

Pooja K.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 101 OF 2008

Subhashchandra Shankarlal Agrawal,
Age 66 years, Occ. Business,
R/o. Jamnalal Bajaj Road, Dhule.Applicant

V/s.

Baban Keruji Avhad,
Age 59 years, Occ. Business,
R/o. Gulabchand Bhavanji Camp,
Near Cannosa Convent Primary School, Dhule.Respondent

...
Mr. S. P. Shah – Advocate for applicant
Mr. A. S. Sawant – Advocate for respondent
...

CORAM: GAURI GODSE, J.
RESERVED ON: 14TH FEBRUARY 2023
PRONOUNCED ON: 11TH APRIL 2023

PER COURT :

BRIEF FACTS:

1. This Revision Application is filed by the original Plaintiff-landlord for challenging concurrent Judgments and Decrees by which Applicant's Suit for eviction is dismissed.
2. Applicant had filed R.C.S. No. 208 of 1990 for recovery of arrears of rent and for possession of the suit premises under Section 12(3) and Section 13(1)(K) of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("Rent Act").

The Applicant contended that he is the owner of the suit property being open land bearing CTS No. 2998-A situated at Lane No. 3 at Dhule.

CASE OF THE APPLICANT:

3. It was contended by the Applicant that he had inducted the Respondent in the suit premises on a monthly rent of Rs. 30/- and the Respondent was running a shop under the name and style of 'Kailas Raddi Paper Mart'. In addition to the monthly rent, the Respondent was also liable to pay other taxes. It was contended that initially, one Nana Sonar had installed a shed consisting of a wooden block and tins, and he was running the said shops. Respondent had purchased the tin shed from Nana Sonar without obtaining consent from the Applicant. Hence, there was a dispute between the parties, and thereafter, the Respondent filed an application being Misc. Application No. 44 of 1974 for fixation of standard rent. The dispute in the said proceedings was amicably settled between the parties, and the Applicant permitted the Respondent to continue in the said premises on a monthly rent of Rs. 30/- per month. Accordingly, an agreement was executed on 20th July 1976.

4. It was the contention of the Applicant that the Respondent had filed R.C.S. No. 273 of 1979 for an injunction. However, the said Suit was dismissed. The Applicant further contended that Respondent was irregular in making payment of rent, and he was in arrears of rent from 1st May 1979 along with education cess. Hence, the Applicant issued a notice of demand on 3rd March 1981 and called upon the Respondent to pay the arrears of rent and also terminated the tenancy of the Respondent. The said notice was received by the Respondent on 12th March 1981. However, the Respondent failed to comply with the said notice. Respondent had filed an application for fixation of standard rent being Misc. Application No. 40 of 1981. However, the said Application was dismissed. Since the Respondent failed to make payment of arrears on rent, he was in arrears of rent from 1st May 1979 to 28th February 1981 for an amount of Rs. 3210/-.
5. It was also the case of the Applicant that the Respondent had acquired alternative accommodation in Gulabchand Bhavanji Compound at Dhule, and he was running his business from the said alternative accommodation. It was thus contended by the Applicant that the Respondent was not using the suit premises for the last 7-8 years and thus was not entitled to retain

possession of the premises. Applicant thus filed R.C.S. No. 208 of 1990 for recovery of arrears of rent as well as for possession.

CASE OF THE RESPONDENT:

6. Respondent appeared in the Suit and filed his written statement, and denied the Suit claim. The Respondent contended that the tenancy agreement was executed by misrepresenting to the Respondent, and hence, the same was not a valid document. Respondent further denied the title of the Applicant on the suit premises and further contended that the Suit property was owned by the Government. The Respondent specifically contended that the Applicant was a lessee of the Suit premises since 1916 for a period of 50 years, and since the lease period had expired, the Applicant was not the owner of the Suit premises and thus was not entitled to claim the possession from the Respondent.

