

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 578 OF 2021

Raosaheb Sahebrao Deshmukh .. Petitioner
V/s.

Pandurang Vithoba Dawale ..Respondent

Mr. S.S. Aradhye for the Petitioner.

Mr. V.S. Talkute for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 16th FEBRUARY, 2021

:JUDGMENT:

1. Rule. Rule made returnable forthwith. The learned counsel for the respondent waives service. Heard finally by consent of parties.

2. The challenge in this petition is to the Judgment and Decree dated 30.04.2019 passed by the learned District Judge at Pandharpur, in Regular Civil Appeal No. 12 of 2017. By the impugned judgment, the Appellate Court, while dismissing the appeal filed by the petitioner, has confirmed the Judgment and

Decree dated 22.12.2016 passed by the Civil Judge Junior Division at Pandharpur in Regular Civil Suit No. 36 of 1995.

3. The brief facts necessary for the disposal of the petition may be stated thus:

That the respondent (original plaintiff) filed the aforesaid suit for eviction and possession of the petitioner from the suit premises, which comprise of two rooms from out of a house situated on CTS No. 3582 better known as 'Davale Wada' at Santpeth, Pandharpur, which is more specifically described in the plaint.

4. The case made out in the plaint is that the petitioner is occupying the suit premises as tenant thereof on an agreed monthly rent of Rs.45/-. The tenancy month is according to the English calendar month. The eviction was sought on the ground that the petitioner was a defaulter and was in arrears of rent from 01.01.1993 to 30.09.1994 amounting to Rs.945/- and that the petitioner has acquired alternate premises under a registered sale deed dated 22.05.1990, which he has subsequently sold on 29.03.1993. The eviction was also sought on the ground that the suit premises are reasonably and bonafide required by the

respondent for his personal occupation. There was also a ground of nuisance made out. For the purpose of disposal of the present petition, it is not necessary to set out those allegations in details, as that ground has not been upheld. Suffice it to mention that the respondent issued a notice to the petitioner on 10.10.1994 *inter alia* claiming the arrears of rent and possession and thereafter filed the suit as aforesaid.

5. The petitioner resisted the suit. It was the material case made out that the rent for the year 1993-1994 was sent by money order. However, it was refused and therefore, the petitioner cannot be said to be a defaulter or in the arrears of rent. It was contended that the respondent was principally unhappy with the amount of rent and therefore, was harassing the petitioner somehow or the other, to get the possession of the suit premises. All other adverse allegations were denied. It was denied that the respondent was in a reasonable and bonafide need of the suit premises. It was contended that after the receipt of summons on 18.02.1995, the petitioner had deposited an amount of Rs.1,620/- in the court. It was also contended that on a consideration of comparative hardship, it is the petitioner who would suffer greater hardship, in the event the eviction decree is passed.

6. On the basis of the rival pleadings, the learned Trial Court framed the following issues :

ISSUES

- 1. Whether the description of suit property is correct?*
- 2. Does plaintiff prove that defendant has not paid rent of suit premises for more than six months and that the defendant has become defaulter?*
- 3. Does he prove that the defendant has acquired suitable alternative accommodation of his own?*
- 4. Does plaintiff prove that the defendant has been guilty of conduct which is a nuisance of annoyance to the plaintiff and adjoining or neighbouring occupier?*
- 5. What is due to the plaintiff, if any?*
- 6. Is plaintiff entitled to the relief sought?*
- 7. What order and decree?*

7. The parties led oral and documentary evidence. The respondent examined himself along with 12 other witnesses, while the petitioner examined himself.

8. The learned Trial Court answered issue nos. 1,2, 4, 6, 9 in the affirmative and also answered the issue on comparative hardship in favour of the respondent and decreed the suit.

9. Feeling aggrieved, the petitioner challenged the same before the learned District Judge. The learned District Judge framed the following points for determination.

