

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

WRIT PETITION NO.5552 OF 2013

Gajanan s/o Devidas Wankhare
 (deceased) through LR's

1. Smt. Vijaya Wd/o Gajanan Wankhare
 Aged 73 years, Occu: Housewife

2. Mrs. Sangita Wd/o Rahul Wankhare
 Aged 43 years, Occu: Housewife

3. Shreyash S/o Rahul Wankhare
 Aged 20 years, Occ: Student,

4. Shraddha D/o Rahul Wankhare
 Aged 17 years, Occ: Student,

5. Mrs. Vaishali W/o Ramesh Nandgawle
 Aged 47 years, Occ: Housewife.

...PETITIONERS

---VERSUS---

Mohd. Jamil Mohd. Amad,
 Aged 61 years, Occ: Labourer,
 R/o Behind Malandevi Vyapar Sankul,
 Near Jaistambh Chowk, Main Road,
 Buldhana, Tq. & Dist. Buldhana.

...RESPONDENT

 Shri R.G. Kavimandan, Advocate for the petitioner(s).
 Shri Anand Deshpande, Advocate h/f Shri F.T. Mirza, Advocate for respondent.

CORAM : AMIT BORKAR, J.
DATED : JULY 29, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith by consent of the parties.

2. This is a landlord's petition challenging the dismissal of

Corrected as per
 Hon'ble Court's order
 dated 26.09.2022
 S.R. Wagh
 Personal Assistant

the suit for ejectment of the tenant on the ground of arrears rent and *bona fide* requirement. In the plaint, it is stated that the defendant had stopped paying rent more than three years prior to filing the suit. In spite of the demand notice dated 05.10.2000 tenant had failed to pay arrears of rent. The *bona fide* requirement pleaded is for starting construction of the shopping complex by demolishing the temporary structure, including the premises in possession of the defendant. It is averred that the permission for construction was already granted, and half of the work of the shopping complex was complete.

3. The respondent contested the suit by filing a written statement. It is stated that initially, rent of the suit premises was ₹35/-. Thereafter, it was increased to ₹100/- and thereafter to ₹200/-. According to the tenant, there was no agreement to pay rent of ₹200/- per month. He denied that there were any arrears of rent. Insofar as the ground of *bona fide* requirement is concerned, it is pleaded that the plaintiff had constructed a commercial complex and sold premises therein. Therefore, it is clear that the suit premises are not required for the plaintiff's residence.

4. In his examination-in-chief, the defendant specifically stated that the petitioner had let out the shop premises in the area

adjoining the suit premises and had also sold the premises. In the cross-examination, the plaintiff made no cross on this point. Initially, the suit was decreed on the grounds of *bona fide* requirement and rent arrears. The appeal challenging the said decree was allowed to remand the proceeding back to the trial Court to adjudicate the hardship issue. Both the parties led evidence on the point of hardship, and the trial Court, by judgment and order dated 04.05.2009, decreed the suit on the ground of *bona fide* requirement only. The appeal against the said decree filed by the tenant was allowed dismissing the suit. The cross-objection filed by the landlord was dismissed.

5. The judgment and decree dated 08.07.2013 is the subject matter of challenge in the present petition.

6. The learned Advocate for the landlord submitted that the plaintiff had proved demand notice. Undisputedly, arrears of rent were neither deposited within the period mentioned in the demand notice nor during the pendency of the suit. He invited my attention to Exhibit 10 of the suit, which is a notice demanding the arrears of rent from the defendant. Exhibit 12 is the acknowledgement of receipt of the notice. It was, therefore, necessary for the plaintiff to deposit the amount as per the notice.

He further submitted that the *bona fide* requirement of the plaintiff had been proved, and therefore the landlord is also entitled to get the premises on the ground of *bona fide* requirement.

7. *Per contra*, learned Advocate for the tenant submitted that the plaintiff has not pleaded how the rent was increased. He had not given the details on how initially rent was increased to ₹100/- and thereafter ₹200/- per month. In the absence of such details in the plaint, grave prejudice is caused to the tenant by taking whatever opportunity he had to lead evidence to prove the deposit amount. He invited my attention to the examination-in-chief of the tenant, wherein the tenant has specifically stated that the plaintiff has constructed the shopping complex and let out shop premises in the shopping complex. The landlord also sold shop premises in the said shopping complex. The landlord has not cross-examined the tenant on this point, and therefore the said part of testimony remained unchallenged. He, therefore, submitted that the learned Lower Appellate Court rightly dismissed the suit.

