



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.166 OF 2020

SARLA PRAKASH GOHAD)
Age 48 years, Occupation : Labour Work)
R/o. H.No.578, Cantonment premises)
A/p. Vitthalwadi, Lam Road)
Deolali Camp, Taluka & District – Nashik)...APPLICANT

V/s.

GHAMAJI POPAT GADHAVE)
Age-56 years, Occupation – Service)
R/o.Vihitgaon, Taluka & District – Nashik)...RESPONDENT

Mr.Pratik Rahade, Advocate for the Applicant.

Mr.N.VBhutekar a/w. Mr.Aniket Nangare, Advocate for the Respondent.

CORAM : ABHAY AHUJA, J.

RESERVED ON : 9th JUNE 2023
PRONOUNCED ON : 24th AUGUST 2023

JUDGMENT :

1. This Revision Application under Section 115 of the Code of Civil Procedure, 1908 (CPC) has been filed by the tenant, who has been evicted pursuant to the judgment dated 18th April 2019 by the District Judge, Nashik in Civil Appeal No.412 of 2015

upholding the judgment and decree passed by the Civil Judge, Junior Division, Nashik Road, in Regular Civil Suit No.47 of 2011 dated 31st March 2015 evicting the Applicant herein and holding that the Respondent was entitled to rent arrears along with interest and directing Applicant to pay damages of Rs.1,000/- per month to the Respondent from 31st August 2010 till vacation of the suit premises.

2. Learned Counsel for the Revision Applicant would submit that the judgment in Appeal as well as the decree of the trial Court ought to be set aside primarily on two grounds viz. failure to prove that there was a landlord tenant relationship between the Respondent and the Applicant and that, there was no bonafide requirement of the Respondent. Learned Counsel would submit that these are the only two grounds on the basis of which the two Courts have evicted the Applicant and awarded rent and damages.

3. Mr.Rahade, learned Counsel for the Applicant, would draw the attention of this Court to page 16 which contains the

statement of the landlord and would submit that at paragraph 13 of the plaint before the trial Court, it has been recorded that the out of pity and due to helplessness, the Respondent herein had let out the room to the Applicant herein and was now repenting for doing so. Though he had rented out the premises to the Applicant herein, the Applicant herein never paid him rent for a single month. Hence, no rent receipts were issued to the Applicant herein, and as such, due to absence of any rent receipt, there cannot be said to be any landlord tenant relationship in existence in law. Learned Counsel for the Applicant would, therefore, submit that since there was no tenancy, there was no question of any rent receipt.

4. Learned Counsel would submit that actually since 1995 the Applicant was residing in the suit premises as a tenant and paid rent regularly till June 2010 to the Respondent; however, the Respondent never issued rent receipts to her, and therefore, it has erroneously got recorded in the judgment of the trial Court as well as the Appellate Court that the Applicant (Defendant therein) has

not produced any documentary evidence to show that she has paid rent regularly till June 2010 to the Respondent (Plaintiff in the Suit).

5. Learned Counsel would further submit that both the Courts below have also erred in holding that the Applicant failed to comply with the provisions of Section 15(2) of the Maharashtra Rent Control Act, 1999 (the “Rent Control Act”). Learned Counsel would submit that the Applicant suo moto appeared in the suit on 30th April 2011 and paid the rent with interest within ninety days from the date of appearance and that the first payment was made on 21st July 2012 after which she has regularly deposited the rent in the Court, which facts have not been appreciated by the Courts below.

6. Learned Counsel would also submit that the trial Court has awarded damages under the Rent Act which has been confirmed by the Appellate Court and this is despite the observations of the trial Court in paragraph 40 on page 46 that so far as the damages

are concerned, it is nowhere established by the Plaintiff (Respondent herein) that the Defendant (Applicant herein) has caused damage to the suit premises. Learned Counsel would submit that despite the said finding and despite there being no provision in law to award damages, the Courts have awarded damages of Rs.1,000/- per month from the date of termination of the tenancy which ought to be set aside. Learned Counsel would submit that both the Courts have erred in failing to appreciate that the Applicant is a poor lady and doing labour work.

