

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

911 APPEAL FROM ORDER 15 OF 2008

Huned Nuruddin Kadiyani, **...APPELLANT**
Age-27 years, Occu-Business,
R/o. Shahada, Tq. Shahada,
Dist. Nandurbar

Versus

1. Abdul Kadir Suleman **...RESPONDENTS**
Age : 68 Years, Occ. Business
Abdul Kadir Suleman
since deceased through his L.Rs.
1. Julekhabee W/o Abdul Kadir Suleman
Age : 60 Years, Occ. Household
R/o. Near Nandvan Hotel, Prakasha Road,
R/o. Shahada, Tq. Shahada,
District Nandurbar.
2. Islamoddin S/o Abdul Kadir Suleman,
Age : 42 Years, Occ. Business,
R/o Near Nandvan Hotel, Prakasha road,
Shahada, Tq. Shahada Dist. Nandurbar
3. Ikramoddin S/o Abdul Kadir Suleman
Died through Legal Representatives
- (A) Haseena W/o Ikramoddin Suleman,
Age : 45 Years, Occ. Household
- (B) Baba S/o Ikramoddin Suleman,
Age : 27 Years, Occ. Business
- (C) Mohammed Ali S/o Ikramoddin Suleman,

Age : 19 Years,

- (D) Mohammed Hussain S/o Ikramoddin Suleman,
Age : 15 Years, Minor under the
guardianship of mother, Respondent No.3-A
- (E) Muskaan D/o Ikramoddin Suleman,
Age : 23 Years,
- (F) Taslim D/o Ikramoddin Suleman,
Age : 21 Years,
- (G) Rukhiya D/o Ikramoddin Suleman,
Age : 20 Years

All Resident of In the house of Wahid
Mistri, Sultana Hind, Town Hall, Near
Municipal Primary School, School No. 15,
Raza Nagar, Garib Nawaz Colony,
Shahada, Tq. Shahada and Dist.
Nandurbar

- (H) Rukshar W/o Imran
Age : 25 Years, Occ. Household
R/o. Waghadi Tq. Shirpur,
Dist. Dhule
- (I) Amreen W/o Imitiaz,
Age : 24 Years, Occ. Household
R/o. Behind Gazi Dargah, Badshah Nagar,
Dist. Nandurbar.
4. Naushad S/o Abdul Kadir Suleman,
Age : 32 Years, Occ. Business,
5. Mehmood S/o Abdul Kadir Suleman,
Age : 30 Years, Occ. Business

6. Sonu S/o Abdul Kadir Suleman,
Age : 27 Years, Occ. Business
7. Hanif S/o Abdul Kadir Suleman,
Age : 25 Years, Occ. Business

All Resident of Near Nandvan Hotel,
Prakasha Road, Shahada, Tq. Shahada,
Dist. Nandurbar.

Mr. C. R. Deshpande, Advocate for the appellant
Mr. S. P. Brahme, Advocate for the respondent Nos. 1
to 5

CORAM : VINAY JOSHI, J.

DATE : 17-02-2022

JUDGMENT :

. Heard finally by consent of both the
learned counsels.

2. This is an appeal of original landlord
arising out of the order dated 14-01-2008 passed by
the first appellate court in Regular Civil Appeal
No. 21 of 2006.

3. The first appellate court has partially
remanded the matter with direction to record limited
finding on the ground of default and to decide the
suit.

4. The facts are such that:

a] The appellant-landlord has initially filed Regular Civil Suit No. 15 of 2005 seeking rent and possession of suit premises on the ground of default in payment of rent and bonafide requirement. The parties led the evidence before the trial court. On appreciation of evidence the trial court came to the conclusion that the plaintiff-landlord has proved both the grounds and accordingly passed the eviction decree dated 11-07-2006.

5. Being aggrieved by the eviction decree the tenant filed first appeal challenging the adverse finding recorded by the rent court. In appeal, first appellate court has recorded finding that the landlord has proved his bonafide requirement. However, on the ground of default the first appellate court thought it fit that the matter requires to be remanded for fresh consideration on the said aspect. In the situation the first appellate court has remanded the matter with specific direction that the learned trial court shall determine the point of default afresh after

giving opportunity to both the sides.

6. With the assistance of both the sides I have gone through the relevant reasons assigned by the first appellate court which are at para Nos. 15 to 21 of the impugned judgment. The appellate court has detailed about the period of default and whether there is compliance of Section 15 of the Maharashtra Rent Control Act. The appellate court considered the findings on this point recorded by the trial court. It appears that the tenant while resisting the ground of default has stalled his claim that he has sent entire rent by way of money order and therefore, he is entitled for statutory protection. The trial court though read the money orders however, they were not considered. In the situation, the first appellate court observed that the money order coupons are having postal endorsement. Therefore, the appellate court expressed that money order coupons filed alongwith list (Exh.46) must be exhibited and ought to have considered while deciding the point of default. With such reasoning the matter was remanded to the trial court to carryout the said exercise only.

7. The issue of default is in question. There is no necessity to record any oral evidence on this point because it depends upon relevant documents and record of court to demonstrate the further deposits if any made by tenant in the court. The limited exercise is required to consider the money order coupons filed alongwith Exh.46. On the basis of money orders alongwith other material it is to be decided whether the compliance is made in accordance with law. Certainly it can be done by the first appellate court himself instead of partially remanding the matter which is not contemplated under law.

8. In view of above the question of law arises whether the first appellate court was justified in partially remanding the matter by recording finding on some of the issues. Notably the first appellate court has not resorted the provision of Order-41 Rule-25 of the Code of Civil Procedure which would have been appropriate course. In the above situation, the impugned order of remanding the matter back to the limited extent is not justifiable. The first appellate court has to consider all the documents and additional material

if any, obviously, produced by tenant to show that he has made deposits in the court. In view of that following order:

ORDER

- i. The appeal stands allowed.
- ii. The impugned judgment and order dated 14-01-2008 passed in Civil Appeal No. 21 of 2006 is hereby quashed and set aside.
- iii. The first appellate court is directed to restore the appeal on its file.
- iv. The first appellate court is directed to exhibit all the money order receipts filed by tenant and also to consider the further deposits if made by the tenant in the court and to consider the issue of default himself and decide the appeal on merits in accordance with law.
- v. The first appellate court shall make endeavour to decide the appeal within six months from the receipt of record, provided parties would co-operate.

(8)

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vi. All the pending civil applications, if any stand disposed of.

[VINAY JOSHI, J.]

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