POINTS

- 1. Does the plaintiff prove that the defendant has become defaulter in payment of the rent of the suit premises?*
- 2. Does the plaintiff prove that the suit premises are reasonably and bonafide required by him for occupation by himself and by his family members?*
- 3. Does the plaintiff prove that if the decree for the recovery of the suit premises is not passed by the court, he will suffer comparative hardship than the defendant, if the decree is passed?*
- 4. Does the plaintiff prove that the defendant has acquired alternate accommodation for his residence?*
- 5. Whether the Judgment and decree passed by the learned trial court needs interference?*
- 6. What order?*

10. The learned District Judge answered point nos. 1 to 4 in the affirmative and dismissed the appeal by the impugned judgment and decree. Hence, this petition.

11. I have heard Mr. Aaradhye, the learned counsel for the petitioner and Mr. Talkute, the learned counsel for the respondent. With the assistance of the learned counsel for the parties, I have gone through the record.

12. Mr. Aaradhye, the learned counsel for the petitioner submitted that the finding recorded by the learned Trial Court in paragraphs 20 and 22 of the judgment are contradictory. It is submitted that the Trial Court having found that the petitioner had sent the rent for the year 1993-94 by money order, which was refused by the respondent, could not have directed eviction on the ground of default. Insofar as the ground of bonafide personal occupation is concerned, it was submitted that the courts below have failed to see that the property which was purchased by the petitioner was required to be sold for the purpose of marriage of the daughter of the petitioner. He, therefore, submitted that courts below were in error in holding the said ground as proved. It is submitted that even on the ground of

comparative hardship, courts below were in error in answering the said issue in favour of the respondent.

13. Mr. Talkute, the learned counsel for the respondent has supported the impugned order. The learned counsel has placed reliance on a full Bench decision of this Court in ***Babulal V/s. Suresh and Ors.***¹ in order to submit that even where the tenant complies with the notice and pays or tenders the rent as demanded, still the landlord is entitled to seek eviction on the ground under section 15(3) of the the Maharashtra Rent Control Act (“Rent Act” for short). It is submitted that the petitioner has not averred or proved that he had made any attempt to search for an alternate accommodation and therefore, the issue regarding the comparative hardship has rightly been answered in favour of the respondent. For this purpose, reliance is placed on the decision of this court in ***Jahangir Abdul Saheb Zari v/s. Balwant Ramchandra Bhokare***² The learned counsel pointed out that there is total lack of pleadings, and in the absence of the material pleadings, in the written statement, the courts below have rightly disbelieved the defence.

1 2017 (4) MhLJ 406

2 2003(supp) Bom. C.R. 333

14. I have carefully considered the rival circumstances and the submissions made. It is true that in paragraph 20 of the judgment, the learned Trial Court has found that the petitioner had sent an amount of Rs.1080/- on 10.11.1994 by money order, representing the rent for the period from 01.01.1993 to 30.09.1994, which is apparent from the receipt at Exhibit 238. The endorsement below Exhibit 237 shows that the said money order was refused. The learned Trial Court, however has found that after the receipt of the summons, it was necessary for the petitioner to have deposited the rent for the said period along with interest and the costs which the petitioner has failed to do. The learned Trial Court has therefore, held that there is non compliance with the provisions of Section 15(3) of the Rent Act.

15. In the case of Babulal (supra) a reference was made to the Full Bench in order to resolve the conflict of views expressed by the Division Bench of this Court in *Chandiram Dariyanumal Ahuja v/s. Akola Zilla Shram Wahtuk Sahakari Sanstha, Akola*¹ and in the case of *Narhar Damodar Wani v/s Narmadabai T. Nave*². The Full Bench in para 24 has held that the decision in the case of Chandiram

1 2013(1) All MR 177

2 1984 Mh. L.J. 313

(supra) lays down the correct proposition of law. This is what is held in paragraph 25 of the judgment.

“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 fulfillment of conditions stipulated under sub-section (1) and (3) of section 15 of the Rent Act.”