7. Learned Counsel would submit that, therefore, both the Courts have erred in holding that the Applicant was a willful defaulter and that the Respondent needs the suit premises for his bonafide requirement. Therefore, the impugned judgment and order is liable to be quashed and set aside.

8. Learned Counsel would also submit that both the Courts have failed to appreciate that the Respondent has his own house at Vihitgaon and that he had three other alternate premises, which

were adjacent to the suit premises, and therefore, the plea of bonafide requirement would also not survive.

9. Learned Counsel would submit that in the suit before the trial Court, on page 13, the property is described as Survey No.29/8/3 admeasuring 19 R, at Taluka and District Nashik, Village Belatgaon, Cantonment Premises, Non-agricultural rate Rs.30.50 and the construction of the premises commenced in the year 1987 and on completion it was marked as Cantonment Holding No.H/587 admeasuring 115.05 sq.metres. Out of this the Applicant (Respondent herein) used half of the property to build his house consisting of four rooms and the remaining half property was utilized by Shri. Vishnu Gangaram Gavali for construction purpose. Out of the four rooms, one room admeasured 20 x 12 feet which contained a partition thereby giving rise to two parts and contained roof of cement sheets. That, the property consists of four rooms, out of which one room was give to the Applicant herein and three rooms were vacant. Learned Counsel would submit that both the Courts below have

not dealt with the fact that the three rooms, which were vacant, were available for the landlord which has not been appreciated while holding that the Respondent needed the suit premises for his bonafide requirement. Learned Counsel would submit that even the fact that the Respondent was residing somewhere else i.e. in Vihitgaon has also not been appreciated by the two Courts.

10. Learned Counsel would submit that the two Courts have failed to appreciate that greater hardship would be caused to the Applicant.

11. On the other hand, Mr.Bhutekar, learned Counsel for the Respondent-landlord (Plaintiff in the Suit), would refer to the judgment of the trial Court and submit that on the basis of the evidence, the trial Court has clearly observed that the tenancy was created by the Plaintiff / Respondent and therefore, the fact of tenancy cannot be disputed. Learned Counsel would submit that, that the Applicant has been a defaulter, has also been established. Learned Counsel would refer to paragraph 15 of the trial Court

order and submit that as per the oral agreement, the monthly rent was from first to last date of each month and the rent was payable in each month, which has not been paid by the Applicant. Learned Counsel would submit that the Plaintiff / Respondent has deposed this fact in the deposition and has also filed the demand notice along with postal receipt and despite having received the demand notice, the Defendant failed to pay the rent within ninety days of the issuance of notice, thereby failing to comply with the provisions of Section 15(2) of the Rent Control Act. That, the suit was filed on 3rd May 2011 and the Defendant appeared on 30th April 2012, but even after receiving the suit summons on 13th February, 2012 the Defendant failed to pay the rent along with interest within the ninety days period, and therefore, the Plaintiff was entitled to the decree as the Applicant was held to be a willful defaulter.

12. With respect to the ground of bonafide requirement, learned Counsel draws the attention of this Court to paragraphs 27 and 28 at page 40 of the judgment of the trial Court. Learned Counsel

would submit that it has clearly emerged from the evidence that the Defendant had not disputed that the Plaintiff's family consisting of ten members could not be accommodated in the house owned by the Plaintiff at Vihitgaon as the same consisted of two rooms admeasuring 10 feet x 10 feet and 15 feet x 10 feet and that too without latrine and bathroom. Learned Counsel would submit that this fact has not been challenged by the Defendant / Applicant. Learned Counsel would submit that both the trial Court and the Appellate Court have clearly held that the two small rooms accommodation without the facility of latrine and bathroom cannot be considered as reasonable alternate accommodation for ten members of the Plaintiff, and therefore, the trial Court as well as the Appellate Court came to a conclusion that the said accommodation at Vihitgaon was not sufficient for the Plaintiff's residence and that the Plaintiff proved his bonafide requirement for the suit premises. Learned Counsel would further submit that as observed in the trial Court order, based on evidence, adjacent to the room let out to the Applicant, the Defendant's father and brothers are residing and being the legal

