



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5501 OF 2010
WITH
CA/4289/2010 IN WP/5501/2010 WITH CA/13438/2011 IN WP/5501/2010
WITH
CA/9343/2012 IN WP/5501/2010

Mohd. Anwar S/o Mohd. Altaf Kachi
Age 52 years, Occ. Business,
Shop No.7, Hirakhan Complex,
Mahaveer Chowk, Jalna
R/o Malipura, Old Jalna,
Taluka and District Jalna

.... Petitioner
(Original defendant)

Versus

1. Smt. Vidyadevi W/o Narayandas Tharani
(Died through L.Rs.)
- 1-A. Narayan Das Kanwarmal Tharani
Age: 75 years, Occ. Business,
- 1-B. Ashokkumar Narayandas Tharani,
Age: 54 years, Occ. Business,
- 1-C. Rajkumar Narayandas Tharani,
Age: 52 years, Occ. Business,
- 1-D. Pradipkumar Narayandas Tharani,
Age: 47 years, Occ. Agriculture,
Nos.1-A to 1-D all R/o. Mahandas
Talreja Nagar, Opp. Bajarang Dal
Mill, Jalna, Tq. & Dist. Jalna.
- 1-E. Smt. Shakuntala W/o Vijaykumar Bajaj
Age: 50 years, Occ. Household,
R/o. Sindhi Colony, Mondha Naka,
Jalna Road, Aurangabad,
Tq. & Dist. Aurangabad.
- 1-F. Smt. Rajashree W/o Shyamlal Keswani,
Age: 46 years, Oc. Household,

R/o. Kanwarnagar, Sindhi Colony,
Jalgaon, Tq. & Dist. Jalgaon.

- 1-G. Smt. Anita W/o. Rajesh Kapdi,
Age: 39 years, Occ. Household,
R/o. Dasturnagar Colony,
Amravati, Tq. & Dist. Amravati.
2. Smt. Ushadevi W/o. Ashokkumar Tharani,
Age: 40 years, Occ. Household,
3. Nitadevi W/o Rajkumar Tharani,
Age: 38 years, Occ. Household,
4. Smt. Vaijanti W/o Pradeepkumar Tharani
Age: 36 years, Occ. Household,

No.22 to 3 R/o. Mohandas Talreja Nagar
Besides Bajrang Dall Mill, Jalna,
Taluka and District Jalna.

Through their General Power of Attorney
Shri Narayandas S/o Kavarmal Tharani,
R/o Mohandas Talreja Nagar,
Besides Bajrang Dal Mill, Jalna,
Taluka and District Jalna

.... Respondents
(Original Plaintiffs)

.....

Mr. S.S. Kazi, Advocate for Petitioner
Mr. A.S. Bajaj, Advocate for Respondent Nos.1 to 4
Mr. Shaikh Mujtaba Gulam Mustafa, Advocate for Applicant in
CA/9343/2012

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 20th SEPTEMBER, 2023

PRONOUNCED ON : 1st DECEMBER, 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally
with the consent of the parties.

2. This petition filed under Article 227 of the Constitution of India, challenges the order dated 16/01/2010 passed by learned Extra Joint Adhoc District Judge, Jalna in Regular Civil Appeal No.101 of 2007.

3. The litigating parties shall, hereinafter, for the sake of brevity, be referred to as, petitioner as 'tenant' and respondents as 'landlords'.

4. Landlords filed Regular Civil Suit No.318 of 2006 under Maharashtra Rent Act, 1999 (for short, 'the said Act') against tenant, in the Court of learned Civil Judge, Junior Division, Jalna, for possession of suit shop, contending that suit shop was let out by previous owner Vijaukumar Motilal Hirakhanwala to tenant on monthly rent of Rs.1,000/-. On 24/08/2005, the entire premises of Hirakhan complex including suit shop was purchased by landlords by registered sale deed (Exhibit-21). Then, the landlords admitted attornment of tenancy of tenant. At the time of purchase of suit shop by landlords, tenant was in arrears of rent for the months of July, 2005 and August, 2005. Tenant remitted the rent of July, 2005 and August, 2005 by money order. Thereafter, tenant failed to deposit rent for the period from

01/09/2005 to 31/05/2006, and therefore, he was in arrears of rent of nine months amounting to Rs.9,000/-. Landlords made demand of arrears of rent at various times, however, tenant failed to pay the same. By issuing legal notice through advocate, landlords terminated the tenancy of tenant from 31/05/2006. the said notice was duly served on tenant. Tenant gave false reply to the notice. On receipt of notice of landlords, tenant became more aggressive, and he made encroachment upon the open space in front of suit shop by constructing a platform and erecting a tin shade. Landlords are intending to separate from each other, and landlord/plaintiff No.3 wants to start independent business for her son, and therefore, the suit premises is required for personal use of landlords/plaintiffs.

