

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.488 OF 2023

Godawari Shivkumar Magdum
And Ors.

...Petitioners

V/s.

Vasant Nemanna Minche
Deceased Through Legal Heirs
1/A. Archana V. Minche And Ors.

...Respondents

Mr. Kuldeep U. Nikam, for the Petitioners.

CORAM : RAJESH S. PATIL, J.

DATED : 10 OCTOBER 2023

P.C.:

1. This Writ Petition is filed under Article 227 of the Constitution of India, challenging the concurrent findings recorded by the learned 5th Joint Civil Judge Junior Division, Sangli in R.C.S No. 152/2013 , Judge and Order dated 5/10/2017 and by the Learned Appellate Court in Regular Civil Appeal No 302/2017, judgment and order dated 20/12/2019.

2. The petitioners herein are the Original Defendants whereas the Respondents are the Legal heirs of Original Plaintiffs in the R.C.S No. 152/2013. The original plaintiff died during the pendency of the suit.

3. The plaintiff had filed suit on 13/02/2013, for recovery

of possession and arrears of rent as per the provisions of Maharashtra Rent Control Act, 1999 in respect of a premises consisting one hall and three room in ground floor and one room at first floor situated over CS. 179/A adm 253.75 sq mtrs situated within the local limits of Sangli Miraj and Kupwad City Corporation (for short referred as “suit premises”).

4. The suit for eviction on ground of bonafide requirement and arrears of rent was decreed in the favour of Plaintiff, directing the Defendants to pay all arrears of rent within 30 days and to deliver vacant possession of the suit premises to the plaintiff.

5. The Defendant thereafter challenged the said Judgment and Order dated 5/10/2017 by way of an Appeal before Learned District Judge, Sangli, in Regular Civil Appeal No. 302/2017. The said Appeal was dismissed and Learned Appellate Court confirmed the decision of the trail court. Hence, against the concurrent findings by both Courts, the present Writ Petition has been filed.

6. Mr. Kuldeep U. Nikam, made his submissions on behalf of the Petitioners/ Original Defendants.

7. Mr. Nikam on very first instance, fairly stated that the suit premises is no more in existence, it has been demolished (as it was very old and dilapidated).

8. Mr. Nikam stated that it is contended by the Respondents in a plaint that the said suit premises belonged to one Bharmma Anna Minche. Also, he further stated that Bharmma Anna

Minche, executed a will deed in favour of Respondents. And by the way of this Will, they became the owner of the suit premises. During the lifetime of the Mr Minche, the said suit premises was given on monthly rent basis to one Mr. Shivkumar Magdum, who died in the year 1995, leaving behind his widow i.e. Defendant no 1 and sons as Defendant No 2 to 4.

9. Mr. Nikam stated that Respondents / org plaintiff issued a notice dated 20 December 2012 to the Petitioners, thereby terminating their tenancy and also, demanded Arrears of Rent worth Rs. 84,800/-.

10. Mr. Nikam further stated that the Petitioners have deposited the rent, sum of Rs. 10,680/- in Appellate Court and has showed their readiness and willingness to pay rent on regular basis.

11. I have heard the submissions on behalf of the Petitioners and I have gone through the documents on record.

12. It is undisputed fact that one Mr. Bharna Anna Minche, had bequeathed by Will the said Suit premises to the Respondents/ org Plaintiffs. And also, the deceased had given the said suit premises on rent to the deceased husband of Defendant No. 1 and father of the defendants No. 2 to 4.

13. It is also undisputed fact that the Plaintiff demanded for all arrears of the rent with interest by sending the demand notice to the Petitioners.

14. The Advocate for the Petitioner/ Original defendant

has not made any submissions on the issue about “arrears of rent”. As it is seen from the proceedings, after the issuance of notice dated 20 December 2012, the defendants did not come forward to tender the arrears of rent to the plaintiff. Hence, they are the willful Defaulters since January, 1995.

15. As per the records, Defendants have paid the rent for the period of March 2010 to March 2014 only. Defendants have not paid the amount of the rent thereafter.

16. Both the courts have concurrently held that the ground of arrears of rent has been proved by the Plaintiff.

17. The Petitioners were not able to show any material irregularities in both of Judgment and Order of the Learned Appellate Court and the trial court respectively. Hence, According to me, it is not the case of irregularity in paying rent but the case of willful default in paying rent. Therefore, no ground is made out to entertain the concurrent findings recorded by the lower courts below.

18. The Writ Petition is accordingly dismissed.

(RAJESH S. PATIL, J.)