

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

WRIT PETITION NO. 1603/2017

Rambhau Govindrao Ughade

..VS..

Uttamrao Maroti Malge

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

Court's or Judge's orders

Shri S.S. Alaspurkar, Advocate for the petitioner
Shri K.B. Zinjarde, Advocate for the respondent

CORAM : Z.A.HAQ, J.

DATED : 04/01/2019

Heard.

The respondent – landlord had filed the civil suit praying for decree for eviction, possession and other reliefs. The landlord claimed that rent of the suit premises was Rs. 500/- per month, the tenant was not paying rent and inspite of service of notice demanding rent, the tenant failed to pay the arrears of rent. In these facts, the landlord claimed that the tenant was liable to be evicted under Section 15 (1) of the Maharashtra Rent Control Act, 1999 (for short “the Act of 1999”).

The tenant disputed that rent of the premises was Rs. 500/- per month. The other claim made by the landlord was also disputed by the tenant.

The learned trial Judge proceeded with the trial and by the judgment dated 21/10/2008 held that the landlord had failed to prove that rent of the premises was Rs. 500/- per month, and that the tenant had not paid rent

for the period from 01/06/2000 till 30/06/2003 as claimed by the landlord. With these findings, the trial Court dismissed the civil suit.

The landlord challenged the judgment and decree passed by the trial Court, before the District Court in appeal which is allowed by the impugned judgment. The learned District Judge has recorded that rent of the premises was Rs. 65/- per month, and that the tenant failed to pay even this amount and therefore was liable to be evicted.

The findings and the conclusions of the learned District Judge are challenged by the tenant on the ground that the decree for eviction under Section 15 (1) of the Act of 1999 cannot be granted unless notice of demand is served on the tenant and the tenant fails to pay rent/arrears of rent for 90 days from the service of notice. The tenant contends that the decree for eviction can be granted under Section 15(1) of the Act of 1999 if the tenant fails to pay the amount of standard rent and permitted increases and in the present case, the landlord had not taken up any proceedings for determination of the standard rent and permitted increases and therefore the decree granted by the learned District Judge under Section 15 (1) of the Act of 1999 is unsustainable.

To support the submission, the advocate for the petitioner – tenant has relied on the following judgments:-

- (a) The judgment given in the case of Arun Bhikaji Pandit vs. Daulat Madhavrao Gaikwad reported in 2016 (1) Mh.L.J. at page 269.

(b) The judgment given in the case of Vinayak Narayan Deshpande and others vs. Deelip Prahlad Shisode reported in 2010 (3) Mh.L.J. at page 807.

It is further submitted that the landlord had filed another civil suit, R.C.S. No. 119/2004 praying for decree for an amount of Rs. 18,500/- towards the arrears of rent contending that rent of the suit premises was Rs. 500/- per month and this civil suit was decided by the judgment dated 17/03/2007. The trial Court held that rent of the suit premises was Rs. 65/- per month. It is submitted that the findings recorded by the Court in R.C.S. No. 119/2004, that rent of the suit premises was Rs. 65/- per month will operate prospectively from 17/03/2007 i.e. the date of the judgment in that civil suit and therefore, the tenant will be liable to pay rent @ Rs. 65/- per month from March, 2007. To support the submission, reliance is placed on the judgment given by the Nagpur High Court in the case of Kewalchand Kastoorchand vs. Samirmal Jaini and another reported in AIR 1953 Nagpur at page 146.

Shri K.B. Zinjarde, Advocate appearing for the landlord has submitted that the tenant has not offered to pay/deposit rent even @ Rs. 65/- per month and continued with the default even during the pendency of the civil suit. The submission made on behalf of the tenant that the landlord is not entitled for decree for eviction as per Section 15 (1) of the Act of 1999 is countered relying on the judgment delivered by the Division Bench of this Court in the case of Chandiram Dariyanumal Ahuja vs. Akola Zilla Shram Wahtuk Sahakari Sanstha reported in 2013 (1) Mh.L.J. at page 28, specially para no. 18).

After examining the documents placed on record of the writ petition and considering the rival submissions made by the learned advocates for the respective parties, I find that even according to the tenant, rent of the premises was Rs. 65/- per month. The tenant failed to pay rent earlier also and the landlord was required to file Small Cause C.S. No. 08/2004 and R.C.S. No. 119/2004 for recovery of the arrears of rent. The tenant has not produced any material on record to show that he had offered to pay/deposit rent @ Rs. 65/- per month during the pendency of the civil suit filed by the landlord seeking decree for eviction and possession. Even during the pendency of the appeal before the District Court, the tenant had not offered to pay/deposit the amount of rent @ Rs. 65/- per month.

At the time of arguments, a submission is made on behalf of the tenant that the civil suit filed by the landlord was dismissed and therefore the tenant was not required to deposit the amount of rent during the pendency of the appeal before the District Court. This submission is recorded only to show the fallacious approach of the tenant, and it has to be rejected. Only because the prayer made on behalf of the landlord for eviction and possession is not granted by the trial Court, the tenant is not absolved of the liability to pay rent regularly. Such a stand by a defaulting tenant cannot be accepted. Further I find that the tenant had come out with a specific case that the landlord was not accepting rent though offered by the tenant (see Para no. 4 of the judgment of the trial Court). Though this spacious plea is taken by the tenant, it has not been substantiated/proved.

The learned District Judge has dealt with all the relevant aspects and after properly appreciating the evidence on record has rightly allowed the appeal and decreed the civil suit. In my view, the conclusions of the learned District Judge cannot be faulted with. The judgments referred by the advocate for the petitioner – tenant do not assist him.

I see no reason to interfere with the impugned judgment and decree.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

Ansari