

((1))

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

**CIVIL REVISION APPLICATION NO.76 OF 2010 WITH
CIVIL APPLICATION NO.11468 OF 2019**

Babulal s/o Fakirchand Agrawal
Age 56 years, Occu. Business,
R/o Shop No.1, Ambika Market,
Jalna, Taluka and District Jalna

... **APPLICANT**

VERSUS

1. Suresh s/o Kedarnath Malpani,
Age 41 years, Occu. Business,
R/o Dr. R.P. Road, Jalna,
Taluka and District Jalna
2. Anil s/o Kedarnath Malpani,
Age 36 years, Occu. and
R/o as above.
3. Ghanshyam s/o Kedarnath Malpani
Age 31 years, occu. and
R/o as above.
4. Rupwati d/o Kedarnath Malpani,
Age 29 years, Occu. Household,
R/o at present Nagpur, Taluka
and District Nagpur.

... **RESPONDENTS**

.....
Shri R.R. Mantri, Advocate for applicant
Shri P.R. Katneshwarkar, Advocate for respondents
.....

CORAM: R.G. AVACHAT, J.

Date of reserving judgment : 19th September, 2019.

Date of pronouncing judgment : 7th January, 2020.

J U D G M E N T :

The challenge in this revision application is to the judgment and decree dated 28.8.2008, passed by the Court of 4th Jt. Civil Judge (Junior Division), Jalna in Regular Civil Suit No.535/2006 and confirmed by learned District Judge - 2, Jalna by judgment and decree dated 19.3.2010, passed in Regular Civil Appeal No.203/2008.

By the impugned judgment and decree, the revision applicant (original tenant) has been directed to vacate the suit premises or hand over its possession to the respondents/ landlords.

2. Heard Mr. Mantri, learned counsel for the applicant and Mr. Katneshwarkar, learned counsel for the respondents.

FACTS :

3. The revision applicant/ tenant has been in possession of a shop premises, being Shop No.1 in the property bearing Municipal House No.4066, situated at Ambika Market, Jalna at a monthly rent of Rs.235/-, since 1982. The suit premises originally

belonged to late Kedarnath Malpani. On his demise, his sons – respondent No.1 to 4 became owners thereof. Since the applicant/ defendant was in arrears of rent, for the period from 1.1.2003 to 31.7.2006 (43 months), amounting to Rs.10,105/-, the respondents issued him a demand notice on 1.8.2006, calling upon him to pay all the arrears of rent. The applicant/ tenant, by his reply to the said notice, informed that he had time and again tendered the arrears of rent to respondent No.1 – Suresh, being elder son of late Kedarnath. He, however, did not accept the rent. The applicant/ tenant also sought clarification as to whom he shall pay the rent. He, however, did not receive any response to his notice reply dated 21.8.2006. The applicant/ tenant, therefore, sent four different cheques for the amount of Rs.2643=75 to each of the respondents towards payment of arrears of rent. The respondents encashed the cheques. Still, the respondents filed the suit, Regular Civil Suit No.535/2006, for possession of the suit premises on the ground of default, bonafide requirement and change of user.

4. The trial Court negatived the claim for possession on the ground of bonafide requirement and change of user. The suit, however, came to be decreed on the ground of default in view of Section 15(3) of the Maharashtra Rent Control Act, 1999 (for short the Rent Act).

5. The trial Court found the applicant/ tenant to have not complied with the provisions of Section 15(3) of the Rent Act, meaning thereby, he had not paid the monthly rent or tendered it in Court regularly. The respondents/ landlords did not pursue the claim for possession of the suit premises on the ground of bonafide requirement and change of user. The appeal preferred by the applicant/ tenant against the judgment and decree passed against him on the ground of default came to be dismissed. The appellate Court, after having scrutinized the record, found the applicant/ defendant to have deposited the rent for the month of January 2007 to May 2007 (5 months) on 12.6.2007. It also found that rent for the month of November 2007 to January 2008 came to be deposited on 21.1.2008. The appellate Court, thus, found the applicant/ tenant to have not deposited the rent regularly and, therefore, became liable for eviction in view of Section 15(3) of the Rent Act.