Tenant by filing written statement (Exhibit-9), admitted that he is tenant of landlords/plaintiffs, and monthly rent of suit shop is Rs.1,000/-. He has further denied that he was in arrears of rent. He issued notice by R.P.A.D. dated 16/05/2005 along with five cheques of Rs.1,000/- each as rent of suit shop for the months from July, 2005 to November, 2005. He has paid the rent to landlords up to December, 2005. He has also paid rent of January, 2006 and February, 2006 by Demand Drafts. He, therefore, claimed that he has regularly

paid the rent. He denied the contention about bonafide requirement and encroachment, and construction in the suit premises. By judgment and decree dated 26/03/2007, Trial Court dismissed the suit. Landlords challenged the judgment and decree of Trial Court by filing Regular Civil Appeal No.101 of 2007 in District Court, Jalna, which came to be allowed by judgment and decree dated 16.01.2010, on the ground of willful default. This order is impugned in the present petition.

5. Heard learned advocate for the petitioner and learned advocate for respondents. Perused the writ petition memo, annexures thereto, impugned order, and citations relied upon by the learned advocates for the petitioner and respondents.

6. Learned advocate for petitioner assailed the impugned judgment and decree on the ground that observations of the Appellate Court are contrary to record. Tenant has regularly paid rent by money orders. Even during pendency of appeal, rent was regularly paid. He submits that 15% interest is not liable to be paid in the present case. None of the landlords have entered the witness box and on their behalf general power of attorney holder is examined, who could not have deposed on behalf of landlords. According to

him, decision in ***Babulal S/o Fakirchand Agrawal Vs. Sureshe S/o Kedarnath Malpani, 2017 (4) Mh.L.J. 406***, supports the case of petitioner. He, therefore, submits that the impugned judgment is liable to be quashed and set aside. In support of his submissions, he relied on ***Laxmikant Revchand Bhojwani and another Vs. Pratapsing Mohansing Pardeshi (deceased) through his heirs and L.Rs., 1997 (3) Bom. C.R. 1 (SUPREME COURT)***, and ***Waman Deoram Sonawane Vs. Shri Ganesh Mandir, Dhulia and another, 1984 Mh.L.J. 791***.

7. Per contra, learned advocate for respondent Nos.1 to 4, supported the impugned judgment. He submits that there is nothing on record to show that for which months the rent is deposited by the tenant. According to him, tenant is still in arrears of nine months rent, between September 2005 to 31/05/2006. He submits that though tenant claims to have paid rent of October, 2005 and September, 2005 vide Exhibit 32 and 33 respectively, whether these payments are made within specified period, and whether interest on arrears is paid is not considered by the Trial Court. Therefore, landlords have proved their case of willful default committed by tenant as there is no material that the tenant has paid rent during the appeal period. Husband of landlord Smt. Viddyadevi has

deposed as general power of attorney holder as he was aware of the affairs of landlords.

8. On appreciation of evidence on record, both the Courts have held that landlords have failed to prove that there was encroachment by tenant on the suit premises. Both the Courts have held that bonafide requirement of landlords is not proved on record. It is brought on record that suit complex consist of 7 shops and shop Nos.4 to 6 were still in possession of landlords and in shop No.8 there is Godown. Evidence further reveals that, there are 7 shops on the ground floor and 12 shops on the first floor. Landlords have failed to prove that partition is effected between them and landlord/plaintiff No.3 is separated from other plaintiffs. There is also no evidence brought on record to show that landlord/plaintiff No.3 has made some arrangements to start business. Since it has come in the cross-examination of landlords' witness that some of the shops are lying vacant in the suit premises, obviously landlord/plaintiff No.3 can start her business in one of the vacant shop.

