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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2709 OF 2016
WITH
CIVIL APPLICATION NO.12292 OF 2021

Sundarlal Ratilal Wani
Died (Through LRS)

PETITIONERS

1. Ramabai Sundarlal Wani
Age – 68 years, Occ – Household
R/o Methaji Plots
Opposite Vidya Gauri Bungalow
Bhusawal, District – Jalgaon
2. Bhaskar Sundarlal Wani
Age – 52 years, Occ – Business / Service
R/o As above

VERSUS

Jenabai Rasulbhai Charawala
Died (Through LRs)

RESPONDENTS

1. Sabir Hussain Rasulbhai Charawala
Age – 45 years, Occ – Business
R/o 863 Chowk Bazar, Bhusawal
District – Jalgaon
2. Mustak Hussain Rasulbhai Charawala
Age – 44 years, Occ – Business
R/o As above
3. Subhash Sundarlal Wani
Age – 47 years, Occ – Business
R/o Methaji Plots
Opposite Vidya Gauri Bungalow
Bhusawal, District – Jalgaon
4. Ramesh Sundarlal Yawalkar (Wani)
Age -44 years, Occ – Business
R/o C/o Mr. Jade,
Shridhar Housing Society,

Wadi, Nagpur

5. Suresh Sundarlal Wani
Age – 38 years, Occ – Service
R/o Trimbak Nagar
Jalgaon

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Mr. S. S. Bora, Advocate for the petitioners
Mr. Rajendra S. Deshmukh, Senior Advocate i/b Mr. Shritej
Survey for respondents No. 1 and 2

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 30th NOVEMBER, 2021
PRONOUNCED ON : 21st DECEMBER, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned advocates for the parties.
2. Short point involved in the writ petition is whether the tenancy is a monthly tenancy or an yearly tenancy. For the sake of convenience, the parties are referred to as "*tenant/s*" and "*Landlady / Landlords*".
3. The petitioners are the tenants of shop premises situated at Municipal House No. 847, City Survey No. 1421 at Bhusawal. Initially, the respondent Jenabai was the Landlady and after her death, her legal heirs are now owners and landlords of the suit property.

4. The landlady had issued a legal notice dated 10th February, 1978 to the tenant claiming that the tenancy was monthly tenancy and monthly rent was payable @ Rs.52.59 and the tenancy month commenced from first day of each English month. The tenant was in arrears of the rent from 1st February, 1977 and has become a defaulter. The Shop premises was needed for her personal *bona fide* use. Therefore, by the notice, the landlady terminated the tenancy rights of the tenant by the end of 31st March, 1978. The tenant was, therefore, called upon to vacate the shop premises by the end of 31st March, 1978 and was directed to pay arrears of rent.

5. The tenant replied said notice and refuted the claim of the landlady. The tenant contended that rent was payable yearly @ Rs.631.08. The said rent amount was sent to the landlady and further an amount of Rs.105.58 was being sent as two months' rent up to 31st March, 1978. The claim of the landlady for *bona fide* personal requirement was denied by the tenant.

6. Regular Civil Suit No. 466 of 1978 was filed by the landlady claiming that the tenant was in arrears of rent from 1976 and, therefore, the tenant has become defaulter and the landlady wanted the shop premises for her own *bona fide* personal use. After 10th February, 1978, the tenant kept the shop premises

closed for a period of eight months and did no business during that period. Thus, clause "*non user of tenanted premises*" is attracted.

7. The tenant resisted the suit by filing written statement contending that after receipt of the legal notice, the entire amount of arrears of rent was sent to the landlady by money order. It was further contended that the rent claimed by the landlady was not the standard rent of the shop premises. The tenant denied that the shop premises was kept close for eight months. The tenant contended that he would suffer greater hardships, if he is required to vacate the shop premises as he would be losing the source of income.

8. The Trial Court framed in all ten issues and after recording of the evidence and hearing the parties decreed the suit filed by the landlady by giving findings on all the ten issues in favour of the landlady.

9. The tenants challenged the judgment and decree of the Trial Court, by filing Civil Appeal No. 317 of 1986 in the District Court. The appellate Court answered all the points in favour of the tenants, however, held that the tenants defaulted in making payment of rent within a month from the receipt of notice issued

by the landlady. It further held that the landlady did not have *bona fide* personal need of the shop premises. The issue of non user was also held in favour of the tenants.

10. The landlady preferred Writ Petition No. 733 of 1993 challenging the judgment and order of the District Court and the tenants filed Writ Petition No. 1429 of 1992 against the same judgment. Writ Petition No. 1429 of 1992 filed by the tenants was partly allowed by this court and the matter was remitted back to the appellate court with a direction to decide the issue as to whether the tenancy was the monthly tenancy or a yearly tenancy. The parties were granted liberty to lead evidence in support of their respective claims. Accordingly, the parties led evidence and the appellate court, by the impugned judgment, dismissed the appeal filed by the tenants. Hence, the present writ petition by the tenants.