6. Shri R.R. Mantri, learned counsel would submit that the applicant/ tenant was in fact tendering the rent to the original landlord Kedarnath. He would, however, not accept the rent. It was his habit not to accept the rent tendered by the applicant/ tenant or other tenants and then file suits for their eviction. According to him, the record and proceedings of the trial Court

undoubtedly indicate the applicant/ tenant to have had remitted the rent by money orders. The respondent No.1 Suresh did not accept money orders. After having received a demand notice, the applicant/ tenant paid the respondents all the arrears of rent then due i.e. Rs.10,105/-. As such, the respondents/ landlords did not have any cause of action to file a suit for possession on the ground of arrears of rent. Even thereafter the applicant/ tenant tendered the rent due for the month of October to December 2006. The same has, however, not been accepted. On receipt of the suit summons, the applicant/ tenant deposited a sum of Rs.705/- towards the rent for the period from October 2006 to December 2006 in the Court on the first date of his appearance. According to learned counsel, the impugned judgments are inconsistent with provisions of Section 15(1) of the Rent Act. In the suit, no claim for arrears of rent was made obviously for the reason that no rent was due from the applicant/ tenant on the date of the institution of the suit. According to learned counsel, the applicant/ tenant had all along been ready and willing to pay the arrears of rent, and in fact, he has paid all the rent due as on the date of the institution of the suit. No cause of action for instituting a suit for possession on the ground of arrears of rent was ever accrued. In support of his contentions, the learned counsel has relied on a number of authorities.

7. Learned counsel has relied on the following observations of the Apex Court in case of **Chitranjan Burman Vs. Om Prakash Bajoria [2001 AIR (SCW) 4217]**, in which it is observed in paras 21 and 22 as under :

“Why should a tenant who resorts to the latter mode of payment be evicted even though he has shown readiness and willingness to pay the rent due and payable by him to the landlord? The law has to be broadly construed because it is not intended to trap the tenant into a situation so that the landlord can evict him.”

The Burmans tendered the rents to Anar Devi one of the co-owners and one of the plaintiffs who refused to receive the same which should not result in a trap to sue them for eviction on the ground of non-payment of rent.

22. As it is found that there has been a proper tender of the rent by Burmans and improper refusal to receive the same by Bajorias it was unnecessary for the High Court to remand the case to the 1st appellate Court to ascertain whether there was default in payment of rent for the months of March, 1972 and August, 1973. The judgment under appeal to this extent is set aside.”

8. According to learned counsel, in case of two

interpretations, an interpretation that favours the case of the tenant has to be preferred.

9. Learned counsel for the applicant has also preferred a Civil Application, praying for calling for record and proceedings of the trial Court and allowing him to raise one more additional ground of attack in the revision application. The ground of attack sought to be introduced is that, the applicant/ tenant has kept a sum of Rs.2500/- as a deposit with the original landlord. The amount in deposit was to be adjusted towards arrears of rent, if any. The learned counsel meant to say that, if the amount in deposit is taken into consideration, no ground of default would have been made out.

10. After having referred and relied upon a number of authorities, learned counsel would ultimately submit that, each case has to be decided on the facts and circumstances obtainable in the very case.

11. The learned counsel ultimately urged for allowing the Civil Revision Application by setting aside the impugned judgments and the decree.

12. Section 15 of the Maharashtra Rent Control Act, 1999

reads as under :

15. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882.

(3) No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in Court the standard rent and permitted increases then due together with simple interest on the amount of

arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the Court.