9. From the evidence it further appears that on 16/11/2005, tenant issued R.P.A.D. notice to landlords. Along with notice, he claims to have issued five cheques of

Rs.1,000/- towards rent for the month of June, 2005 to November, 2005. He produced receipt of R.P.A.D. notice. There is nothing on record to show that along with said notice, cheques were also sent. Tenant has failed to examine the officer of Bank to prove the issuance of cheques and disbursement of cheque amount in favour of landlords. Postal acknowledgments at Exhibits 87 to 94 are of the dates 09/11/2007 and 05/12/2007. As per acknowledgments, landlords have received the same independently and amounts of Rs.250/- are mentioned on those acknowledgment receipts. Thus, landlords have received rent from tenant up to 05/02/2007. However, as per Section 15(3) of the said Act. After receiving suit summons, tenant is required to deposit arrears of rent inclusive of interest @ 15% per annum and Municipal Taxes on the suit premises. There is nothing on record to show that the interest on arrears of rent, as well as Municipal Taxes are paid by tenant. Therefore, tenant is not entitled for protection given under the said provision. At the most, from the evidence brought on record by tenant, it can be said that he tried to pay rent of suit premises @ Rs.1,000/- per month during pendency of suit. Tenant has failed to prove that he has paid interest @ 15% per annum on the arrears of rent and Municipal taxes, and he continued to pay or deposit

the rent of the suit premises regularly in the Court. It is therefore clear that tenant has committed willful default as is held in *Hari Bhuraj mahajan (died through his L.Rs.) Vs. Rajendra Shankar Dawknor* , 2009 (4) All M.R. 12.

10. Appeal is in continuation of suit. Though there is some evidence brought on record by tenant that he paid rent during the pendency of suit, there is no evidence on record to show that during the pendency of appeal, tenant has regularly deposited the rent and permitted increases of suit premises. On this ground also, it can be said that tenant has committed willful default in payment of rent and permitted increases of suit premises, and on this ground also landlords are entitled for possession of the suit premises.

11. In *Babulal S/o Fakirchand Agrawal* (supra), Full Bench of this Court, while interpreting Section 15(3) of the said Act, held:

“16. It is, thus, clear that the tenant who "pays" or "is ready and willing to pay" is only required to be protected on recording findings in that regard. Sub-section (1) of section 15 of the Maharashtra Rent Control Act provides that the landlord shall not be entitled to recovery of possession of any premises so long as tenant pays or is ready and willing to pay the amount of standard rent and permitted increases if any, and observes and performs the other conditions

of tenancy in so far as they are consistent with the provisions of the Act. Protection is extended to the tenant who pays or is ready and willing to pay the amount of standard rent and permitted increases. The latter part of the sub-section also mandates the tenant to observe and perform other conditions of tenancy in so far as they are consistent with the provisions of the Act. The term "tenant pays or is ready and willing to pay" read with observance and performance of other conditions of tenancy would surely include observance of the terms of the tenancy and, one of the terms of tenancy which is consistent with the provisions of the Act is regularity in payment of rent. A tenant who is irregular in payment of rent and pays the amount only under the threat of action of eviction or only after issuance of notice for recovery of rent cannot be considered to have complied with the mandate of sub-section (1) in respect of payment of rent and readiness and willingness on the part of the tenant so as to claim relief against forfeiture cannot be presumed. The only limitation that has been put on the entitlement of the landlord to avail of the remedies for enforcing his right to recover possession is to be found in sub-section (2) of section 15. Sub-section (2) of section 15 mandates that no suit for recovery of possession shall be instituted by the landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until expiration of 90 days next after notice in writing for payment of standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882. A suit by the landlord is thus not entertainable on the ground of recovery of possession for non-payment of the standard rent or permitted

increases without transmitting a notice to the tenant 90 days before institution of such suit, in the manner as provided in section 106 of the Transfer of Property Act, 1882. Sub-section (3) of section 15 provides that the Court shall not pass a decree of eviction on the ground of arrears of standard rent and permitted increases if within a period of 90 days from the date of service of summons of the suit, the tenant pays or tenders in the Court standard rent and permitted increases then due together with simple interest on the amount of arrears at the rate of 15% per annum and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the Court. It is, thus, clear that if the tenant pays the amount demanded within the time stipulated and further continues to pay the amount of standard rent and permitted increase during the pendency of the proceeding regularly, the tenant is not liable to be evicted and no decree shall be passed. There is no whisper in the provisions of section 15 putting an embargo on the entitlement of the landlord to file a suit for eviction against a tenant except subject to compliance of the preconditions specified in sub-section (2) of section 15 of the Maharashtra Rent Control Act.

