IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH: NAGPUR.

WRIT PETITION NO.5008 OF 2019

PETITIONERS (Judgment Debtors) : **1.** M/s Monarch Medicals, through its Managing Partner Shri Santosh s/o Champalal Rathi, CTS No.247, NMC Building No.197, Block No.A-O, Buty Bhavan, Rani Jhansi Square, Sitabuldi, Nagpur.

2. Shri Santosh s/o Champalal Rathi, Aged about 52 years, Occu: Business, R/o. 47-A, Shubham, Dharampeth, Nagpur.

//VERSUS//

RESPONDENTS (Decree holder) : **1.** Shri Padmanabh s/o Vinayak Buty, Aged 39 years, Occu: Agriculturist, R/o. CTS No.248, NMC Plot No.194, "Buty Bhavan", Rani Jhansi Square, Sitabuldi, Nagpur.

(Judgment Debtor) **2.** Shri Purshottam s/o Madanlalji Rathi, Aged about Major, Occu: Business, R/o. Plot No.197, Block No.A-1, Buty Bhavan, Rani Zhanshi Square, Sitabuldi, Nagpur.

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Mr. Yash Maheshwari, Advocate h/f. Mr. S.V. Bhutada, Advocate for the Petitioners.

Mr. A.S. Manohar, Advocate for Respondent No.1.

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CORAM : MANISH PITALE, J.

RESERVED ON : 14th JUNE, 2022.
PRONOUNCED ON : 17th AUGUST, 2022.

JUDGMENT

Rule. Rule made returnable forthwith. The writ petition is heard finally with the consent of the learned counsel appearing for the parties.

02] By this writ petition, the petitioners have challenged concurrent orders passed by the Small Causes Court and the District Court, whereby objection raised on their behalf as to the maintainability of execution proceeding initiated by respondent No.1, was rejected. As a consequence, the Small Causes Court would go ahead with the execution proceedings.

03] Briefly stated the facts, leading to filing of the present writ petition, are that the petitioners and respondent No.2 are tenants of premises owned by the respondent No.1. There were certain proceedings initiated by the respondent No.1 for fixation of fair rent and appeal arising therefrom was pending. In the year

2012, the respondent No.1 filed Regular Civil Suit No.148/2012, before the Small Causes Court at Nagpur, against the petitioners and the respondent No.2 for their eviction on the ground of *bonafide* need. At the stage when written statement was to be filed by the defendants, the parties entered into a compromise through the process of mediation.

04] As a consequence of the settlement of disputes between the parties, on 26.09.2012, the parties executed settlement agreement, wherein specific terms of settlement were recorded. As part of the settlement, the defendants were granted a term of remaining as tenants in the suit premises from 01.04.2010 till 31.03.2027 and thereafter, it was stipulated that the term would be renewed on fresh terms to be mutually decided between the parties. It was also stipulated that, if the respondent No.1 required the tenanted shop blocks, he would give advance written notice of six months to the defendants, terminating the tenancy and at the end of the said period, the defendants would handover peaceful vacant possession, failing which, the respondent No.1 could seek due legal procedure for getting the suit shop blocks vacated. There were other terms also specifically stipulated in the said settlement.

05] On 26.10.2016, the respondent No.1 issued notice to the petitioners and respondent No.2, calling upon them to vacate the suit shop blocks as he needed them, to which the petitioners and respondent No.2 replied on 30.06.2017, requesting respondent No.1 to refrain from indulging in any highhanded tactics. It is in this backdrop that the respondent No.1 filed execution proceeding bearing S.D. No.92/2017, before the Small Causes Court, seeking execution of the compromise decree dated 26.09.2012, passed by the said Court in pursuance of the settlement executed between the parties.

06] In this execution proceeding, the petitioners raised objection at Exh.13, claiming that the said execution proceedings were not maintainable, because the respondent No.1 was required to initiate appropriate proceedings under the provisions of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as the "said Act"), to make out grounds, while seeking possession of the suit shop blocks. It was claimed that the terms of the settlement and compromise between the parties had given rise to tenancy in favour of the petitioners and they were entitled to protection under the provisions of the said Act. The respondent No.1 contested the stand taken by the petitioners.