(4)

13. After having noticed conflicting views in two Division Bench judgments of this Court namely **Narhar Damodar Wani Vs. Narmadabai T. Nave, deceased through L.Rs. [1984 Mh.L.J. 313]** and **Chandiram Dariyanumal Ahuja Vs. Akola Zilla Shram Wahtuk Sahakari Sanstha, Akola [2013(1) Mh.L.J. 28]**, the learned Single Judge of this Court, in this very matter, was pleased to refer the issue to a larger Bench. Pursuant to the said reference, the Full Bench of this Court answered the reference as under :

“If the tenant complies the notice issued by the landlord demanding arrears of rent and pays the entire amount as demanded within the time stipulated under Section 15(2) of the Maharashtra Rent Control Act, then whether the landlord can still file a suit for eviction on the ground of arrears of rent and whether the eviction can be ordered by invoking provisions of Section 15(3) of the Maharashtra Rent Control Act ?

20. On the analysis of the provisions of Section 15 as well as various judgments, it must be concluded that the provisions of sub-sections (1), (2) and (3) of Section 15 shall be read independently. In order to claim relief against forfeiture, the tenant must satisfy all the conditions in respect of payment of rent or tender in Court all the arrears then due on the first day of hearing of the suit or within contemplation of provisions of law and to deposit the rental liability regularly in the Court till the suit is finally decided and there is no extinction of the cause of action by reason of payment of existing arrears by the tenant. It is, thus, clear that in order to avoid decree, once the notice is issued within contemplation of sub-section (2) of Section 15 of the Maharashtra Rent Control Act by the landlord, the tenant shall have to fulfil the conditions laid down under sub-section (3) of Section 15 of the Maharashtra Rent Control Act and there is no escape therefrom.

24. The view expressed by Division Bench in the matter of Chandiram Ahuja (supra) lays down correct proposition and we are in agreement with the view expressed by the Division Bench in aforesaid matter. The view expressed by Division Bench in the matter of Narhar Wani (supra) does not lay down correct law and we disagree with the view expressed therein.

25. To infer that once the tenant pays the amount recorded in the notice or tenders the same, the landlord has no right to institute a suit for recovery of possession for non-payment of those arrears or continue with such proceeding for eviction and no decree for possession can be asked for, is not within contemplation of provisions of Section 15 of the Act. The provision does not interfere with the right of the landlord to initiate proceeding for eviction, however, sub-section (2) of Section 15 prescribes precondition for presentation of suit that is to say that no suit can be initiated without issuing a notice within contemplation of said sub-section (2) of Section 15 and tenant's entitlement to claim relief against forfeiture shall be subject to fulfilment of conditions stipulated under sub-section (1) and (3) of Section 15 of the Rent Act."

14. True, the applicant/ tenant had tendered the arrears of rent to the respondent No.1 before a statutory demand notice was issued, calling upon him to pay the arrears of rent. The respondent No.1 did not accept the money orders of rent sent before issuance of the statutory demand notice. Even after the issuance of the demand notice dated 1.8.2006, the applicant/ tenant paid all the arrears of rent then due to the respondent No.1 to 4 by four cheques dated 3.10.2006. He, however, did not pay the rent for the months of October 2006 to December 2006

regularly i.e. in each of those months. True, on receipt of suit summons, he deposited in Court the rent then due. It also appears that, he went on depositing in Court the rent pending the suit before the trial Court, and in appeal as well. The question is, whether he has deposited the rent regularly in terms of Section 15(3) of the Rent Act.

15. The Hon'ble Supreme Court, in case of **Mohan Laxman Hede Vs. Noormohamed Adam Shaikh [AIR 1988 SC 1111]**, has interpreted the provisions of Section 12(3)(b) of the then Bombay Rents, Hotel and Lodging House Rates (Control) Act (57 of 1947). The said provisions of Section 12(3)(b) were identical with that of the provisions of Section 15(3) of the Rent Act. Section 12(3)(b) of the then Bombay Rents, Hotel and Lodging House Rates (Control) Act is reproduced hereunder :

"In any other case no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court."

