

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.4410/2021

Rajesh s/o Himmatlal Dawda
Aged about 52 years, Occ. Business
C/o Apsara Beauty Herbal Shop No.1,
House No.289-A, Modi No.3,
Sitabuldi, Nagpur.

.... **PETITIONER.**

// VERSUS //

Naresh s/o Gyarsilal Agrawal,
Aged about 62 years, occ. Business,
R/o 105, Kachipura, Krushna-Kunj,
Ramdaspath, Nagpur.

.... **RESPONDENT.**

Shri M.R. Joharapurkar, Advocate for petitioner.
Shri N.G. Jetha, Advocate for respondent.

CORAM : MANISH PITALE, J.
DATED : 13/04/2022.

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the rival parties.

3. By this writ petition, the petitioner has challenged order dated 24/02/2021, passed by the Court of Small Causes, Nagpur, on an application filed on behalf of the respondent (landlord) for fixation of interim fair/standard rent of the tenanted premises. The said application has been partly allowed and the petitioner (tenant) has been directed to pay interim fair/standard rent of the suit plot at Rs.15,000/- per month from the date of filing of the application.

4. The respondent filed an application under Section 8 of the Maharashtra Rent Control Act, 1999 (in short "Act of 1999") for fixation of fair/standard rent. During the pendency of the said application, the respondent filed the aforesaid application for fixation of interim fair/standard rent for the tenanted premises. The application stood partly allowed, as noted above.

5 The petitioner being aggrieved by the said order filed the present writ petition, wherein notice was issued for final disposal and effect of the impugned order was stayed, subject to the petitioner making payment of Rs.7,500/- per month to the respondent with effect from the date of the impugned order.

6 When this writ petition was taken up for final disposal, a preliminary objection regarding maintainability of the writ petition was raised on behalf of the respondent.

7 Shri Narendra Jetha, learned Counsel appearing for the respondent invited attention of this Court to the provisions of the aforesaid Act of 1999, particularly Sections 8 and 34 thereof, to claim that an appeal would lie before the District Judge against the impugned order. It was submitted that the aforesaid provisions read with Sections 26 and 26-A of the Provincial Small Causes Courts Act, 1887, would show that the appeal would certainly lie before the District Court and in view of the alternative efficacious remedy of appeal available to the petitioner, the present writ petition deserved to be dismissed only on that short ground. Attention of this Court was invited to the judgment of this Court in the case of *Pundalik Haribhau Chandekar Vs. Jagdish Dadaji Bind* reported in **2010 (1) BOM CR 144**.

8 On the other hand, Shri M.R. Joharapurkar, learned Counsel appearing for the petitioner submitted that there was no substance in the preliminary objection raised on behalf of the respondent regarding maintainability of the writ petition. It was

submitted that the respondent had initiated proceedings under section 8 of the Act of 1999 and that there was a clear prohibition under Sub-section 5 thereof regarding filing of an appeal. It was further submitted that a proper application of Section 34 of the aforesaid Act would show that an appeal would not lie in the facts and circumstances of the present case.

9 This Court has perused the impugned order, as also the material placed on record. There can be no dispute about the fact that the respondent in the present case has filed the application for fixation of fair/standard rent under Section 8(1) of the Act of 1999. The application at Exhibit 5 sought fixation of interim fair/standard rent and the said application was partly allowed. A perusal of Sub-Section (5) and Section 8 of the Act of 1999, would show that no appeal can lie against an order of the Court under Sub-Sections (3) and (4) of Section 8. In the present case, the application for fixing interim fair/standard rent is not traceable to Sub-Sections (3) and (4) of Section 8 of the Act of 1999 and therefore, Sub-Section (5) thereof will not be applicable.

10 At the same time, a perusal of Section 34 of the Act of 1999, shows that in the facts and circumstances of the present case Sub-Section (1)(b) thereof would apply, which provides for an appeal to the

District Court against an order passed by a Judge of the Court of Small Causes established under the Provincial Small Cause Courts Act, 1887.

The relevant portion of Section 34 of the Act of 1999, reads as follows:

“34 (1) Notwithstanding anything contained in any law for the time being in force, an appeal shall lie-

a)

b) elsewhere, from a decree or order made by a Judge of the Court of Small Causes established under the Provincial Small Causes Courts Act, 1887, or by the Court of the Civil Judge deemed to be the Court of Small Causes under clause (c) of sub-section (2) of section 33 or by a Civil Judge exercising such jurisdiction, to the District Court: Provided that no such appeal shall lie from-

(a) a decree or order made in any suit or proceeding in respect of which no appeal lies under the Code of Civil Procedure, 1908;

(b) a decree or order made in any suit or proceeding (other than a suit or proceeding relating to possession) in which the plaintiff seeks to recover rent in respect of any premises and amount or value of the subject matter of which does not exceed-

(i) where such suit or proceeding is instituted in Brihan Mumbai Rs. 10,000; and

(ii) where such suit or proceeding is instituted elsewhere, the amount upto which the Judge or Court specified in clause (b) is invested with jurisdiction of a Court of Small Causes, under any law for the time being in force;”

11. A perusal of the above quoted provision would show that Section 34 (1)(b) of the Act of 1999 applies to the facts and

circumstances of the present case and proviso to Clause (b) does not apply in the facts of the present case.

12. Apart from this, a perusal of Section 26-A of the Small Causes Court Act, 1887, would show that an appeal would lie to the District Court, against an order passed by the Court of Small Causes exercising jurisdiction under Section 26 of the said Act. A perusal of Section 26 of the said Act shows that it pertains to suits or proceedings between landlord and tenants for recovery of possession of immovable property and license fee or rent.

13. A conjoint reading of the aforesaid provisions would show that there is substance in the preliminary objection raised on behalf of the respondent. Since the impugned order is passed by the Court of Small Causes established under the Provincial Small Causes Courts Act, 1887, an appeal would lie against the same before the District Court. The said conclusion is supported by the aforesaid judgment of this Court in the case of *Pundalik Haribhau Chandekar (supra)* wherein this Court in paragraph no.7 has referred to Section 8 (1) and Section 34 of the Act of 1999 and upon analysis of the same it is laid down that remedy of

appeal under Section 34(1) (b) of the Act of 1999, is available against an order of the Small Causes Court.

14. In view of the above, this Court of the opinion that an appeal to the District Court would lie against the impugned order. Since the alternative efficacious remedy of appeal is available to the petitioner, this Court is of the opinion that the present petition is not maintainable and that the petitioner would be at liberty to exhaust such alternative efficacious remedy of appeal available to him.

15. Accordingly, the writ petition is dismissed.

16. Needless to say, this Court has not commented upon the merits of the matter and all questions on merits are kept open. Since the writ petition is dismissed, the interim order stands vacated.

JUDGE

R.S.Sahare