TRIAL COURT PROCEEDINGS:

7. Learned 4th Jt. Civil Judge (J.D.) Dhule decided the Suit by framing the issues with respect to ownership of the Applicant over the Suit property as well as the issue of whether the Respondent was the defaulter in payment of rent. The learned trial Judge also framed the issue with respect to the non-use of

Suit premises and whether greater hardship would be caused in the event of passing the Decree for eviction.

8. Learned trial Judge, by Judgment and Decree dated 30th September 1995, dismissed the said Suit by holding that the Applicant failed to prove that he was the owner of the Suit property. Learned trial Judge also negated the case of the Applicant with respect to the Respondent being in arrears of rent and that the Suit premises was not being used by the Respondent as alleged by the Applicant. Learned trial Judge referred to the definition of premises under Section 5(8) of the Rent Act and held that the Suit being filed with respect to open space was not within the purview of the definition of premises under Section 5(8) of the Rent Act, and hence, the Suit was not covered under the provisions of the Rent Act.
9. With respect to the issue of ownership of the Suit property, the learned trial Judge after examining the documentary evidence on record, held that the Applicant had not produced any documentary evidence with respect to the acquisition of the title of the Suit premises from the Government. The learned trial Judge thus held that since the Applicant had failed to produce any original Sanad issued by the Government in his favour, there was no documentary proof with respect to the title

of the Applicant over the Suit premises. The learned trial Judge relied upon the case of Respondent that the Applicant had instituted the Suit against one Laxman Tayade for possession of the said property, and the said Suit was dismissed. The Applicant had preferred an Appeal against the dismissal of the said Suit. Said Appeal was also dismissed. Learned trial Judge further referred to extracts of the city survey register at Exhibit 38 and 49 where the name of the holder of the Suit premises is shown as Jeevanram Marwadi, entered on the basis of the sale deed. Thus, the learned trial Judge recorded a finding on the title of the Applicant over the Suit premises and held that for want of sufficient proof of ownership over the Suit premises, the Applicant could not be accepted as the owner of the Suit premises.

10. Learned trial Judge examined the documentary evidence with respect to the notice dated 3rd March 1981 issued by the Applicant, thereby terminating the tenancy of the Respondent and calling upon the Respondent to make payment of arrears of rent. The learned trial Judge held that endorsement on the envelope of the notice did not show any endorsement that Respondent had refused to accept the said notice. Hence, the trial Judge held that the notice issued by the Applicant was not a valid notice.

11. With respect to the ground pleaded by the Applicant seeking eviction of the Respondent on the ground of arrears of rent was concerned, the learned trial Judge held that provisions of the Rent Act were not applicable to the Suit premises and hence, Respondent cannot be held to be a defaulter in making payment of rent. Since the learned trial Judge held that the Applicant was not the owner of the Suit premises, the claim of the Applicant for recovery of arrears of rent was also answered in the negative. Thus, the learned trial Judge, by recording a finding of the title of the Applicant as well as holding that provisions of the Rent Act were not applicable to the Suit property, dismissed the Suit.

APPELLATE PROCEEDINGS:

12. Being aggrieved by the dismissal of the Suit, Applicant preferred Civil Appeal No. 99 of 2000. Learned 1st Adhoc Additional District Judge Dhule dismissed the Appeal and confirmed the dismissal of the Suit. First Appellate Court also held that Applicant was not the owner of the Suit property, and thus, the Applicant had failed to prove that Respondent was a defaulter in making the payment of rent. First Appellate Court also confirmed the findings of the trial Court on the other issues.