16. This clause read in the context makes it clear that no decree for eviction can be passed in a suit for recovery of possession on the ground of non-payment of standard rent or permitted increases instituted by the landlord against the tenant, if on the first day of the hearing of the suit or on or before such a date, as the Court may fix, the tenant pays or deposits in Court the standard rent and permitted increases then due and thereafter continues to pay or deposits in Court regularly such rent and permitted increases till the suit is finally decided and also pays the costs of the suit as directed by the Court.

17. The Apex Court, in case of Mohan Hede (supra), observed :-

“... .. the provisions of clause (b) of Section 12(3) are mandatory, and must be strictly complied with by the tenant during the pendency of the suit or appeal if the landlord’s claim for eviction on the ground of default in payment of rent is to be defeated. The word ‘regularly’ in clause (b) of Section 12 (3) has a significance of its own. It enjoins a payment or tender characterized by reasonable punctuality, that is to say, one made at regular times or intervals. The regularity contemplated may not be a punctuality, of clock-like precision and exactitude, but it must reasonably conform with substantial proximity to the sequence of times or intervals at

which the rent falls due. Thus, where the rent is payable by the month, the tenant must, if he wants to avail of the benefit of the latter part of clause (b), tender or pay every month as it falls due, or at his discretion in advance. If he persistently defaults during the pendency of the suit or appeal in paying the rent, such as where he pays it at irregular intervals of 2 or 3 or 4 months - as is the case before us - the Court has no discretion to treat what were manifestly irregular payments, as substantial compliance with the mandate of this clause, irrespective of the fact that by the time the judgment was pronounced all the arrears had been cleared by the tenant."

18. Both the Courts below have recorded a finding of fact that the applicant/ tenant has not been depositing in Court rent regularly. The appellate Court in para 24 of its judgment has observed that, the applicant/ tenant deposited the rent for the months of January 2007 to May 2007 on 12.6.2007 (application Exh.12). On 28.1.2018, he deposited a sum of Rs.705/- as a rent for the period November 2007 to January 2008. The aforesaid finding is based on the evidence on record. The applicant/ tenant failed to successfully traverse the same. I have also perused some of the papers/ applications available on record to find the applicant/ tenant to have not strictly complied with mandate of Section 15(3) of the Rent Act. Application Exh.84 is dated

22.10.2007. Vide this application, a rent for the month of October 2007 came to be deposited. Then comes Exh.88, the application dated 22.4.2008, where a sum of Rs.705/- came to be deposited towards arrears of rent for the month of February 2008 to April 2008. Similarly, vide application Exh.89, dated 17.7.2008, a sum of Rs.470/- came to be deposited towards rent for the month of May and June 2008. Vide application Exh.93, dated 25.9.2008, a sum of Rs.705/- came to be deposited towards rent for the month July to September 2008. I have not seen further record. There might have been very many such instances indicating irregularity in payment of arrears of rent.

19. Suffice it to say that both the Courts below have rightly directed the applicant/ tenant to vacate the suit premises on the ground of he having been found to have committed breach of provisions of Section 15(3) of the Rent Act. This Court finds no reason to take a different view. The revision application, therefore, fails.

20. I am not inclined to allow the Civil Application No.11468/2019 for the reasons that the evidence indicating breach of provisions of Section 15(3) of the Rent Act is writ large from the record available before this Court. So far as regards a claim of the applicant/ tenant that the sum of Rs.2500/- has been

kept with the landlord as a deposit is concerned, no such ground has been raised in written statement before the trial Court and even before the appellate Court as well. For the first time in the revision application the applicant/ tenant cannot be allowed to take a stand which has no foundation in the pleadings.

21. For the reasons stated hereinabove, the revision application fails. The same, therefore, stands dismissed. Rule discharged. Civil Application No.11468/2019 also stands dismissed.

(R.G. AVACHAT, J.)

22. Since the interim relief was there, the same to continue for a period of next three months.

23. Learned counsel for the applicant seeks six months time to vacate the suit premises. Time is granted as prayed for, for vacating the suit premises.

(R.G. AVACHAT, J.)

fmp/-