

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

WRIT PETITION NO. 5226 OF 2021

The Washim Urban Co-Operative Bank Ltd. -- Petitioner

Vs.

Shailesh @ Shailendra Manoharrao Jangade -- Respondent

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P.K. Mohta, Advocate for Petitioner
Mr. M.G. Sarda, Advocate for Respondent

CORAM : MANISH PITALE, J.

DATE : 6th APRIL, 2022

By this writ petition, the petitioner has challenged order dated 07/01/2020, passed by the Court of 2nd Jt. Civil Judge, Senior Division, Akola (hereinafter referred to as the Trial Court), whereby application filed on behalf of the petitioner for fixing standard rent under Section 8 of the Maharashtra Rent Control Act, 1999, has been rejected.

2. Mr. P.K. Mohta, leaned counsel appearing for the petitioner (original defendant) contended that the impugned order is cryptic and the reasoning given in the short order is in the teeth of the provisions of the aforesaid Act. It is submitted that there is a

dispute regarding rent between the parties and in such a situation, considering Section 8(1)(a) of the aforesaid Act, the Trial Court is required to fix standard rent by favourably considering the application filed by the petitioner. Instead, the Trial Court dismissed the application on a reasoning which betrays prejudging of the issue by the Trial Court.

3. On the other hand, Mr. M.G Sarda, learned counsel for the respondent (original plaintiff) submitted that the impugned order is justified for the reason that the petitioner failed to make out any ground for entertaining its application under Section 8 of the aforesaid Act. Attention of this Court is invited to Section 7(14) of the said Act to contend that Section 8(1)(a) thereof would not apply to the facts of the present case. Attention of this Court was invited to agreement executed between the predecessor of the respondent and the petitioner. It was submitted that the whole case of the respondent is that as per Section 11 of the aforesaid Act, he is entitled to increase of rent at 4% per annum, which is disputed by the petitioner. But, the said dispute cannot be said to be a dispute regarding standard rent and it is limited to the rival claims pertaining to permissible increase in the agreed rent between the parties. The learned counsel invited attention of this Court to the issues framed by the Trial Court in the present matter and he submitted that in these circumstances, the impugned order was justified.

4. This Court has perused the impugned order. It would have been better if the Trial Court had elaborated upon the reasoning contained in paragraph 2 of the said order. In order to appreciate as to whether the brief reasoning given in paragraph No.2 of the impugned order is justified, this Court has perused the material on record in the backdrop of Sections 7, 8 and 11 of the aforesaid Act.

5. A perusal of Section 8(1)(a) of the said Act would show that it takes us back to Section 7(14) and the clauses therein. A perusal of the same would show that the aforesaid clause would apply to a situation where the premises was let out on rent on or before the year 1987, which is admittedly not the case in the present matter. As regards, other clauses of Section 8(1) of the aforesaid Act, on the face of it, they do not apply.

6. In this backdrop, there is substance in the contention raised on behalf of the respondent that no case is made out for moving an application for fixing standard rent in the facts and circumstances of the present case. The material on record does indicate that as per the agreement, the parties had agreed to particular amount and the real dispute between them as on today is pertaining to periodical increase in the quantum of rent. It is for this reason that the Trial Court has framed the following issues.

- “i) Is entitlement to permitted increase every year by 4% on agreed rent from July 2010 proved?
- ii) Whether it is proved that, petitioner is in arrears of rent amounting to Rs.3,68,635/-?
- iii) Is entitlement to interest on due rent proved if yes at what rate?”

7. When the facts of the case are appreciated in this manner, it is found that the Trial Court was justified in holding that the application for fixing standard rent deserved to be rejected and it appeared to be an attempt on the part of the petitioner to come out of consequences of non-compliance of Section 15 of the aforesaid Act, if at all.

8. It is made clear that the reasoning contained in paragraph No.2 of the impugned order and this Court agreeing with the same, will not influence the Trial Court, while considering the contentions of the rival parties in the context of the issues already framed.

9. In view of the above, the writ petition is dismissed.

JUDGE