

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

WRIT PETITION NO.11123 OF 2018

Shri. Bahadur Jagardev Rajput

..Petitioner

Versus

Smt. Saraswati Gajanan Kolsekar

Since deceased through legal heirs

Shri. Dattatraya Gajanan Kolsekar & Ors.

..Respondents

Mr. Nikhil M. Pujari, for the Petitioner.

Mr. Drupad S. Patil, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 20th OCTOBER, 2022

PC.

1. This petition is by the tenant/defendant who suffered a decree for eviction in Regular Civil Suit No.89 of 2010 passed by the Joint Civil Judge, Junior Division, Alibag on 26th March, 2014, which was confirmed by the learned Ad-hoc District Judge, Raigad-Alibag in Regular Civil Appeal No.82 of 2014 decided on 8th March, 2017.

2. The facts necessary for deciding the present petition are as under :-

The respondents/landlords initiated aforesaid suit for possession, compensation pursuant to the provisions of the

Maharashtra Rent Control Act, 1999 (hereinafter referred to as “the Rent Act” for the sake of brevity) alleging that the suit property of which the petitioner was a tenant consists of a room admeasuring 30 X 11 ft. out of house No.903 which was let out on monthly rent of Rs.80/- since 1975.

3. Alleging that the petitioner/tenant does not reside in the suit premises but is residing at Kalyan, district Thane and his son namely Ashok along with his wife is residing in the suit premises. Alleging non-payment of regular rent from 4th August, 1997, the need of the suit property for bonafide reasons as comparative hardship will be caused to the respondents/plaintiffs the suit came to be initiated.

4. The defendant through written statement Exh.14 denied the claim of the respondents/plaintiffs. According to him, initial rent was Rs.12.50 per month and in the year 1972, same was increased to Rs.15/- thereafter in the year 1976 was increased to Rs.18/- and again in the year 1991 it was increased to Rs.80/- per month. According to the petitioner/defendant, the plaintiff Nos.1 to 6 are residing in Mumbai. It is also claimed that one acre land is available with the respondents/plaintiffs over which two bungalows are constructed and occupied by them. It is also claimed that there is existing shop in the said property. According to the petitioner/ defendant, he is poor and is in need of the suit property for his personal use. The Trial Court having regard

to the rival claims has framed issues at Exh.16 which reads thus :-

Sr. No.	ISSUES	FINDINGS
1.	Does plaintiff prove that defendant is a defaulter ?	...In the affirmative.
2.	Does plaintiff prove that defendant has violated the provisions of Sec.15 of Maharashtra Rent Control Act ?	...In the affirmative.
3.	Whether plaintiffs are having bonafide requirement of suit property for their residence ?	...In the affirmative.
4.	Who will have to face hardship in case of decree ?	...In the affirmative.
5.	Whether plaintiff is entitled for compensation as sought ?	...In the affirmative.
6.	Whether suit is within limitation ?	...In the affirmative.
7.	What order and decree ?	...As per final order.

5. All the issues were answered against the petitioner thereby holding that the petitioner is defaulter in the matter of payment of rent, the bonafide need by the respondents/plaintiffs is duly established and the more hardship is likely to be caused to the respondents/plaintiffs.

6. The Appellate Court while re-appreciating the entire evidence has recorded the findings against the petitioner/defendant and confirmed the decree of eviction.

7. Amongst other, the contentions of counsel for the

petitioner/defendant/tenant are, the respondents/plaintiffs are in habit of creating evidence so as to prepare a ground of eviction of the petitioner/defendant. He would urge that in spite of the fact that the rent was tendered, the respondents/plaintiffs have not accepted the same and tried to create evidence to that effect. According to him, the evidence brought on record to that effect is ignored by both the Courts below. It is further claimed that the rent of Rs.80/- was never agreed, as the last standard rent was Rs.18/- and it was never agreed to be increased. As such, according to him, both the Courts have committed an error in recording finding that the provisions of Sub-Section (3) of Section 15 of the Rent Act are not complied with. It is further claimed that the respondents/plaintiffs have not disclosed the availability of other premises and that being so, the eviction of the petitioner is incorrectly ordered. He would further urge that the issue of bonafide need and the hardship caused is incorrectly appreciated and as such, the case warrants interference. So as to substantiate the aforesaid contention, reliance is placed on the judgment of this Court in the matter of ***Tarachand Hassaram Shamdasani Vs. Durgashankar G. Shroff & Ors.*** reported in ***2004 (Supp.) Bom.C.R. 333***, on the issue of the disclosure of all the facts about the holding of other premises by the plaintiffs. He has also placed reliance on the division bench judgment of this Court in the matter of ***M/s. Green View Radio Service Vs. Laxmibai Ramji & Anr.*** reported in ***AIR 1990 SC 2156***. The support is drawn from the aforesaid judgment so as to claim

that the notice ought to have been tendered with a correct contents at the proper address of the petitioner/ defendant.