07] By order dated 22.03.2019, the Small Causes Court dismissed the objection at Exh.13. Aggrieved by the same, the petitioners filed revision application under Section 34(4) of the said Act, before the District Court. By the impugned judgment and order dated 10.07.2019, the District Court dismissed the revision application by interpreting the terms of the compromise and settlement between the parties. It was held that the compromise decree was executable and that no error was committed by the Small Causes Court while dismissing the objection raised by the petitioners.

08] Aggrieved by the said order of the District Court, the petitioners filed the present writ petition, wherein on 22.07.2019, this Court recorded the principal contention on behalf of the petitioners pertaining to interpretation of the terms of the compromise agreement, particularly Clauses (8) and (9) thereof. While issuing notice in the petition, this Court granted *ad-interim* stay of further proceedings before the Small Causes Court. Upon the contesting respondent No.1 entering appearance through counsel, the petition was taken up for hearing.

09] Mr. Yash Maheshwari, learned counsel holding for Mr. S.V. Bhutada, learned counsel for the petitioners, submitted that both the Courts below had erred in holding against the petitioners, for the reason that they had misinterpreted the true purport of the terms of the compromise/settlement agreement executed between the parties. It was submitted that a proper interpretation of the terms of compromise executed between the parties, clearly indicated that a new tenancy had come into existence on specific terms agreed upon by the parties. The petitioners were specifically permitted to continue as tenants in the suit shop blocks till 31.03.2027 i.e. a period of seventeen years and it was specifically recorded in the compromise terms itself that the tenancy rights of the petitioners shall remain fully protected, as per the provisions of the said Act. It was submitted that there was no specific date, on which, the petitioners were to vacate the premises and that merely because there was a clause, under which the respondent No.1 could issue notice of six months to the petitioners to vacate the suit shop blocks, it could not be said to be a decree, which could be directly executed by respondent No.1.

10] The learned counsel appearing for the petitioners relied upon judgment of the Hon'ble Supreme Court in the case of ***Alagu Pharmacy and others Vs. N. Magudeswari*** reported in ***(2018) 8 SCC 311*** and judgments of this Court in the cases of ***Dinesh Tulshtdas Sheth and another Vs. Hemchandra Ganpat Desai and others*** reported in ***(1999) 1 Mah.L.J. 749, Krishna Kashinath Patil Vs. S. Mohandas Kamath*** reported in ***(2002) 2 Mah.L.J. 924*** and ***Ramdayal Gulabachand Khandelwal and others Vs. Mahendra s/o Badrinarayan Khandelwal and others*** reported in ***(2009) 2 Mah.L.J. 782***.

11] On the other hand, the learned counsel appearing for contesting respondent No.1 submitted that a proper reading of the terms of the compromise/settlement agreement, would show that as per Clause (9) thereof, the petitioners were liable to vacate the suit shop blocks upon a notice of six months issued by the respondent No.1 and that the petitioners would be liable to pay damages from the date of termination of the tenancy. It was submitted that Clause (8) of the said agreement specifying the term of tenancy from 01.04.2010 to 31.03.2027, was necessarily required to be read with Clause (9) of the agreement, thereby indicating that the nature of the compromise decree based on the said agreement was such that it could be directly executed. It was submitted that the petitioners were not justified in reading Clause (8) of the agreement in isolation and further that the stipulation in Clause (11) regarding tenancy rights of the petitioners being protected under the provisions of the said Act, would not nullify the effect of Clause (9) of the agreement, which reserved the power with the respondent No.1 to issue an advance notice of six months to the petitioners to vacate the suit shop blocks, failing which, they would be liable to pay the damages from the date of termination of the tenancy.

12] The learned counsel for respondent No.1 relied upon Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC"), to contend that the aforesaid compromise decree was clearly executable and that the objection raised on behalf of the petitioners was correctly dismissed by the two Courts below.