It can thus be seen that even where the landlord has accepted the rent within contemplation of sub-section 2 of Section 15, still the said provision does not interfere with the right of the landlord to initiate the proceedings for eviction under sub-section 3 of Section 15 of the said Act. It can thus be seen that in the present case notwithstanding the earlier refusal by the landlord, in the face of non compliance with provisions of sub-section 3 of Section 15, the

eviction decree on the said ground cannot be faulted with in view of the fact that the rent along with interest and costs have not been deposited by the petitioner as has been found by the courts below.

16. Coming to the issue of reasonable and bonafide requirement, the first Appellate Court after thread bare consideration of evidence in the context of the pleadings has found that there was a partition of property at 'Dawale Wada' between respondent and his brothers way back in the year 1970, which was much prior to the filing of the suit. The first Appellate Court has therefore, held that the said partition could not have been said to be effected to create a ground for eviction. The learned District Judge, has also noticed that the respondent was residing along with his two sons, out of whom one was married and another was of marriageable age, which aspect was not disputed. The respondent is in possession of the premises consisting of 10 *khans* which was too small for the family of the respondent. Although, it was contended on behalf of the petitioner that the respondent was having a farm house in land Gut No. 94 at Kasegaon, on the basis of the evidence of P.W. 3 Ramdas Chavan, who is gramsevak of village Kasegaon during the period from 2003 to 2012 and on the basis of the extract of the house property No. 1660 (Exhibit 156) the Appellate Court has found that the said

property is in the form of a tin shed constructed in bricks and stones, admeasuring about 275 sq. ft. only. Further, it has been found on the basis of the extract No. 157 that the said property was not in existence. The learned District Judge has found and to my mind rightly so that even assuming that the respondent was having such a house in Gut No 94 at village Kasegaon, the petitioner could not force the respondent to go to reside at village Kasegaon from Pandharpur. It is trite that in such a case, the landlord is the best judge of his need and it is not for the tenant to dictate how the landlord should reside. The learned District Judge has also found that there is lack of pleadings on the part of the petitioner about the respondent having obtained possession of one room in 'Dawale Wada', which was let out to Malaria office. The learned District Judge has also found that there is no evidence to show that the said room was allotted to the respondent in the partition between respondent and his brothers in the year 1970. The learned District Judge has found that petitioner has admitted in the cross examination that he has a house property bearing CTS No. 4395 at village Atpadi as well as his wife is also having another house property being CTS No. 4393 at village Atpadi.

17. In the case of Jahangir (supra) this Court taking note of the decision of the Supreme court in *Bega Begum & Ors. v/s. Abdul Ahad Khan & Ors.*¹ has held that it is for the defendant/tenant to establish on record that it was not possible for the tenant to secure any alternate accommodation elsewhere in the entire city. That evidence is not forthcoming in this case. Thus, in my considered view, no exception can be taken even to the finding on the point of comparative hardship.

18. Considering the over all circumstances, I find that the courts below on a proper consideration of the oral and documentary evidence on record have directed eviction and the findings so recorded do not suffer from any infirmity so as to require interference in the supervisory jurisdiction of this court under Article 227 of the Constitution of India. It is trite that the jurisdiction under Article 227 is neither appellate nor revisional in nature. It is essentially supervisory, with the object of ensuring that the courts and Tribunals subordinate to this court, act within the bounds of their authority and the judgments and orders do not result into any manifest injustice. (see the decision in the case of *Shalini Shetty and*

1 (1979) 2 SCR 1

Another v/s. Rajendra Shankar Patil¹ and Radhey Shyam and Another V/s. Chhabi Nath and Ors.²)

19. The petition is without any merits and is accordingly dismissed, with no order as to costs.

20. At this stage, the learned counsel for the petitioner has prayed for stay of the decree for eviction for six weeks in order to enable the petitioner to consider, further course of action, which is opposed by the respondent. However, in order to afford a fair opportunity to the petitioner, the execution and operation of the impugned Judgment and Decree is hereby stayed for a period of six weeks.

C.V. BHADANG, J.

1 (2010) 8 Supreme Court Cases 329

2 (2009) 5 Supreme Court Cases 616