13. Hence, Plaintiff - landlord has filed the present Civil Revision Application.

SUBMISSIONS ON BEHALF OF THE APPLICANT:

14. Learned Advocate appearing for the Applicant submitted that admittedly, there was a rent agreement dated 20th July 1976 executed between the parties and pursuant to terms and conditions of the rent agreement, Respondent was in arrears of rent since 1st May 1979. He further submitted that pursuant to notice of demand dated 1st March 1981, Respondent had filed Misc. Application No. 40 of 1998 for fixation of standard rent. Before filing the said Application, Respondent had earlier filed an application being Misc. Application No. 44 of 1974 for fixation of standard rent, which was compromised and the rent agreement dated 20th July 1976 was executed. Thus, the Respondent was not entitled to dispute the rent agreement, which was executed pursuant to an amicable settlement in the Application filed by the Respondent. In the second Application for fixation of standard rent, the Respondent failed to file any Application for fixation of interim rent, and there was no attempt made by the Respondent to make the payment of arrears of rent demanded by the Applicant. Application for fixation of standard rent was subsequently dismissed in

default. Hence, the Applicant had filed the present Suit claiming possession of the Suit premises on the ground of default as well as the acquisition of alternate suitable premises.

15. Learned Advocate appearing for the Applicant submitted that the Decree was refused by both the Courts on the ground that since the Suit property was open land, the provisions of the Rent Act were not applicable. Both the Courts further held that the Applicant was not the owner of the Suit property. Learned Appellate Court had, in fact, dealt with only the point of ownership of the Applicant. Learned Advocate for the Applicant thus submitted that the Suit was filed by the Applicant seeking possession under the provisions of the Rent Act. Though the suit was with respect to open land, the provisions of the Rent Act were applicable to the Suit premises. In support of submissions with respect to the applicability of the provisions of the Rent Act, the learned Advocate for the Applicant relied upon the decision of the Hon'ble Supreme Court in the case of *Nalanikant Ramadas Gujjar Vs. Tulasibai (Dead) by Lrs and Ors.*¹ Learned Advocate relied upon paragraph 6 of the said decision, which holds that the plain reading of the definition of the 'premises' as defined under Section 5(8) of the Rent Act

¹ (1996) 5 SCC 394

shows that definition shall not include any land used for agricultural purposes but certainly shall include any land which is not being used for agricultural purposes. Thus, the learned Advocate for the Applicant submitted that it is a well-settled principle of law that the definition of 'premises' as defined under Section 5(8) of the Rent Act would include any open land which was not being used for agricultural purposes.

16. Learned Advocate for the Applicant also relied upon the decision of the Hon'ble Supreme Court in the case of *National Spiritual Assembly of Bahais of India and others Vs. Maharashtra State Khadi and Village Industries Board and Another*² in support of his submissions that any person who is entitled to collect rent and issue rent receipts is covered under the definition of a 'landlord' as defined under Section 5(3) of the Rent Act. He thus submitted that definition of 'landlord' as held by the Hon'ble Supreme Court in the case of *National Spiritual Assembly of Bahais of India*, supports the case of the Applicant that he was the landlord of the Suit premises and was entitled to file a Suit for possession. He thus submitted that the rent agreement executed between the parties was pursuant to an amicable settlement between the parties in the

² 1994 Supp (2) SCC 704

Application for fixation of standard rent filed by the Respondent. He thus submitted that it was not disputed that there was an application which was settled amicably, and the execution of the agreement was also not disputed by the Respondent. He further submitted that the objection raised by the Respondent with respect to the rent agreement was only on the basis that the same was executed by the misrepresentation. Learned Advocate further submitted that Respondent had not made any case as to what was the misrepresentation in the execution of the Agreement. Learned Advocate for the Applicant thus submitted that once there was no dispute of execution of the rent agreement executed between the parties, it cannot be said that the Applicant was not entitled to file a Suit for eviction of the Respondent on the basis of provisions of Rent Act.

17. Learned Advocate submitted that the Courts dealing with Suits under Rent Act have no jurisdiction to decide the title of the Plaintiff with respect to the Suit premises. He submits that once there was sufficient evidence on record that the rent agreement was executed by the Applicant in favour of the Respondent and the Respondent was in possession of the Suit property pursuant to the rent agreement, there was no

question of examining the title of the Applicant over the suit property. Learned Advocate for the Applicant also relied upon the decision of this Court in the case of *Jagdishrai Shivnathrai Hora Vs. Prabhakar Balkrishna Mahanubhav*.³ The said decision was also relied upon by the Applicant in support of his contention that the Applicant was a landlord within the meaning of Section 5(3) of the Rent Act and thus was competent to maintain a Suit against the Respondent.