13] The learned counsel for the respondent no.1 relied upon judgments of the Hon'ble Supreme Court in the cases of ***K.K. Chari Vs. R.M. Seshadri*** reported in ***(1973) 1 SCC 761, Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and others*** reported in ***(1974) 1 SCC 242, Roshan Lal and another Vs. Madan Lal and others*** reported in ***(1975) 2 SCC 785, Byram Pestonji Gariwala Vs. Union Bank of India and Others*** reported in ***(1992) 1 SCC 31*** and ***Hiralal Moolchand Doshi Vs. Barot Raman Lal Ranchhoddas (dead) by LRs.*** reported in ***(1993) 2 SCC 458,***

14] Having heard the learned counsel for the rival parties, this Court is of the opinion that before analyzing the position of law canvassed by learned counsel appearing for the rival parties, it would be appropriate to reproduce the terms of the settlement/compromise between the parties, so that the contentions raised on behalf of the rival parties can be appreciated in the proper perspective.

15] The terms agreed between the parties in the aforesaid settlement dated 26.09.2012, read as follows:

> *"**1. CONSIDERATION :** It is hereby mutually agreed that the PARTY NO 2 shall pay an amount of Rs.251000/- (Rs Two Lakh Fifty One Thousand Only) through cheque (as described in the payment schedule) as the consolidated amount towards difference of standard rent from 1-Apr-1999 to the period ending on 31-Mar-2010.*
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> ***2. SECURITY DEPOSIT:** Apart from above the DEFENDANTS shall pay Rs. 5,55,555/- (Rs Five lakhs Fifty thousand Five hundred & Fifty Five only) through cheque/ DD (as described in the payment schedule) towards interest free refundable deposit.*
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> ***3. MONTHLY RENT:** DEFENDANTS are very old tenant the DEFENDANT shall pay discounted rate of rent ie Rs 12 per sq ft per month from 1-Apr-2010 onwards i.e. DEFENDANT shall pay rent Rs 1983/- for block no 197/A-0 and Rs 1518/- for block no 197/A-1 excluding all corporation taxes. The rent is payable in advance on or before 10th of each English calendar month.*

4. DIFFERENCE OF RENT: *As per above clause 3 the rent is payable from 1-Apr-2010 so the difference of rent shall be from 1-Apr-2010 to 30-Sep-2012 which comes to Rs 93662/- (Rs Ninty Three Thousand Six Hundred & Sixty Two only) shall be payable through post dated cheques as per following schedule.*

PAYMENT SCHEDULE

Sr. No	*Cheque Details*	*Date*	*Amount*
1	*000442/BOI/Sitabuldi*	*26-Sep-2012*	*251000/-*
2	*000443/BOI/Sitabuldi*	*26-Oct-2012*	*300000/-*
3	*000444/BOI/Sitabuldi*	*26-Nov-2012*	*255555/-*
4	*000445/BOI/Sitabuldi*	*26-Dec-2012*	*93662/-*

5. TAXES : *All current or future corporation and/or any government taxes that are levied on the block are payable by the DEFENDANT, Re-Assessment of the tax by NMC is pending since Apr-2008. In case of any other future taxes levied on the building or land by the government, then the proportionate share of taxes as per area in occupation ie 300 sq ft shall be payable by the DEFENDANTS.*

6. RECEIPT: *The PARTY NO 1 shall give receipts of the amounts received, which shall be in the name of the PARTY NO 2 ie M/s Monarch Medicals. The PARTY NO 2 or his attorney duly empowered in this regard by a written document, shall sign the counter foil of the receipt every time. The receipt will be issued only in the name of PARTY NO 2 ie (M/s Monarch Medicals through its managing partner Sh. Santosh C. Rathi) irrespective of the account from which cheques are drawn.*

*7. **PERIODIC INCREMENT:** After every 3 years the rent shall be increased by minimum 10% on the prevailing rent ie first such increment shall be from 01-Apr-2015.*

*8. **EXPIRY:** The term will start from 1-Apr-2010 and will automatically end on 31-Mar-2027. (Subject to clause 11). The term of this agreement shall be 17 years ie till Mar 2027 there after this will be renewed on fresh terms which will be decided mutually at that time.*