11. Learned advocate for the tenants vehemently submitted that the appellate court has ignored the admissions given by the landlady in the cross-examination. The averments made in the written statement are misread and misconstrued by the appellate court. According to him, the appellate court has not properly appreciated the evidence on record. He further submitted that Education Cess and Municipal Taxes, if claimed,

then the tenancy has necessarily to be held as yearly tenancy. The judgments viz; (i) *Awabai Muncharji Cama and Others V/s M. N. Kaka, 1987 (3) Bom. C. R. 338* and (ii) *Madhavsingh Tulsidas Through LRs V/s Bhaktiben Narandas Paleja Through LRS" 2006 (5) Bom. C. R. 604*, relied on by the tenants on the point that if Education Cess is paid, then the tenancy is yearly tenancy, are not all discussed and taken into consideration by the appellate court, which has vitiated the impugned order. He emphasized on the aspect that if Municipal Taxes and Education Cess is claimed then the tenancy has to be considered as yearly tenancy. In support of his arguments, he relied in "*Madhavsing Tulsidas*" (supra). He, therefore, submitted that the impugned judgment is liable to be quashed and set aside, by allowing the present writ petition.

12. Per contra, learned senior advocate for the landlords supported the impugned judgment. By pointing out that the evidence led by the parties and the exhibited documents in the form of money orders, he submits that the same proves the case of the landlords that the tenancy was monthly tenancy and not yearly tenancy. By relying on section 12 (3) (b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "the said Act") he submitted that there is clear cut default

on the part of the tenants in payment of rent, which is proved on record in the evidence led before the Trial Court. Therefore, the appellate court was justified in coming to the conclusion that the tenancy was the monthly tenancy. He further submits that at no point of time, the tenant has moved for fixation of standard rent. In support of his submissions, he relied in ***"Anil Kumar Dadurao Dhekle V/s Rukhiben and Others"* 2017 (14) SCC 215.**

13. I have heard learned advocate for the tenants and learned senior advocate for the landlords, at length. Perused the record.

14. Though, in the written statement (Exhibit-32), the tenant has denied that he was the monthly tenant claiming that he was a yearly tenant, however, in paragraph No. 5, the tenant has averred that the landlady ought to have accepted Rs.50/- per month, but she has accepted Rs.52.59 per month. In fact Rs.50/- per month is also not the standard rent. The standard rent is Rs.19/- per month. Further admission is given by the tenant in the cross-examination that many times the rent was collected @ Rs.52.89 per month. After the receipt of notice issued by the landlady, when the tenant met husband of the landlady, who used to collect the rent every month, he asked the tenant why he sends rent by money order, therefore, the tenant gave rent for two months to him in cash. A receipt of sending

money order (Exhibit-53) and part of form of money order (Exhibit-79) are placed on record. The money order coupon mentions that rent @ Rs.52.59 per month was being sent. The tenants filed a statement showing deposit of the rent in the court, which started from 15th October, 1986. The tenant deposited rent from 1st February, 1977 to 31st October, 1986 and thereafter, he started depositing the rent once a year. However, earlier documents i.e. money order coupon and admissions of the tenant are sufficient to come to the conclusion that the rent was being paid and accepted every month.

15. Admittedly, there is no written rent agreement. Section 106 of the Transfer of Property Act (for short "the TP Act") provides that in the absence of a contract or local law or usage to the contrary, except lease of a immovable property for agricultural or manufacturing purpose, the lease for any other purpose would be deemed to be monthly lease and lease for immovable property for any other purpose shall be lease from month to month basis terminable on the part of either lessor or lessee by fifteen days' notice. Section 107 of the TP Act provides that a lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent can be made only by a registered instrument and all other leases of

immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

16. In the light of these provisions, the only irresistible conclusion which can be drawn from the evidence on record is that the tenancy was a monthly tenancy and not an yearly tenancy.

17. In **"Madhavsing Tulsidas"** (*supra*) it is held that *'education cess is a part of rent and, when this was claimed in addition to the contractual or standard rent, it constituted a permitted increase within the meaning of the Act. Being payable on a year to year basis, rent ceased to be payable by month within the meaning of Section 12 (3) (a) of the said Act.'*

18. Taking into consideration the evidence on record and the facts of the case in hand, this ruling is of no help to the case of the tenants.

19. In **"Dasrao s/o Ramrao Bokil (deceased through LRS) V/s Ganpat Valhoba Ghisadi (Since deceased through LRS) 2012 (1) ALL R 241**, the Hon'ble Apex Court has held thus -

“10. The fact that the Defendant was inducted on the suit property

by the Plaintiff as a tenant is undisputed. The dispute is about the nature of the property i.e. yearly or monthly tenancy. It is nobodies case that there was written contract between the parties regarding the said lease. The Plaintiff and Defendant are unanimous in one aspect that the tenancy was oral.