18. Learned Advocate for the Applicant submitted that the Respondent was not entitled to raise any objection with respect to the title of the Applicant. It was the submission of the learned Advocate that Respondent was estopped from raising a such objection in view of Section 116 of the Evidence Act. Learned Advocate contended that once Respondent had accepted that he was in possession of the Suit premises pursuant to the rent agreement, Respondent was estopped from disputing the title of the Applicant over the Suit property. In support of the submission, the learned Advocate relied upon the decision of the Hon'ble Supreme Court in the case of *Sri Ram Pasricha Vs. Jagannath and others*.⁴

³ 2000 (4) Mh.L.J. 442

⁴ AIR 1976 SUPREME COURT 2335

19. Thus, it was the submission on behalf of the Applicant that the execution of the rent agreement was sufficient proof of the landlord-tenant relationship between the Applicant and Respondent. The fact that Respondent had filed an application for fixation of standard rent on two occasions is sufficient proof that Respondent was in possession of the Suit premises as a tenant of the Applicant. Hence, the Respondent was not entitled to deny the title of the Applicant over the Suit property and, in any case, was not entitled to dispute that the landlord-tenant relationship.
20. Learned Advocate further submitted that demand notice was duly served upon the Respondent. Filing of a second application for fixation of standard rent after the demand notice is sufficient proof of service of notice. Respondent had not made any attempt to make payment of rent as demanded. Hence, in absence of any case made out by the Respondent for payment of arrears of rent, the Applicant was entitled to a Decree of eviction on the ground of default. Learned Advocate thus submitted that Judgments passed by both the Courts, thereby holding that the provisions of the Rent Act were not applicable to the present case, were perverse and illegal, and thus deserved to be quashed and set aside. Learned Advocate

thus submitted that once the relationship of the Applicant and Respondent of landlord-tenant was accepted and there was no proof of compliance with the demand made by the Applicant, a Decree of eviction had to follow. Hence, the applicant is entitled to a Decree of possession in respect of the Suit premises on the ground of default. Hence, he submitted that this Civil Revision Application be allowed and the Suit filed by the Applicant be decreed as prayed.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

21. Learned Advocate for Respondent contended that Applicant was not the owner of the Suit property, and the lease agreement executed by the Government in favour of the Applicant had expired, and the same was not renewed. Hence, the Applicant had no right, title or interest in the Suit premises and thus was not entitled to file a Suit for possession. Thus, it was submitted that both the Courts had rightly framed the issue with respect to the ownership of the Applicant and the entitlement of the Applicant to maintain the Suit for possession. It was contended that the Applicant had failed to produce any document with respect to ownership of the property and that evidence on record showed that the holder of the land was a third party, and hence, the Applicant had no right to maintain

the Suit. Respondent contended that the tenancy agreement relied upon by the Applicant was an illegal document and was filed by misrepresentation. Hence, in view of Section 18 of the Indian Contract Act, said the document was illegal and void and hence, the Applicant was not entitled to rely upon the said document. It was contended on behalf of the Respondent that there was nothing on record to show that the Applicant was a landlord with respect to the Suit property. In support of the submission, the learned Advocate has relied upon Section 5(3) of the Rent Act. Thus, it was submitted on behalf of the Respondent that Applicant was not entitled to maintain the Suit on the basis of a tenancy agreement which was got executed by way of misrepresentation. In support of his submissions, the learned Advocate for the Respondent relied upon the decision of the Hon'ble Supreme Court in the case of *Bhanwarlal Dugar and others Vs. Bridhichand Pannalal and others*.⁵ By relying upon the said decision, it was submitted that in the limited scope under Section 115 of Code of Civil Procedure, 1908, the concurrent findings recorded by both the Courts, thereby dismissing the Suit of the Applicant, cannot be interfered with.