heir, she would have a right to inherit the said house from her father. The trial Court has also recorded that the Defendant has specifically admitted that her father and brothers are residing adjacent to her house, that she has further admitted that she has filed maintenance petition where she has given her address as Main Road, Deolali Camp, and in Regular Civil Suit no.92 of 2010, she has given address as House No.578, Vithalwadi, Lam Road, Deolali Camp and both these addresses have been admitted by the Defendant in her cross-examination. Learned Counsel would submit that, therefore, the trial Court has concluded that the Defendant has alternate accommodation and that her brothers and parents residing adjacent to her house clearly indicate that she can be very well accommodated there.

13. Learned Counsel would further submit that in view of decision of the Hon'ble Supreme Court in the case of **Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.**¹ the landlord is entitled to compensation from the tenant for over staying despite the termination of tenancy, and therefore, the rate of Rs.1,000/-

¹ (2005) 1 Supreme Court Cases 705

per month, as awarded by the trial Court and confirmed by the Appellate Court, from the date of termination of tenancy till the date of actual handing over of vacant possession by the Defendant, also deserves to be upheld.

14. I have heard Mr.Pratik Rahade, learned Counsel for the Applicant and Mr.N.V.Bhutekar, learned Counsel for the Respondent and with their able assistance, perused the papers and proceedings in the matter and also considered the rival contentions.

15. As will be elucidated later as this discussion progresses, I find merit in the submissions by Mr. Bhutekar, learned Counsel for the Respondent. In a revision filed under Section 115 of the Code of Civil Procedure, 1908, the High Court may call for the record of any case which has been decided by any Court subordinate to it and in which no Appeal lies thereto and if such subordinate Court appears to have exercised a jurisdiction not vested in it by law or to have failed to exercise jurisdiction so vested or to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order as it thinks fit. There being no such excessive exercise of jurisdiction, failure to exercise jurisdiction nor any illegal or irregular exercise of jurisdiction, I am not inclined to interfere with the decisions of the trial Court or the Appellate Court.

16. The Courts below were deciding a suit filed by the Respondent herein, who was the original Plaintiff, for recovery of possession, arrears of rent, mesne profits and damages. The Plaintiff was the owner of Cantoment Holding No.578 admeasuring 115.05 sq.meters situate at Beltgaon Shivar, Taluka and District Nashik. The half portion of the property was constructed by the Respondent herein which consists of four rooms and remaining half portion has been constructed by the co-owner Vishnu Gangaram Gavali. One room out of four rooms admeasuring 20 feet x 12 feet is the subject matter of the suit (referred to as "the suit premises"). The Plaintiff was residing in all four rooms along with his family and was serving at the India Security Press, Nashik Road. That, he used to attend his office, which was at a distance of about 15 kilometers, on a bicycle. As

his duty hours were 7.00 a.m. to 7.00 p.m., it was difficult for him to attend from his house. Therefore, he locked his house and went to reside at Vihitgaon, which was nearer to his job place and started residing there. The Defendant, who was deserted by her husband and having two kids, doing household work in Deolali camp area, approached the Plaintiff for accommodation for residence. Initially, the Plaintiff was not inclined, but due to the intervention of Padmabai Handore and Subhash Khalkar, he gave the suit premises to the Revision Applicant for a period of six months, at a rent of Rs.1,000/- per month along with electric bill and water bill and that is how the Revision Applicant was inducted as a tenant in the suit premises. The tenancy was for a temporary period and it was agreed that the rent would be payable regularly per month with effect from 1st November 2009. The Revision Applicant started residing there.

