

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

CIVIL REVISION APPLICATION NO. 99 OF 2021

- 1) Bahujan Shikshan Sangh, Ahmednagar
Through its Registrar -
Shri Vasant Mahadeo Baiche
Age; Major, Occ; Service,
R/o; Survey No. 90 G-23, Gulmonhar Park
Nawalenagar, Savedi, Near Siddhi Baug,
Ahmednagar,
Taluka and District; Ahmednagar.

...PETITIONER
(Original Defendant
No. 1)

VERSUS

Kamalbai Gangadhar Bhope
Deceased through her Representatives

1. Vijaya Narendra Kene,
Deceased through her Legal
Representatives
- 1-A) Narendra Namdev Kene,
Age; 58 years, Occ; Service,
R/o; Nimbhale, Taluka - Sangamner,
District; Ahmednagar.
- 1-B) Sachin Narendra Kene,
Age; 32 years, Occ; Service,
R/o; Nimbhale, Taluka - Sangamner,
District; Ahmednagar.
- 1-C) Omkar Narendra Kene,
Age; 30 years, Occ; Service,
R/o; Nimbhale, Taluka- Sangamner,
District; Ahmednagar.
- 1-D) Gauri Narendra Kene,
Age; 23 years, Occ; Education,
R/o; Nimbhale, Taluka- Sangamner,
District; Ahmednagar.

- 2) Mandakini Rajendra Kene,
Age; 65 years, Occ; Household,
R/o; Chandoli Road, Raiguru Nagar,
Taluka Rajguru Nagar,
District; Pune.
 - 3) Alka Dinkar Bhoir,
Age; 62 years, Occ; Medical Practitioner,
R/o; Rangar Galli, Sangamner,
Taluka - Sangamner, District; Ahmednagar.
 - 4) Dr. Indumati Gangadhar Bhope,..Deceased
 - 4-A) Radhika Lawrence Castle
Age; 20 years, Occ; Education,
R/o; C/o. Lawrence Brion Castle,
Windsor Apartment, Round House,
C-11/22/33, Ramwadi,
Pune, District; Pune.
 - 5) Smt. Pramila Gangadhar Bhope,. Deceased
- ...RESPONDENTS**
(No. 1-Orig.
Transposed Plaintiff,
Nos. 2 to 5 -Orig.
Defendant Nos. 2, 3,
5 & 6)

.....
Shri. P.R.Katneshwarkar h/f Mr. Girish S. Rane for the applicant
Shri. A.S. Bajaj, Advocate for Respondent Nos. 1-A and 1-B
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CORAM : (VINAY JOSHI, J.)

Reserved on : 16.02.2022
Pronounced on : 01.03.2022

JUDGMENT :

1. By consent of both sides, this revision is taken for final

hearing, at the stage of admission.

2. This revision is for challenging the judgment and decree passed by the appellate Court, dated 17th July, 2021, in Regular Civil Appeal No. 55 of 2008, confirming the judgment and decree passed by the trial Court dated 24.03.2008, in Regular Civil Suit No. 124 of 2003 (Old Special Civil Suit No. 39 of 1996).

3. The revision petitioner was original defendant No. 1 (tenant) of the premises jointly owned by the original plaintiff along with defendant Nos. 1 to 5. The suit was filed by the landlord seeking eviction on the sole ground of default in payment of rent amount. The trial Court recorded the evidence and ultimately held that the tenant is defaulter and therefore, not entitled for statutory protection in terms of Section 12 (3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "Rent Act".) The trial Court also held legality of suit notice and competency of one of the co-owner for seeking eviction against the tenant. The said decree was challenged by the tenant in First Appeal, however could not succeed.

4. Brief facts that need to be noted are that the suit property comprising of two storeyed building of RCC construction was owned by one Bhagubai Bhope. It was let out by Bhagubai to defendant No. 1 tenant on monthly rent of Rs. 750/- for running educational institution.

The tenancy month was as per the British calendar. The original owner Bhagubai died on 30.11.1975 leaving behind her only son Gangadhar. The tenant was paying rent to Gangadhar, who died on 29.03.1989. Gangadhar was having two wives i.e. first wife Kamalbai (plaintiff) and second wife i.e. defendant No. 6 Pramila. Defendant Nos. 2 to 5 are the daughters of Gangadhar from Kamalbai. The tenant failed to pay rent for a period from 01.01.1984 to 31.03.1995 to the tune of Rs. 99,000/-.

5. Defendant No. 1 tenant has paid rent to Gangadhar till the end of December 1983. Thereafter, despite repeated demand he did not pay rent. The defendant was in arrears of rent of Rs. 99,000/- for the period from 01.01.1984 to 31.03.1995. Therefore, the plaintiff has issued legal notice dated 08.05.1995 by which, terminated the tenancy and called upon the defendant No. 1 tenant to pay arrears of rent and for possession.