Bare perusal of Section 106, it is manifest that except lease of a immovable property for agricultural or manufacturing purpose, the lease for any other purpose would be deemed to be monthly lease. As such by deeming fiction unless contract to the contrary is proved the lease for an immovable property for any purpose would be presumed to be monthly lease. Further, Section 107 of the Transfer of Property Act mandates that a lease of immovable property from year to year or for any term exceeding a year, or reserving a yearly rent, can be made only by a registered instrument.

In view of the clear unambiguous provision contained in Section 107 of the Transfer of Property Act a lease not commenced or continued pursuant to registered instrument can never be considered as a lease from year to year or yearly tenancy. The said proposition is no longer res integra in view of catena of decisions of the Apex Court. The learned Counsel for the Appellant rightly relied on the judgment of the Apex Court in case of Samir Mukherjee V. Davinder K. Bajaj referred supra. The Courts below have tried to refer to the evidence to conclude that the tenancy was yearly tenancy but have totally lost sight of the provisions of the statute i.e. Section 107 of the Transfer of Property Act which states that creation of a yearly tenancy has to be by registered instrument. In absence of registered instrument of lease it will have to be held that the tenancy in question is a monthly tenancy.”

The above ratio supports the case of the landlords.

20. In "**Anil Kumar Dadurao Dhekle**" (*supra*), it is held that the tenant had not moved for fixation of standard rent within a month from the date of receipt of notice from the landlady. The notice issued by the landlady clearly stated that the tenancy was a monthly tenancy at a monthly rent of Rs.30/-. The defendant deposited an amount of rent after a lapse of one month after the receipt of the notice. Hence, the Trial Court held that the defendants were liable to be evicted on the ground of default in payment of rent. The first appellate court and the high court gave a finding that the tenancy was covered under section 12 (3) (b) of the said Act. The Hon'ble Apex Court set aside the findings by the first appellate court as well as of the High Court and restored the order of eviction passed by the Trial Court on the ground of default in payment of rent. This ruling supports the case of the landlords.

21. The first appellate court has considered the evidence on record, particularly, documentary evidence of receipt of money order (Exhibit-63) and part of money order form (Exhibit-79). The provisions of sections 106 and 107 of the TP Act, are reproduced in the impugned judgment by the appellate court and has rightly come to the conclusion that from the oral and documentary evidence and particularly from the admissions of

the tenants as well as provisions of sections 106 and 107 of the TP Act, it can be said that tenancy was not created by a registered document. The tenancy was not for agricultural or manufacturing purposes, therefore, lease for any other purpose is a monthly lease and hence, the tenancy was a monthly tenancy. The first appellate court has also reproduced relevant provisions of sections 12 (1), (2) (3) (a) and (3) (b) of the said Act. It has further come to the conclusion that there is no dispute about the rent or permitted increase and tenants are in arrears for a period of six months or more and neglected to make payment and the court has to pass a decree of eviction. Admittedly, no application for fixing standard rent is moved by the tenants. The notice was sent to the tenant on 10th February, 1978, which was received by him on 15th February, 1978. Had the tenant paid the rent within one month i.e. on or before 14th March, 1978, he would have been entitled for protection. But nothing is placed on record in this behalf.

22. The fact remains that money order coupon shows that rent of two months i.e. February and March, 1977 was sent and as per the avement made in the written statement, the tenant has said that this rent was paid to the husband of the landlady in cash. Thus, sending of money order appears to be doubtful. The

tenants' witness has admitted that the date stamp on the money order (Exhibit-62) is not legible. It can be 15th or 25th March. The notice reply was sent on 30th March, 1979, wherein a statement is made that rent for twelve months was sent and money order of Rs.105.18 was sent to the advocate. The reply was addressed to the landlady, however, it was sent on the address of the advocate.

23. In view of the said evidence on record, the first appellate court was right in coming to the conclusion that the tenant had not sent money order within a month from the date of receipt of the notice. Admittedly, the application for fixing standard rent was not filed. The Trial Court framed issues on 31st August, 1984 and the tenant deposited the rent for the first time on 15th October, 1986. Thus, the arrears were not paid on or before first date of hearing. Even costs were not paid.

24. The first appellate court, therefore, was justified in holding that even if it is held that case is covered under section 12 (3) (b) of the said Act, then also there was a default by the tenants. No illegality or perversity is found in the order passed by the first appellate court, it has rightly considered relevant provisions and applied the same to the facts of the case. The case law relied is rightly taken into consideration while dismissing the appeal. No

merit is, therefore, found in the challenge raised by the petitioners-tenants in the present writ petition. In my view, no case is made out by the petitioners-tenants to exercise extraordinary writ jurisdiction in their favour. The writ petition is, therefore, dismissed. Rule is discharged. There shall be no order as to costs. Interim relief stands vacated.

25. In view of disposal of writ petition, nothing survives for consideration in the civil application and civil application No. 12292 of 2021 is disposed of accordingly.

26. At this stage, the learned advocate for the tenants prayed for extension of stay, which is operating in favour of the tenants. The stay is extended for a period of six weeks from today.

[NITIN B. SURYAWANSHI]
JUDGE