

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1819/2019

(GAJANAN VISHWANATHRAO KADU **VERSUS** SUMAN SHESHRAO KALE (DELETED) SHESHRAO
 MAHADEORAO KALE)

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

Court's or Judge's orders

 Shri R.D. Wakode, counsel for petitioner.
 Shri C.A. Babrekar, counsel for R-2.

CORAM : A.S. CHANDURKAR, J.
DATE : APRIL 09, 2019.

The petitioner is the tenant who is aggrieved by the decree for eviction passed by the trial Court under provisions of Section 15 of the Maharashtra Rent Control Act, 1999 (for short, 'the said Act') as confirmed by the Appellate Court.

A house admeasuring about 2565 square feet owned by the respondents is occupied by the petitioner as a tenant since the year 1998. Rent of Rs.1,000/- per month excluding other charges was to be paid. According to the respondents, the petitioner was in arrears of rent since August-2002. On 09.10.2006, demand notice under Section 15 of the said Act was issued demanding arrears from August-2002 to October-2006. In response to that notice, the petitioner paid an amount of Rs.51,000/- on 02.11.2006. The respondents thereafter filed suit on 04.08.2008 seeking eviction of the tenant on the count of arrears of rent and *bona fide* need. The suit was opposed by the tenant. After considering the evidence on record, the trial Court found that the tenant was in arrears of rent for the months of November and December-2006. On that count, it was held that the plaintiffs were entitled for decree of eviction. The ground with regard to *bona fide* need was held against the plaintiffs. In the appeal filed by the tenant, he placed on record

rent receipt for the month of November-2006 indicating payment of Rs.1,040/- as rent. The Appellate Court accepted that receipt but held that as rent was not paid for the month of December-2006 and rent was being paid during pendency of the proceedings without permitted increases, it proceeded to dismiss the appeal. Hence, this writ petition.

Shri R.D. Wakode, learned counsel for the petitioner submitted that as the tenant had complied with the demand notice dated 09.10.2006 and had remitted an amount of Rs.51,000/-, there was no cause of action to seek eviction of the tenant on the ground of arrears of rent. The decree as passed is with regard to the arrears for the month of December-2006 and failure to pay permitted increases. The conduct of the tenant was such that he was always ready to pay the rent as and when demanded. The same was not being accepted by the landlords by refusing the money orders. Placing reliance on the decision in *Sitaram Narayan Shinde & Others Versus Ibrahim Ismail Rais & Others* [2005(1) **Mh.L.J.** 35], it was submitted that there was no cause of action for filing the suit in question and hence the decree was liable to be set aside.

Shri C.A. Babrekar, learned counsel for the respondents supported the impugned judgment. According to him, the arrears for the month of December-2006 and failure to pay the permitted increases thereafter justified the decree for eviction. It was the duty of the tenant to pay permitted increases every month as required by Section 15(3) of the said Act read with Section 11 thereof. It was not in dispute that the permitted increases had not been paid. He placed reliance on the decision in *Babulal Fakirchand Agrawal Versus Suresh Kedarnath Malpani & Others* [2017 (4) **Mh.L.J.** 406] in that regard.

I have heard the learned counsel for the parties at length and I have perused the material placed on record. It is an admitted position that in response to the demand notice dated 09.10.2006 the tenant paid the arrears of rent from August-2002 to October-2006. Thereafter for the month of November-2006, payment of Rs.1,040/- has been accepted by the Appellate Court. During pendency of the suit as well as the appeal, the tenant continued to pay rent at the rate of Rs.1,040/- per month. It is in these facts that it has to be considered whether the tenant is in arrears of rent.

As per provisions of Section 15(3) of the said Act, no decree for eviction can be passed by a Court in the suit for recovery of possession if the tenant pays or tenders in Court the standard rent and permitted increases due with simple interest at 15% per annum. The tenant has to continue to pay such rent which includes standard rent and permitted increases till the suit is finally decided. Under Section 11 of the said Act, the permitted increases are to the extent of 4% per annum in the amount of rent. The Full Bench in *Babulal Fakirchand Agarwal* (supra) has held that for seeking protection from eviction it is necessary for the tenant to comply with the requirements of Section 15(3) of the said Act. Unless rent and permitted increases are deposited during pendency of the proceedings, the tenant is not entitled to claim protection from eviction. It is an admitted position that permitted increases of Rs.40/- were paid only in the month of November-2006. Thereafter for a period of more than ten years, permitted increases have not been paid. The tenant was paying rent at the rate of Rs.1,040/- per month and same has been paid till the end of November-2017 but without permitted increases. Hence, compliance with provisions of Section 15(3) of the said Act is not indicated.

As regards the demand for the period of November-2006 and thereafter, it is observed that the suit has been filed based on the demand notice dated 09.10.2006. If the tenant would have complied with the provisions of Section 15(3) of the said Act, he could have avoided eviction from the suit premises. Even payment of arrears with 15% interest has not been shown to have been made. Having failed to comply with the provisions of Section 15(3) of the said Act, the eviction has been rightly directed by both the Courts. Hence, there is no reason to interfere with the impugned judgment.

Considering the fact that the petitioner is in occupation of the premises in question for last twenty years, he is granted time to vacate the suit premises by the end of September-2019. The petitioner shall file an undertaking in this Court within a period of four weeks stating therein that by 30.09.2019 he shall handover vacant possession of the suit premises to the respondents. He shall continue to pay the agreed rent with permitted increases till that date.

The Writ Petition is disposed of in above terms. No costs.

JUDGE

APTE