

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

8 CRA NO.60 OF 2023

RABBANIBEGAM SHABBIRALI SAIYYAD DIED 2. MUSTAQALI
SHABBIRALI SAIYYAD AND ORS
VERSUS
FARJANABEGAM MEER MUJUMALI

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Advocate for Petitioners : Mr. Natu Sharad V.

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CORAM : S. G. MEHARE, J.
DATE : 25.10.2023

PER COURT :-

1. Heard the learned counsel for the applicants/tenants.
2. The respondent/landlord had filed a suit for eviction under the Maharashtra Rent Control Act, 1999, on the grounds of default in rent payment and bonafide need.
3. Learned counsel for the applicants would submit that the tenants were paying the rent regularly as per the practice. It was the practice that the landlord used to come and collect the rent, and the tenant used to put the entry of the payment of rent in a diary brought by the landlord. However, it was interrupted on one occasion as the landlord did not get that diary. There are contradictions as regards the monthly rent.

The landlord admitted that the agreed monthly rent was Rs.600/-. Hence, her claim that the last rent of Rs.1,000/- was false. The tenant has deposited the rent in the Court in installments during the suit. He would submit that the landlord was at the default in not issuing the rent receipts as per Section 31 of the Maharashtra Rent Control Act. There was no written agreement on the rent. Hence, without any written agreement, the tenants should have been believed on the monthly rent amount. Since there was no agreement to pay the rent either in advance or on a particular date, the landlord accepted the rent at their convenience. It cannot be accepted that the tenants were habitual defaulters and were not willing to pay the rent. This legal aspect has been ignored by the Courts below.

4. He also argued that the landlord has a house in Nashirabad. So, they had a better tenement for their use. The landlord did not produce satisfactory evidence that the suit premises was required for a bonafide need. The evidence on bonafide needs was insufficient and not satisfactory. The tenants did search for alternative residential premises, but due to their financial restraints, they could not afford the current rent. Therefore, the hardship was in their favour. Both Courts

did not consider these material aspects while deciding the hardship.

5. Perused the impugned judgments and decrees. It is correct that the landlord claimed the monthly rent of Rs.1,000/- per month but admitted in cross-examination that it was Rs.900/- per month. In the absence of any document of rent terms, the Court appreciated the facts from the oral evidence of the parties. Considering the probabilities in favour of the landlord, the Trial Court concluded that the rent was at Rs.900/- per month till 2008 as it was continued till the date of filing the suit. The father and husband of the present appellants was the original tenant, who died after the service of the statutory notice. The Trial Court has also considered the evidence on practice and procedure of paying and receiving the rent. However, it appears that the tenant kept silent for years for not following the practice of taking the entries in the diary of receipts of the rent. Till filing the suit, the tenant never complained about not following such practices. Therefore, the Courts have correctly appreciated the facts and believed that the tenants were in arrears of rent without any substantial reason.

6. Findings recorded regarding the bonafide need appear to have been considered applying the armchair rule. The law is well settled by a catena of judgments that the landlord is the best Judge of his bonafide need. The landlord can choose the tenant from whom the premises will be vacated. The Court did not know whether the other premises at Nashirabad were suitable for comparison with the suit premises.

7. There are two concurrent judgments against the tenant. The revisional Court has a very limited scope. Examining the record and hearing the learned counsel for the petitioner, there appears to be no grounds to entertain the revision application.

8. Hence, the Civil revision application is dismissed at the admission stage. However, the tenant is granted six (6) months to vacate the premises from today.

(S. G. MEHARE, J.)

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vmk/-