22. Learned Advocate for the Respondent also relied upon the decision of the Hon'ble Supreme Court in the case of *Suraj*

⁵ (2010) 12 SCC 164

*Bhan Vs. Financial Commissioner & Ors.*⁶ By relying upon the said decision, the learned Advocate for the Respondent submitted that in absence of any documentary evidence, the Applicant was not entitled to claim ownership over the Suit property. In support of the submission with respect to the title of the Applicant, the learned Advocate for Respondent also relied upon the decision of the Hon'ble Supreme Court in the case of *Prahlad Pradhan and Others Vs. Sonu Kumhar and Others.*⁷ and *Bhimabai Mahadeo Kambekar (D) Thr. Lr. (Smt.) Vs. Arthur Import and Export Company and Others.*⁸ By relying upon aforesaid decisions, the learned Advocate for the Respondent submitted that the Applicant had no right, title or interest in the Suit premises and hence, was not entitled to maintain the Suit against the Respondent. It was thus submitted that there was no landlord-tenant relationship between the parties, and hence, the Applicant was not entitled to seek eviction of the Respondent by relying upon the provisions of the Rent Act. He thus submitted that both the Courts have concurrently held that the Applicant failed to prove his ownership over the Suit property and thus held not entitled to maintain the Suit for eviction against the Respondent.

⁶ 2007 (6) SCC 186

⁷ 2019(10) SCC 259

⁸ 2019(6) Mh.L.J. 4

23. Learned Advocate further contended that the signature on the tenancy agreement was admitted by the Respondent. However, he had signed the agreement under misrepresentation. Hence, the tenancy agreement could not have been relied upon for holding that there was a landlord-tenant relationship between the Applicant and Respondent. Learned Advocate for Respondent further contended that Respondent was put in possession of the Suit premises by one Nana Sonar, who was the original tenant of the Applicant. Hence, the Respondent was, in fact, a sub-tenant of the Applicant. Thus, it was submitted that the Applicant was not entitled to maintain the Suit under the Rent Act against the Respondent. In support of this submission, the learned Advocate relied upon findings recorded by the first Appellate Court in paragraph 10 of the impugned Judgment by which the first Appellate Court held that since the Suit property was owned by the Government, mere execution of the tenancy agreement would not mean that ownership of the Applicant was admitted by Respondent and that the same cannot be sufficient proof of ownership of the Applicant over the Suit property. He, therefore, submitted that no case is made out to interfere in the concurrent findings recorded by both Courts. Hence, Civil Revision Application be dismissed.

CONSIDERATION OF THE SUBMISSIONS AND FINDINGS:

24. I have considered the submissions made on behalf of both parties. I have perused the record of the Civil Revision Application. It is not in dispute that the Suit premises is non agricultural land. Thus, a plain reading of the definition of 'premises' under Section 5(8) of the Rent Act, it is clear that the Suit was maintainable under the provisions of the Rent Act. Definition of 'Premises' in Section 5(8) of the Rent Act reads thus:

“(a) any land not being used for agricultural purposes,

(b) any building or part of a building let separately (other than a farm building) including-

(i) the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,

(ii) any furniture supplied by the landlord for use in such building or part of a building,

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or lodging house.”

25. Since there is no dispute that the Suit premises is non-agricultural land, I do not see any reason not to accept the case of the Applicant that the provisions of the Rent Act are applicable so far as the Suit premises are concerned. Learned Advocate for the Applicant has thus rightly relied upon the decision of the Hon'ble Supreme Court in the case of *Nalanikant Ramadas Gujjar*, which specifically holds that definition of 'premises' under the Rent Act would not include any land which is used for agricultural purposes but certainly would include any land which is not being used for agricultural purposes. Hence, the provisions of the Rent Act are applicable to the Suit premises.
26. It is not in dispute that Respondent had filed an application for fixation of the standard rent on two occasions. The first Application Misc. Application No. 40 of 1998 filed by Respondent was amicably settled between the parties, and pursuant to compromise in the said Application, a tenancy agreement dated 20th July 1976 was executed. Respondent had not disputed the execution of the said agreement, however, has only contended that said agreement was executed by misrepresentation. I have not been shown the