8. While countering the aforesaid submissions, Mr. Drupad Patil, counsel appearing for the respondents/decreed-holders would urge that the petitioner is habitual defaulter. He has invited attention of this Court to the demand notices issued by the plaintiffs/landlords at Exhs.24, 26, 28 and 30, but replies to the initial three notices at Exhs.25, 27 and 29. According to him, the last notice Exh.30 was not replied by the petitioner. In addition his contentions are, the reply by the petitioner to the notice in categorical terms speaks of his intention to purchase the suit property on one hand and claiming his poor financial status on other hand. According to Mr. Drupad Patil, the Court below having appreciated the standard rent at the rate of Rs.80/- from 1991 onwards which was duly paid pursuant to the reply Exh.29. According to him, the notice Exh.30 dated 23rd January, 2009 was neither replied nor the rent as statutorily required under Sub-Section (3) of Section 15 of the Rent Act is paid. So as to substantiate his claim of comparative greater hardship, he has invited attention of this Court to the oral evidence.

9. I have appreciated the submissions.

10. At the outset, it is required to be noted that the conduct of the petitioner of non-payment of rent regularly could be inferred

from Exh.24 to Exh.30 which are demand notices issued by the plaintiffs and replies thereto filed by the petitioner/defendant. The last notice Exh.30 was neither replied by the petitioner nor immediately rent was tendered along with interest at the rate of Rs.15% as provided under Sub-Section (3) of Section 15 of the Rent Act. The categorical findings are recorded by both the Courts below against the petitioner on the said issue. Both the Courts below have concurrently held that the petitioner is a defaulter and as such proceeded to record finding to that effect thereby ordering eviction of the petitioner. The aforesaid findings are in tune with the statutory provisions, particularly, pursuant to the provisions of Sub-Section (3) of Section 15 of the Rent Act.

11. In the affidavit of evidence Exh.57 of the petitioner/defendant, it is specifically brought on record that after his transfer to Kalyan in the year 1995, he has shifted to Kalyan. The petitioner from the evidence has failed to demonstrate the more comparative hardship being caused to him. Apart from above, the respondents/ plaintiffs have specifically pleaded that they have a larger family to reside in the suit premises which consists house No.850 admeasuring 30 X 22 ft.. He has also given details about the family members. Though the petitioner has come out with a case of other properties owned by the plaintiffs at Girgaon, however, such suggestion of the petitioner was denied by the plaintiffs. The plaintiffs in fact have stated that they are having 22 gunthas land opposite to Revdanda High School. It is claimed that the plaintiff

No.5 is residing in part of the suit property i.e. in house No.850. The fact remains that the petitioner/defendant in his evidence has accepted that since 1987 till the date of recording of evidence, he has not searched for the alternate house. Even if the plaintiffs are owning other property, the fact remains that it is the choice of the plaintiffs where they want to reside and accordingly petitioner/defendant cannot dictate them as to which of the properties they should occupy. As such, the Court below has rightly recorded findings that the bonafide need was duly established and the petitioner has failed to demonstrate more comparative hardship he will suffer. Rather the petitioner in his cross-examination has stated that he had purchased a house at village Choul in the name of his wife for his residence as he intend to settle post his retirement. It is also brought on record that the petitioner/defendant has retired in 1998. The Exh.65 is the assessment extract of the house No.1083 of the wife of the petitioner. In this background, it cannot be said that the respondents have not disclosed the details about his property. Rather the perusal of the examination-in-chief of the plaintiff No.2 which is at Exh.21/C in categorical terms speaks of the disclosure of the property held by the respondents/plaintiffs.

12. Similarly, the Appellate Court has reappreciated the entire evidence and recorded findings based on appreciation of the position of law settled by the Hon'ble Apex Court in the matter of ***Mranalini B. Shah & Anr. Vs. Bapalal Mohanlal Shah*** reported in

(1980) 4 SCC 251 has held that the petitioner has failed to comply with the provisions of Sub-Section (3) of Section 15 of the Rent Act. The Appellate Court has also taken note of the fact of irregular payment of rent by the petitioner, so also not depositing 15% simple interest on the outstanding rent under Sub-Section (3) of Section 15 of the Rent Act. The Appellate Court then considered the large family of the respondents/plaintiffs consisting of 19 members, the area which is in possession of the plaintiffs so as to appreciate the case of bonafide need. It has also considered other accommodation of the plaintiffs which are inadequate. The Appellate Court then considered the other properties held by the plaintiffs in the very same area and has recorded findings against the petitioner upon reappraisal of the evidence.

13. Both the Courts below have rightly so held that the petitioner is liable to be evicted from the suit premises not only on the ground of failure to pay regular rent but also on the ground of bonafide need. The findings recorded by both the Courts below are based on the appreciation of the evidence which cannot be faulted with.

14. As the reliance placed by the petitioner on the judgment of *M/s. Green View Radio Service (cited supra)* will be of hardly any assistance, particularly when notice Exh.30 has been duly served on the petitioner on the regular address i.e. other notices were received by the petitioner. Apart from above, the judgment in the matter of

Tarachand Hassaram Shamdasani (cited supra) will also be of hardly any support, as from the evidence of the plaintiffs it can be inferred that they have disclosed the details of other property held by them. That being so, no case for interference is made out.

15. The petition as such stands dismissed.

[NITIN W. SAMBRE, J.]