

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

WRIT PETITION NO.9141 OF 2021

Smt. Tidiben Nanubhai Bharwar (since deceased)
Thr.Her Lrs. Petitioners
Versus
Smt. Urmila Prakash Thakur Respondent

Mr. Harish R. Pawar a/w P. S. Tiwari for the Petitioners.
Mr. B. P. Pandey a/w. Mr. Vikas B. Pandey, Adv. Girish Agarwal, Adv.
Ayus Tiwari i/b. Ridhima Mangaonkar for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATED : 11th JULY, 2022

P.C.:

1. The Respondent/Plaintiff filed Regular Civil Suit No. 118 of 2010 on the file of 8th Joint Civil Judge, Senior Division, Thane which was preceded by notice under section 106 of the Transfer of Property Act (for short "TP Act") issued on 26/11/2009 at Exhibit-36. The said suit came to be decreed on 15/12/2012. The Appeal of the Petitioner i.e. Civil Appeal No. 31 of 2013 came to be dismissed vide order impugned on 08/02/2019, as such this Petition.

2. The contentions of the counsel for Petitioner/tenants are, admittedly suit premises were given on monthly tenancy for the purpose of using the same as stable. In view thereof, protection

under the provisions of Maharashtra Rent Control Act is available to the Petitioners. So as to substantiate the said claim, he would invite attention of this Court to the evidence of the plaintiff at page no. 87.

3. He would claim that Exhibit-43 are receipts which are collectively proved to speak of monthly tenancy and that being so the suit was not maintainable.

4. According to him, though the issue was specifically raised before both the Courts below, the Courts below have committed an error in framing the issue to that effect.

5. While countering the aforesaid submission, counsel for respondent/plaintiff Mr. Pandey states that both the Courts have concurrently held that petitioners have failed to make out a case for rejection of the claim of the Petitioners for termination of lease and possession.

6. He would further urge that temporary structure on the suit property was already demolished prior to filing of suit and this fact is suppressed by Petitioners from this Court, as such sought dismissal of the Petition.

7. I have considered the aforesaid submissions.

8. The fact that the Petitioners/tenants have replied to notice of

termination of lease issued under section 106 of the TP Act is not in dispute. Rather the description of the suit property in the said notice at Exhibit-35 dated 12.11.2009 issued by respondents/plaintiffs was duly admitted by the Petitioners/tenants by giving reply to the same at Exhibit-36 dated 26.11.2009.

9. As such the Petitioners/tenants have in categorical terms admitted that the tenancy of the open plot was to be commenced from 1st of each English calendar month and to be expired on the last day of the said month.

10. In this background and rightly so, both the Courts below were prompted not to frame a specific issue, as a draft issue to that effect was neither supplied by petitioners nor was it their claim that issue was sought to be framed but not framed by both courts.

11. In the aforesaid background, having regard to the oral evidence available on record, analysis of which in the background of pleadings rightly prompted both Courts below to decree the suit of respondent/plaintiff.

12. Apart from the aforesaid issue, no other issue is canvassed in the present petition. As such, in the light of concurrent findings by

both the courts below, I have hardly see any ground, which warrants interference.

13. Petition as such dismissed.

14. Ad-interim protection ordered by this Court shall directed to be continued for a period of four weeks.

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by ANANT
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Date: 2022.07.20
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(NITIN W. SAMBRE, J.)