case made out by the Respondent with respect to the nature of misrepresentation as sought to be contended by the Respondent. Plea of misrepresentation has to be pleaded with material particulars. There is no such pleading. Mere saying that agreement was vitiated by misrepresentation cannot be sufficient ground for holding that agreement was executed by misrepresentation. Once the Respondent had filed an application for fixation of standard rent, there cannot be a doubt that the Respondent accepted the Applicant as landlord of the Suit premises. After the issuance of the demand notice the applicant subsequently filed one more Application for fixation of standard rent; however, said Application was dismissed for default. The very fact of filing an application for fixation of standard rent shows that Respondent had accepted the Applicant as landlord of the Suit premises. Though it is sought to be contended by the Respondent that he was inducted in the Suit premises by the original tenant Nana Sonar, it is not disputed that in view of the compromise in the Application for fixation of standard rent, rent agreement was executed. Respondent himself has admitted that he was put in possession by the original tenant of the Applicant. Respondent has not pleaded any independent right with respect to being in possession of the Suit premises. As per the case made out by

the Respondent, he was inducted in the Suit premises by the original tenant of the Applicant. Thus, these facts with respect to he being inducted in the Suit premises by the original tenant and subsequent execution of the rent agreement is sufficient proof to hold that Respondent was the tenant of the Applicant in respect of the Suit premises pursuant to the rent agreement executed on 20th July 1976, which was produced on record and proved. Learned Advocate for the Applicant has rightly relied upon the decision of the Hon'ble Supreme Court in the case of *National Spiritual Assembly*, in support of his submission that the Applicant is a Landlord within the meaning of Section 5(3) of the Rent Act.

27. The receipt of the demand notice is also not disputed. Pursuant to the issuance of the demand notice, Respondent had filed Misc. Application No. 40 of 1981 for fixation of standard rent. It is not disputed that said Application was dismissed for default. There was no attempt made by the Respondent for getting the Application restored. There was no Application made by the Respondent for the fixation of any interim rent. Respondent never attempted to deposit the amount as demanded by the Applicant. Thus, once the demand notice was served upon the Respondent and the

Respondent failed to comply with the demand notice, a Decree of eviction on the ground of default has to follow.

28. The provisions of Section 12 of the Rent Act grants an opportunity to the tenant to avoid the Decree of eviction on the ground of arrears of rent. Section 12 of the Rent Act reads as follows:

12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the 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.

(3) No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine per cent 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.

Provided that, the relief provided under this subsection shall not be available to a tenant to whom relief against forfeiture was given in any two suits previously instituted by the landlord against such tenant.

(4) Pending the disposal of any such suit, the Court may out of any amount paid or tendered by the tenant pay to the landlord such amount towards payment of rent or permitted increase due to him as the Court thinks fit.

Explanation I – In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall

be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the Court under sub-section (3) of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court.

Explanation II – For the purposes of sub-section (2), reference to “standard rent” and “permitted increase” shall include reference to “interim standard rent” and “interim permitted increase” specified under sub-section (3) or (4) of section 11.

Explanation III – For the purposes of this section where, a tenant has deducted any amount from the rent due to the landlord under section 173C of the Bombay Municipal Corporation Act for recovery or any water tax or charges paid by him to the Commissioner, the tenant shall be deemed to have paid the rent to the extent of deductions so made by him.