6. The petitioner tenant resisted the suit by denying that he was a willful defaulter in payment of rent and submitted that on the contrary, he was regularly paying rent to Gangadhar till February, 1989. Thereafter, second wife of Gangadhar namely Pramila (defendant No. 6) started to raise demand of rent, to whom the rent was paid for the month of March 1989 to May, 1989. So also Pramila raised dispute about the payment of rent and therefore, the defendant tenant vide

letter dated 20.09.1989 informed the Social Welfare Department for not to release the grants for rent as there was dispute amongst the landlord. It is contended that since the landlord Gangadhar was survived by two wives, the plaintiff alone has no right to terminate the tenancy and demand possession. With these contentions the suit was resisted.

7. On the basis of pleadings adduced before the Trial Court issues were framed. The trial Court decided the issue of default of payment of rent in favour of landlord besides other issues. The eviction decree was passed by the trial Court and was confirmed by the appellate Court.

8. The learned counsel appearing for the petitioner tenant submitted that the Courts below have completely erred in decreeing the suit in favour of the landlord. He submitted that initially the plaint was filed in the year 1996 in the Court of Civil Judge, Senior Division, however, it was returned under Order VII Rule 10 of Civil Procedure Code (for short "C.P.C.") on which instituted in the Court of Civil Judge, Junior Division. According to him, before re-institution of suit, already entire amount of rent has been deposited in the Court and therefore, he has complied the statutory obligations for getting the protection. Moreover, it is contended that during the pendency of the suit, as well as appeal, the tenant has regularly deposited the rent amount in the

Court.

9. Per contra, the tenant's learned counsel has submitted that the tenant has sheerly failed to deposit the arrears of rent on the first day of hearing of the suit and was irregular in depositing rent in Court ,therefore, he loses the statutory protection.

10. At the inception, some factual aspect needs reference. Initially, the plaintiff-landlord has filed suit bearing Special Civil Suit No. 39 of 1996 in the court of Civil Judge, Senior Division, Sangamner for eviction of defendant No. 1 (tenant), on the ground of default in payment of rent. The suit summons was served on defendant No. 1 (tenant) on 11.04.1996. On presentation of pleadings, the Court has framed issues on 08.12.1998. In the said suit on 08.02.2000 the tenant has applied for depositing rent, the Court permitted him to do so on 18.04.2000, whilst the tenant deposited the rent amount on 29.08.2000. Thereafter the plaint was returned for presentation to the Court of Civil Judge, Junior Division on jurisdictional issue. The suit was re-numbered as R.C.S. No. 124 of 2003. The parties have no dispute about the said factual position. It is also not in dispute that after demise of original owner Bhagubai, Gangadhar became exclusive owner of the suit property. He was survived by first wife (plaintiff-Kamalbai), four daughters (defendant Nos. 2 to 5) and second wife defendant No. 6 Pramila. On such un-disputed facts the suit proceeded

further.

11. Since the plaintiff was claiming possession on the ground of default in payment of rent, Section 12 (2) of the rent Act mandates for issuance of statutory demand notice, which was issued on 08.05.1995. demanding arrears of rent and possession. It is the plaintiff's case that the tenant was not regular in payment of rent and thus, was in arrears of Rs. 99,000/- towards rent due for the period from 01.01.1984 to 31.03.1995. Admittedly, defendant No. 1 tenant neither replied demand notice nor paid rent however, he applied for payment of rent on 08.02.2000 and consequently deposited rent on 29.08.2000. It is apparent that on the first date of hearing i.e. of framing of issues on 08.12.1998, arrears of rent were not deposited.

12. The learned counsel appearing for the petitioner-tenant by placing reliance on the decision of **Exl Careers and another Vs. Frankfinn Aviation Services Private Limited - (2020) 12 SCC 667**, would submit that when the plaint is returned for the lack of jurisdiction, on its presentation to proper Court the suit has to be proceeded de-novo before the competent Court. It is his submission that therefore, before re-institution of suit in the year 2003, he has already deposited the entire rent and thus, it shall be construed that prior to the first day of hearing the rent amount was deposited.

13. The above ratio only lays down a procedure to be adopted after presentation of suit in the court of competent jurisdiction. The procedure of commencing de-novo trial does not carves any exception for statutory compliances. Pertinent to note that the suit summons was served on defendant tenant on 11.04.1996 and thereafter the trial Court framed issues on 08.12.1998. The tenant was well aware about the demand notice, filing of suit, as well as framing of issues, still he did not bother to deposit amount. In the circumstances, the procedure of holding de-novo trial would not come to the rescue to the defendant tenant.