*9. **VACATING BLOCKS:** During the continuation of this tenancy if DEFENDANTS wants to vacate the blocks then he shall give 3 months advance written notice to the PLAINTIFF and after vacating the block the PLAINTIFF shall refund the security deposit without any interest on the date of vacant possession to the DEFENDANT, failing which PLAINTIFF is liable to pay interest 15% pe annum to the DEFENDANT and also DEFENDANT can continue his occupation till he gets the full refund.*

In case of need of blocks by the PLAINTIFF then he shall give 6 months advance written notice to the DEFENDANTS ie his tenancy shall be terminated and DEFENDANT shall give peaceful vacant possession within 6 months from date of receipt of the request letter failing which the PLAINTIFF can seek due legal procedure for getting vacated and DEFENDANT is liable for the damages from date of termination of the tenancy.

*10. **DISPLAY BOARD :** The PARTY NO 2 undertakes and agrees that the board shall be put up above shutter of each shop. The size of the board shall not exceed 5 ft by 3 ft. for each shop Further PARTY NO 2 undertakes and agrees that he shall use the board for displaying his own registered business firm name "**M/S MONARCH MEDICALS**" only and shall use board for displaying* *any brand names/logos/registered trade marks etc. as may be allowed by the laws time being in force, provided however that the firm name "**M/S MONARCH MEDICALS**" shall always be prominent and other names/ matter /brands / logs shall be subsidiary. DEFENDANT further agrees that any other firm name he will not display.*

11. CONSTRUCTION: *The PARTY NO 2 is aware that the said block/property is a part of the entire property popularly known as "Buty Bhavan". It is categorically understood that the said property is constructed in the year 1958-59 ie. Its more than 50 years old and in dilapidated condition. In future it may become due for re-development / re-construction if required, on such event PARTY NO 2 shall give way of development and / or without any interruption / obstruction, provided however that the PARTY NO 2 after having participated in the said development would be accommodated in the commercial block having same area (preferably facing to road or best suitable for retail outlet since the DEFENDANT has retail medicine business) in the new complex which may be constructed on such terms and conditions as may be mutually agreed between the parties at that time and PARTY NO 1 further ensures that the Tenancy rights of the PARTY NO 2 remains intact as per MHRC ACT 1999. On vacating the block for above purpose the PARTY NO 1 shall refund the security deposit on date of vacant possession or may be adjusted in the new agreement which will be drafted for new premises / blocks. But in any situation tenancy rights of PARTY NO 2 shall be fully protected as per Maharashtra Rent Control Act 1999 (MhRC 1999).*

12. MAINTENANCE: *The PARTY NO 2 shall keep internal as well as external (western ie. Front side) maintenance. Backside / Eastern side maintenance shall* *be done by PARTY NO 1.*

13. ALTERATIONS : *The PARTY NO 2 shall not cause any changes to the property and shall not construct any walls and shall not remove execute dismantle any existing walls, slabs etc. No outlets, windows openings shall be made in any of the walls.*

14. CHANGE OF PARTNERS : *In case of addition / deletion of any partners the DEFENDANT / PARTY NO 2 undertakes to inform in writing about any change in the constitution of partnership firm within 7 days of occurrence to PLAINTIFF / PARTY NO 1 and till then the prevailing constitution shall only be recognized.*

15. USAGE : *The PARTY NO 2 shall use the said commercial block for his own business of PHARMACY (MEDICINE/CHEMIST/DRUGIST), or allied PHARMACY or COSMETIC related products, but PARTY NO 2 shall not use the premises for selling vegetarian or non-vegetarian food items or liquor, or lottery trading and also shall not do any such business which may cause nuisance to adjoining neighborhood. The PARTY NO 2 shall not use the premises for storing any explosive or hazardous substances. The premises shall not be used to storage or consumption of liquor or meat or food related products. No immoral activity shall be permitted in the premises.*

16. SUBLET : *This agreement is intended to establish more precisely the terms, conditions, rights, titles and interests pertaining to tenancy of PARTY NO 2 and PARTY NO 2 hereby agrees that under any circumstances the PARTY NO 2 shall NOT SUBLET the same and shall not introduce any person, firm or any corporate in the said block /part of block / premises without taking written permission from the PARTY NO 1."*

16] The crucial question that arises for consideration in this petition is, whether the decree passed on the basis of the abovementioned compromise terms gave rise to a fresh tenancy with the protection afforded by the said Act or that it was a decree, which could be directly put into execution or that it was a nullity. For deciding such cases, a conclusion can be reached on the facts of the particular case, depending upon the true nature of the terms of compromise.