29. Thus, the Respondent had an opportunity to avoid the Decree for eviction by making payment of rent on or before the first date of hearing of the Suit of standard rent and permitted increases then due together with simple interest on the amount of arrears of such standard rent and permitted increases at the

rate of 9% per annum. It is not the case of the Respondent that any such attempt was made. Hence, I do not see any reason for not accepting the case of the Applicant that the Respondent was in arrears of rent. In view of the receipt of the demand notice by the Respondent and in absence of any attempt made to make payment of arrears of rent within the time stipulated by the aforesaid Section, there is no reason to refuse to pass the Decree for eviction on the ground of default as prayed by the Applicant.

30. The decisions of the Hon'ble Supreme Court relied upon by the learned Advocate for Respondent are not applicable to the facts of the present case. The principles laid down in the decisions relied upon by the Advocate for Respondent are of no assistance to him in view of the different facts of the present case.
31. With respect to findings recorded by both the Courts on the ownership rights of the Applicant is concerned, those findings are, on the face of it, without jurisdiction. Rent Court has no jurisdiction to examine the title of the Plaintiff. The source of the title of the Applicant in the Suit property was irrelevant so far as the present case is concerned. Once the execution of the tenancy agreement was admitted and the Respondent had

not pleaded any other source of possession over the Suit premises coupled with the fact of Respondent filing two Applications for fixation of standard rent, there was no reason to disbelieve that the Applicant was the landlord of the Suit premises and the Respondent was a tenant. In such circumstances, Applicant being a landlord of the Suit premises, was entitled to maintain the Suit for eviction of the Respondent.

32. Both the Courts have dealt with the documents of title and held that the Applicant was not the owner of the Suit premises. In view of the settled proposition of law that the Rent Court has no jurisdiction to decide the title of the Plaintiff, said findings are illegal and without jurisdiction. Hence, a case is made out to interfere with the impugned Judgments and Decrees under the provision of Section 115 of the Code of Civil Procedure, 1908.
33. Provisions of Section 12(2) of the Rent Act clearly provide that a landlord would be entitled to a Decree of eviction on the ground of default once the demand notice is served upon by the tenant and the tenant fails to comply with the demand notice by making payment of arrears of rent and/or deposited

the same in the Court within one month of service of demand notice. Provision of Section 12 (3) of the Rent Act provides an opportunity for the tenant to avoid the decree of eviction by making payment of arrears of rent then due together with simple interest on the amount of arrears and permitted increase at the rate of nine percent per annum on the first date of hearing of the suit or on any such date fixed by the Court and continue to pay the rent amount. In absence of any such attempt made by Respondent to comply with the demand of arrears of rent, a decree for eviction as prayed by the Applicant has to follow. Thus, for the reasons stated hereinabove, Applicant is entitled to possession of Suit property. The applicant is the landlord of the Suit property, and by way of demand notice dated 1st March 1981, the tenancy of the Respondent stood terminated. Hence, the Applicant is entitled to a Decree of arrears of rent as well as possession of the Suit premises under Section 12(3) of the Rent Act. Hence, the following Order is passed.

ORDER

- I. Impugned Judgment and Decree dated 30th March 2005 passed in Civil Appeal No. 99 of 2000 by First Adhoc Additional District Judge, Dhule and Judgment and Decree dated 30th September 1995 passed in Regular Civil Suit No. 208 of 1990

by 4th Jt. Civil Judge (J.D.) Dhule is quashed and set aside.

- II. Regular Civil Suit No. 208 of 1990 is decreed, and the Respondent is directed to hand over possession of the Suit premises being open land bearing CTS No. 2998-A situated at Lane No. 3 at Dhule to the Applicant within three months from today.
- III. Respondent is directed to pay the arrears of rent of Rs. 3210/- as per paragraph no. 4 of the Plaint, together with interest at the rate of 9% per annum from the date of filing of the Suit till the actual payment.
- IV. Necessary inquiry under Rule 12 of Order XX of Code of Civil Procedure 1908, as to mesne profits from the date of institution of the Suit till delivery of possession is ordered.
- V. Decree to be drawn up accordingly.
- VI. Civil Revision Application is allowed in the above terms.
- VII. There will be no order as to costs.

**[GAURI GODSE]
JUDGE**