17. On consideration of provisions of section 15 of the Maharashtra Rent Control Act which provide for relief against forfeiture to the tenant, it is clear that the tenant has been extended protection from eviction so long as he performs his obligation in respect of payment of rent as well as observance and performance of other conditions of the tenancy. The provisions, thus, protect the tenant who is paying rent or has established his readiness and willingness to

pay. Further protection is also provided in sub-section (3) of section 15 if the tenant pays entire arrears of rent on receipt of notice within contemplation of sub-section (2) of section 15 before the period prescribed under sub-section (2) together with interest and cost as may be ordered by the Court and continues to pay rent and the permitted increases regularly until the decision in the suit. If the tenant does not pay rent regularly and offers to pay only after issuance of notice within contemplation of sub-section (2) of section 15 and does not observe the other terms and conditions which include regular payment of rent, the landlord is not disabled from proceeding against such tenant. In nutshell, to derive that if tenant offers or pays the amount recorded in the notice issued in pursuance to sub-section (2) of section 15, together with permitted increases, the landlord is disabled from proceeding against the tenant is not within contemplation of section 15 of the Act. The right to seek remedy and claim possession of the premises owned by the landlord is inherent in him however, initiation of such proceedings is subject to fulfillment of certain pre-conditions such as issuance of notice in accordance with section 106 of the Transfer of Property Act as provided under section 15(2). It is, thus, clear that the tenant who disobeys the provisions of section 15(1) can be evicted independently though such tenant may not necessarily pay any arrears of rent on the date of institution of the suit. Sub-section (3) of section 15 shall have to be construed independently and if the tenant does not observe the mandate of sub-section (3) in respect of payment of amount of rent and permitted increases regularly till disposal of the

proceedings before the Court, is also liable to be evicted.

20. *On the analysis of the provisions of section 15 as well as various judgments, it must be concluded that the provisions of sub-sections (1), (2) and (3) of section 15 shall be read independently. In order to claim relief against forfeiture, the tenant must satisfy all the conditions in respect of payment of rent or tender in Court all the arrears then due on the first day of hearing of the suit or within contemplation of provisions of law and to deposit the rental liability regularly in the Court till the suit is finally decided and there is no extinction of the cause of action by reason of payment of existing arrears by the tenant. It is, thus, clear that in order to avoid decree, once the notice is issued within contemplation of sub-section (2) of section 15 of the Maharashtra Rent Control Act by the landlord, the tenant shall have to fulfill the conditions laid down under sub-section (3) of section 15 of the Maharashtra Rent Control Act and there is no escape therefrom.*

25. *To infer that once the tenant pays the amount recorded in the notice or tenders the same, the landlord has no right to institute a suit for recovery of possession for non-payment of those arrears or continue with such proceeding for eviction and no decree for possession can be asked for, is not within contemplation of provisions of section 15 of the Act. The provision does not interfere with the right of the landlord to initiate proceeding for eviction, however, sub-section (2) of section 15 prescribes precondition for presentation of suit, that is to say that no suit can be initiated without issuing a notice within contemplation of*

said sub-section (2) of section 15 and tenant's entitlement to claim relief against forfeiture shall be subject to fulfillment of conditions stipulated under sub-section (1) and (3) of section 15 of the Rent Act."

Aforestated ratio is squarely applicable to the facts of the present case. As tenant has failed to deposit rent during the pendency of appeal, Appellate Court is justified in partly allowing the appeal and directing tenant to handover the suit premises to the landlords.

12. In *Laxmikant Revchand Bhojwani and another Vs. Pratapsing Mohansing Pardeshi (deceased) through his heirs and L.Rs., 1997 (3) Bom. C.R. 1 (SUPREME COURT)*, it is held that, "money order sent to the landlord having not been received by the landlords during the specified period, it cannot be said that tenant has neglected to make payment." It is further held that, "The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."

In the present case petitioner has failed to bring his case within the parameters given in this ruling. Therefore, this decision is of no assistance to the tenant/petitioner.

13. In ***Waman Deoram Sonawane Vs. Shri Ganesh Mandir, Dhulia and another, 1984 Mh.L.J. 791***, learned Single Judge of this Court, held:

"Writ petition is not an appeal against a decree. It is in the very nature, an extraordinary remedy given to the party who feel aggrieved by the order in question. Furthermore, the remedy is not available as of course or as of right and the matter is well in discretion of the writ Court. There is no question of permitting respondent No.1-landlord in such a matter to agitate the grievance by submitting that there is some other ground on the basis of which the decree could be sustained."

14. By relying on these observations, tenant has rightly submitted that since landlords have not challenged the findings on the ground of bonafide requirement, they are not entitled to agitate that point in the present petition.

15. The Appellate Court has rightly appreciated the evidence on record, and has passed a well reasoned order. The petitioner has failed to point out illegality or perversity in the

judgment impugned in the present petition. No case is made out by the petitioner to interfere in extraordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

16. Civil Applications are disposed of.

17. At this stage, learned advocate for the petitioner seeks extension of stay granted in favour of the petitioner. For the reasons stated in the order prayer is rejected.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane