

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

WRIT PETITION NO. 2065/2018

(KAILASHCHANDRA GOVINDLAL SHARMA **VERSUS** RATANLAL GIRDHARILAL AGRAWAL)

WITH

WRIT PETITION NO. 2066/2018

(KAILASHCHANDRA GOVINDLAL SHARMA **VERSUS** RATANLAL GIRDHARILAL AGRAWAL)

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

Court's or Judge's orders

Shri G.R. Kothari, counsel for petitioner.
 Shri A.J. Gilda, counsel for respondent.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 01, 2019.

The petitioner is the defendant in the suit for recovery of arrears of rent filed by the respondent herein. It is the case of the respondent that house consisting of two rooms has been let out to the petitioner on a rent of Rs.1,336/- per month with increase of 5% per annum. Since the petitioner was in arrears of rent for the period from November-2000 to September-2003 and thereafter for the period from October-2003 till May-2006, he filed two suits seeking recovery of arrears.

Written statement was filed denying the claim as made. The trial Court after recording the evidence held that the petitioner was in arrears of rent for the aforesaid period. Though certain payments were made by the petitioner, the same were adjusted towards earlier dues.

The suit was accordingly decreed and direction to pay arrears of rent alongwith interest at the rate of 15% per annum was ordered. The Appellate Court has confirmed the aforesaid decrees.

Shri G.R. Kothari, learned counsel for the petitioner submitted that without adjudicating the specific period for which the arrears were payable the suits have been decreed. The payments made by the defendant have been adjusted towards time-barred arrears. The arrears have been directed to be paid alongwith interest at the rate of 15% per annum which is contrary to Section 34 of the Code of Civil Procedure, 1908. It is thus submitted that decrees passed in both the suits are not sustainable.

Shri A.J. Gilda, learned counsel for the respondents submitted that the schedule of payment as sought to be relied upon by the petitioner was not duly proved. The respondent was therefore within his rights in adjusting the amount as paid towards the earlier dues. He submitted that decree passed in Regular Civil Appeal No.13 of 2012 directing such payment of arrears alongwith interest at the rate of 15% per annum was not challenged by the petitioner.

Heard the learned counsel and perused the impugned judgments. The Courts have after considering the evidence on record came to the conclusion that the petitioner was in arrears of rent since the year 2000. The same has been directed to be paid alongwith interest. The relationship between the parties is not in dispute. Similarly, the petitioner has not been able to substantiate his stand that rent was paid for a particular period. Reference therefore to the provisions of Section 60 of the Contract Act, 1872 is justified. In the light of the fact that the decree in Regular Civil Appeal No.13 of 2012 directing payment of arrears alongwith interest at the rate of 15% per annum has not been challenged, no fault can be found with the decrees as passed by the trial Court and confirmed by the Appellate Court. In absence of any jurisdictional error, the judgments are confirmed.

The writ petitions are dismissed. No costs.

JUDGE

APTE