14. It is argued that there was inter-se dispute in between the legal heirs of the landlord Gangadhar, therefore, the tenant was unable to pay the rent. Moreover, it is submitted that as there was dispute, the Social Welfare Department was informed for not to disburse grants for the payment of rent. It requires to be noted that admittedly the tenant has not shown his willingness to tender the rent. Defendant No. 6 i.e. the second wife of the landlord has admittedly not demanded rent by issuing notice to the tenant. Admittedly the tenant has not endeavored to pay rent or issued any notice to the heirs of landlord expressing his willingness and desire to pay the rent. On the contrary, the tenant has issued letter to the Social Welfare Department for non disbursement of grants to pay rent which strongly suggests that there was no readiness and willingness on the part of tenant.

15. The learned counsel appearing for the plaintiff-landlord would submit that in order to avail benefit of Section 12 (3) of the Rent Act, the tenant must fulfill his obligation in letter and spirit. For that purpose reliance is placed on the full bench decision of this Court in the case of **Babulal s/o Fakirchand Agrawal Vs. Suresh s/o Kedarnath Malpani and others - [2017 (4) Mh. L.J. 406** wherein, it is observed that the tenant must satisfy all the conditions about the payment of rent as required under law. It is further submitted that the provisions of Section 12 (3) of the Rent Act, are of mandatory nature, in which the Court has no discretion to grant protection in case of failure. Moreover, the word 'regularly' has to be construed strictly. For that purpose my attention is invited to the paragraph No. 13 of the decision of the Supreme Court in the case of **Mranalini B. Shah and Another Vs. Bapalal Mohanlal Shah (1980) 4 Supreme Court Cases 251** which reads as below :

Paragraph No. 13 :-

"The above enunciation, clarifies beyond doubt that 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 characterised 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 it every month as it falls due, or at his discretion in advance. If he persistently default 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. "

16. In order to emphasis the strict compliance of the mandatory provisions of Section 12 (3) of the Rent Act, the respondent's learned counsel relied on the decision in cases of **Smt. Yamuna Dattartrya Gawade Vs. Shri Vishvaprakash G. Kirad and others - 2017 SCC Online Bom 8891** and **Jamnadas Dharamdas Vs. Dr. J. Joseph Ferreira and another (1980) 3 SCC 569**. Thus, there can be hardly any dispute that for seeking protection the conditions of Section 12 (3) of the Rent Act are to be complied as per the requirement of law. The tenant can escape from the eviction

decree by paying arrears of rent on first day of hearing of the suit along with interest. This provision offers an opportunity to the tenant to protect himself against the eviction. He can comply with conditions set out in Section 12 (3) of the Rent Act and defeat the landlord's claim for eviction.

17. As noted above the tenant has not deposited rent on the first day of hearing. Moreover, the tenant has not paid interest @ 9% p.a. as contemplated under law. The learned counsel appearing for the petitioner would submit that since the entire rent was paid before the re-institution of suit, there is no question of paying interest amount. In other words, it is submitted that when the tenant pays or fulfills the entire demand, there is no necessity to pay interest. Section 12 (3) of the Rent Act provides that the tenant shall pay the rent amount together with simple interest on the amount of arrears @ 9% p.a. The tenant has produced rent receipts (Exh. 78 to 83) to show that the rent amount was paid till the end of May 1989. Thus, the rent was due from the month of May, 1989 till the end of March, 1995. The arrears were running for the period of 5 years and therefore, the tenant was obliged to pay interest on such arrears due.

18. There is further requirement of continuing to pay or tender in Court regularly amount of rent till the suit or appeal is finally decided. The learned counsel appearing for respondent submitted that

on this count also the tenant sheerly failed to make necessary compliance. The term “regularly” has been explained to mean that, ‘though not strictly but it should be with reasonable punctuality’. The respondent’s learned counsel has submitted a chart showing the deposit of rent in Court from 29.08.2000, till the decision of appeal i.e. 08.07.2021. The other side has not disputed the said factual aspect. There are total 52 entries, under which the tenant has deposited the rent amount in Court. On careful examination, it reveals that each time there happens to be delay in payment of rent. It is not the case that the tenant was irregular on some occasion but has deposited the rent after interval of two or three months. Most of the entries suggest that he was totally irregular in payment of rent as most of the time, after the gap of 4 to 6 months the rent was deposited. Suffice to say that there are more than 10 to 15 entries when the rent was deposited after the gap of 3 to 4 months. Thus, it is not possible to hold that the tenant was regular in payment of rent. There is total non compliance on the part of the tenant to fulfill the requirement of Section 12 (3) of the Rent Act to escape from eviction decree.

19. The landlord is well entitled for the decree of eviction of a tenant who fails to carry out his obligation to pay rent to landlord despite opportunities given by law in that regard. Section 12 (3) of the Rent Act makes it obligatory for the Court to pass the decree of eviction when its conditions are not satisfied. The trial Court as well as

appellate Court have correctly assessed the evidence and came to the conclusion that the petitioner tenant was defaulter in payment of rent and not entitled for statutory protection. Therefore, the revision being devoid of merits, stands dismissed. Two months time is granted to, vacate the suit premises.

(VINAY JOSHI, J.)

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