8. I have reflected on the submissions made by them. Insofar as the ground of *bona fide* requirement is concerned, the

need pleaded in the plaint is for constructing a shopping complex. The tenant, in his examination-in-chief, specifically stated that the landlord had constructed a shopping complex adjoining the suit premises and let out shop premises to a third party. It is also stated in the examination-in-chief by the tenant that landlord has sold shop premises in the shopping complex. Undisputedly, there is no cross-examination on the said point. Therefore, it is clear that the plaintiff had constructed the complex, let out shop premises to a third party, and sold shop premises to other persons. In that view of the matter, the Appellate Court was justified in dismissing the suit on the ground of *bona fide* requirement.

9. Insofar as the ground of arrears of rent is concerned, Exh.10 shows the landlord issued a demand notice on 05.10.2001. Exh.11 is the postal receipt of the said notice. Exh.12 is the acknowledgement of the demand notice. In paragraph 9 of the demand notice, the landlord made a specific demand calling upon the tenant to pay arrears of rent within 90 days. However, in spite of receipt of said notice, the tenant neither paid the amount within 90 days nor deposited it during the pendency of the suit in Court.

10. It is submitted by the tenant that the landlord needed to

plead about how the rent was increased to ₹100 and thereafter to ₹200/-. According to him, pleadings of arrears of rent were covered by the Order VI Rule 7 of the Code of Civil Procedure (CPC). In the absence of specific pleadings about the manner for an increase of rent, grave prejudice was caused to the tenant. He relied on the Apex Court's judgment in the case of **Nandkishor Lalbhai Mehta Vs. New Era Fabrics P.Ltd.**¹

11. Having considered the ratio laid down by the Apex Court, I am of the opinion that the said judgment does not apply to the facts of the present case. The facts of the case before the Apex Court and the evidence on record were considered without specific pleadings supporting relief. There was no prayer for particular relief, which this Court granted, and in the facts of the said case, the Apex court held that no amount of evidence could substitute the pleadings. For raising pleadings in support of ground arrears of rent, the landlord needed to plead the date of the notice, a demand made, the amount of rent and failure on the part of the payment to pay the arrears of rent. On perusal of the plaint, it contains necessary sufficient pleadings to raise the ground of arrears of rent.

1 AIR 2015 SC 3796

12. The next judgment relied upon on behalf of the tenant is in the case of **Ramjohn Mehomoodin Vs. Yahyabhai Abdul Kayum**¹. In the facts of the said case, the suit was for dissolution of the partnership; in that context, the Single Judge of this Court held that the pleadings, in that case, are covered by Order VI Rule 7 of CPC. As stated earlier, since the necessary pleading to raise the ground of arrears is already raised, no prejudice can be said to be caused to the tenant.

13. Insofar as the point of increase in rent from ₹35/- to ₹100/- and thereafter to ₹200/- is concerned, if there was a dispute as regards the quantum of rent, the tenant needed to file the application for standard rent. It is settled law that the only manner to dispute quantum rent is to file an application for standard rent. Even otherwise, if the tenant felt that the amount of ₹200/- was excessive and was not agreed upon by the tenant, it was incumbent upon him to deposit the undisputed amount of rent along with filing an application for standard rent. In the facts of the case, the tenant neither filed an application for standard rent nor deposited or paid an undisputed amount of rent. Since nonpayment of arrears of rent after receipt of notice is an undisputed fact, the landlord is entitled to the decree of

1 1946 BCI (0) 34

possession of arrears of rent. In the result, I pass the following order:

The Rule is made absolute in terms of prayer clause (1), which reads as under:

“(1) Quash and set aside the judgment and decree dated 08/07/2013 passed by Principal District Judge, Buldhana in Regular Civil Appeal No.55/2009 at Annexure-10 arising out of judgment and decree dated 04/05/2009 passed by Civil Judge Senior Division, Buldhana in R.C.S. No.22/2001 at Annexure-7 and further be pleased to modify the judgment and decree dated 04/05/2009 passed by Civil Judge Senior Division, Buldhana in R.C.S. No.22/2001 at Annexure-7 thereby decreeing the suit filed by the petitioner with costs throughout;”

14. In the facts of the case, there shall be no order as to costs. The petition stands disposed of in the above terms. Pending civil application (s), if any, stand disposed of.

JUDGE

Wagh