17] The judgments upon which the learned counsel appearing for the respondent No.1 has placed reliance, concern the nature of such compromise decree under Order XXIII Rule 3 of the CPC, in the context of the decrees passed in the facts of the cases that came up for consideration. The said judgments were considered by this Court in a recent ***judgment dated 27.07.2022, passed in Writ Petition No.1797/2022 (Mirza Sharique Baig S/o. Mirza Azim & Anr. Vs. Mohd. Nasim S/o. Abdul Salim)*** and it was found that the general principle that could be culled out from the said judgments was that, there has to be either express or implied admission of the grounds for eviction raised by the landlord in the suit for eviction, because the concerned Court exercising power under the Rent Legislation would retain jurisdiction only in such condition. In the said recent judgment, this Court analyzed the series of judgments and found that while considering compromise terms leading to decrees in such cases concerning landlord tenant relationship, the terms of the compromise would have to be examined minutely to reach a conclusion, as to whether the decree could be directly executed or that a fresh tenancy had come into existence. In the facts of the said case, this Court found that the decree based on the compromise between the parties was directly executable and accordingly, it was directed that the execution proceedings would proceed further. Thus, each case would have to be decided on its own facts, depending upon the true nature of the terms of compromise between the parties.

18] As regards the judgments upon which the learned counsel for the petitioners has placed reliance, it is again found that in the facts of the individual cases, this Court concluded that the decree could not be said to be directly executable and that a fresh relationship had come into existence between the parties. For instance, in the cases of ***Krishna Kashinath Patil Vs. S. Mohandas Kamath*** (supra) and ***Ramdayal Gulabachand Khandelwal and others Vs. Mahendra s/o Badrinarayan Khandelwal and others*** (supra), the terms of compromise were such that the tenants therein were granted periods of tenancy of fifteen years and other conditions pertaining to rent, periodic increase in rent and resort to legal remedies were provided. These two cases appear to be closer on facts to the present case. In both the said cases, this Court found on facts that the intention of the parties upon an overall appreciation of terms of compromise indicated a fresh lease. Accordingly, it was held that, such compromise decree could not be directly executed.

19] In the present case, a perusal of the above quoted terms of compromise, would show that a period as long as seventeen years i.e. from 01.04.2010 to 31.03.2027, was specifically stipulated for the petitioners to continue as tenants in the suit premises. There are specific Clauses in the above quoted terms of compromise, providing for payment of difference in standard rent for specified period and also the manner in which the difference in rent would be payable. It is specifically stipulated that there would be increase in the rent by minimum 10% every three years, apart from specifying that, if the property in which the suit shop blocks are located is to be re-developed or re-constructed, the petitioners would be accommodated in commercial block, having the same area preferably facing the road.

20] It is crucial that the tenancy rights of the petitioners were recorded to be intact under the said Act, further specifically stipulating that in any situation, tenancy rights of the petitioners shall be fully protected under the provisions of the said Act. The other Clauses in the above quoted terms of compromise, clearly demonstrate that a fresh tenancy came into existence in favour of the petitioners. Both the Courts below have placed much emphasis on Clause (9) of the terms of compromise, pertaining to vacating of the suit shop blocks. In this Clause, it is specifically provided that, if the petitioners desire to vacate the suit shop blocks, they would have to give advance written notice of three months and, if the respondent No.1 needed the suit shop blocks, he would have to give advance written notice of six months to the petitioners for terminating the tenancy. This Clause further provides that, if the petitioners fail to give vacant possession pursuant to the notice issued by respondent No.1, the said respondent could seek due legal procedure and further that the petitioners would be liable for damages from the date of termination of the tenancy. Much emphasis was placed on behalf of the respondent No.1 on the aforesaid Clause, providing for damages from the date of termination of the tenancy.

