is of the opinion that the petitioner has not been able to make out a case for invoking writ jurisdiction to interfere with the concurrent findings rendered by the two Courts below on this aspect.

10. Once it is found that the statutory notice under Section 15(2) of the said Act was indeed served on the petitioner on 02/03/2001, the default in

payment of rent on the part of the petitioner becomes obvious.

11. Therefore, this Court is of the opinion that no case is made out for interference in writ jurisdiction. Accordingly, the writ petition is found to be without any merits and it is dismissed.

12. At this stage, the learned counsel for the petitioner requested for reasonable time for the petitioner to vacate the suit property. Considering the chequered history of the present litigation and the fact that the petitioner has been in possession of the suit property for long period of time and further in the face of the finding that she has indeed defaulted in payment of rent, this Court is of the opinion that a direction needs to be given to the petitioner to vacate the suit property on or before **31st March, 2020**.

13. Hence, the petitioner is directed to vacate the suit property on or before **31st March, 2020** and hand over vacant peaceful possession to the respondent, failing which consequences as prescribed in law shall follow.

JUDGE