21] But, a proper appreciation of all the sixteen Clauses of the compromise terms quoted above, would show that Clause (9) pertaining to vacating of the suit shop blocks, could not be read in isolation to mean that decree passed on the basis of such compromise terms could be directly executable. It is crucial that the very nature of the aforesaid Clauses of the compromise terms indicates that a fresh relationship came into existence between the parties and that the notice as contemplated under clause (9) issued by respondent No.1 to the petitioners for vacating the suit shop blocks, is still based on the "need" of such suit shop blocks for the respondent No.1. The moment the said aspect of “need” of the respondent No.1 comes into picture, the rights and protection available to the petitioners under the said Act, becomes relevant, particularly in the light of specific stipulations in Clause (11) of the said compromise terms. Merely, because there is a reference to liability to pay damages from the date of termination of the tenancy cannot *ipso facto* mean that the said decree based on compromise would be directly executable, because the aforesaid Clause (9) pertaining to vacating the suit shop blocks, by the very nature of the document executed between the parties, cannot be read in isolation.

22] The present case is distinguishable from the case recently decided by this Court on 27.07.2022, in the case of ***Mirza Sharique Baig S/o. Mirza Azim & Anr. Vs. Mohd. Nasim S/o. Abdul Salim*** (supra), because in the said case, specific amount of damages per day was specified and even more significantly, the Clause pertaining to the liability of the defendant to vacate the suit premises was specific and a particular date was fixed on or before which the defendants therein were mandated to vacate and handover peaceful possession to the landlord. It is also significant that the terms of compromise in that case gave time period only of two years and nine months to the defendants therein to handover vacant possession of the suit premises. As opposed to that, in the facts of the present case, it is found that the terms of compromise are elaborate, giving rise to a fresh relationship between the parties and more importantly Clause (8) of the terms of compromise in the present case, provides for a term of seventeen years of tenancy for the petitioners between 01.04.2010 and 31.03.2027, with a further stipulation that on expiry of the said term, it would be renewed on fresh terms to be mutually decided at that time between the parties. This is a clearly distinguishable feature of the present case.

23] This Court finds that a proper appreciation of the above quoted Clauses of the terms of compromise in the present case, in the light of the law laid down by the Hon'ble Supreme Court and this Court in various judgments, clearly indicates that the decree passed in terms of the said compromise could not be a directly executable decree and that a new relationship of tenancy came into existence. Not only this, protection afforded to the petitioners as tenants under the said Act, was specifically retained under the said compromise executed between the parties.

24] A perusal of the concurrent orders passed by the two Courts below, would show that much emphasis was placed only on Clause (9) of the above quoted terms of compromise, without appreciating the true nature of the document in its totality by referring to the other Clauses. In the absence of appreciation of the document in its entirety, the two Courts below fell in error in holding that the respondent No.1 could directly execute the compromise decree for seeking eviction of the petitioners.

25] It is found that the petitioners raised specific objection at Exh. 13 in this context, but the two Courts below erred in examining the true scope of the aforesaid terms of compromise executed between the parties, which led to the compromise decree. The respondent No.1 consciously signed on the said terms of compromise, which indicates a fresh relationship coming into existence between the parties, binding them to the terms, which include protection afforded to the petitioners under the provisions of the said Act.

26] In view of the above, it is found that the two Courts below erred in holding against the petitioners.

27] Accordingly, the writ petition is **allowed**. Consequently, the impugned orders passed by the two Courts below are quashed and set aside.

28] The objection at Exh.13 raised on behalf of the petitioners, is upheld and the execution proceeding bearing S.D. No.92/2017, is dismissed.

29] It is clarified that the respondent No.1 would be at liberty to institute appropriate proceedings in accordance with law for seeking possession of the suit shop blocks.

30] Rule is made absolute in above terms. No order as to costs. Pending applications, if any, stand disposed of.

(MANISH PITALE, J.)

Vijay