17. It was claimed by the Respondent herein that since the Revision Applicant failed to pay the rent and other charges and that he was inclined to get voluntary retirement from his service

and also that the place in Vihitgaon had only two small rooms without any latrine and bathroom, to accommodate 8 to 10 persons of his family was becoming difficult and therefore asked the Defendant to pay rent amount and vacate the suit premises, as the entire house of four rooms was required for residence purpose. It is also submitted that instead of paying rent and vacating the suit premises, the Revision Applicant extended various threats of filing false complaint of molestation, outraging modesty etc. Accordingly, the Plaintiff issued termination and demand notice through his Counsel on 22nd June 2010 and asked for arrears of rent and vacation of possession till 31st August 2010. However, the Revision Applicant, even after receiving the notice, neither paid the rent nor vacated the premises, and therefore, the Plaintiff was constrained to file the suit for recovery of possession, mesne profits and damages. It was also averred that if the eviction decree was not passed, the Plaintiff would suffer greater hardship.

18. The Defendant appeared and filed written statement. However, apart from denying the averments in the plaint, it was

stated in the written statement that the Plaintiff owns the house at Vihitgaon, and therefore, alternate accommodation was available with him. That, she had been residing in the suit premises since 1995 as a tenant for a monthly rent of Rs.1,000/- and had been paying the same regularly but the Plaintiff never issued rent receipts to her. That, the description of the suit premises was not made properly and the suit premises consisted of one room which is partitioned at the middle and it admeasures 10 feet x 12 feet. That, the Plaintiff was taking undue advantage of non-issuance of rent receipts, and therefore, alleging that the Defendant was a defaulter. It is submitted that the Defendant was regularly paying the rent and also ready and willing to pay the same in future. The Plaintiff wanted the premises vacated and was trying to dispossess her unlawfully, and therefore, she had filed an injunction suit. It is submitted that the suit summons was not served on her, but she had suo motu appeared before the Court and filed pursis. That, the notice given to her was not as per the Rent Control Act, and therefore, the suit was liable to be dismissed. That, she is a poor lady doing labour work and does not have any alternate

accommodation and there is no possibility of having any accommodation in future, whereas, the Plaintiff has alternate accommodation and the said house is sufficient. It was, therefore, prayed that the suit be dismissed.

19. The trial Court considered the rival contentions and concluded after examining the Plaintiff as well as the Defendant and the witnesses that the tenancy was created by the Plaintiff and that the Plaintiff and the Defendant were landlord and tenant. That, it was an admitted fact that there was a monthly tenancy as well as monthly rent of Rs.1,000/-. With respect to the Defendant becoming a defaulter, the trial Court observed that the notice of demand dated 22nd June 2010 issued for recovery of rent and termination of tenancy was received by the Defendant. That, the Defendant had admittedly not paid the rent within ninety days of receipt of the notice, thereby failing to comply with Section 15(2) of the Rent Control Act. The Plaintiff filed the suit on 3rd May 2011 and issued suit summons to the Defendant. The suit summons were issued through registered post and the original

envelope had been returned back with the endorsement “not claimed” on 13th February 2012. The summons were issued on the correct address of the Defendant. Relying on the Hon'ble Supreme Court decision in the case of **M/s. Madan & Co. vs. Wazir Jaivir Chand**² the trial Court held that under Section 27 of the General Clauses Act, 1977 such service was deemed service of notice and the suit summons were positively served on the Defendant. That, admittedly, Defendant suo motu appeared before the Court on 30th April 2012 which is questionable and no reasonable and satisfactory answer was given by the Defendant how she appeared if the suit summons was not duly served on her before she appeared in the Court. The trial Court has clearly found that after the receipt of summons (which is deemed to be on 13th February 2012), the Defendant has failed to make payment within ninety days of the receipt of the summons. The first payment was made on 21st July 2012 which is beyond the statutory period, after the deemed receipt of the summons.

2 1989 AIR 630

20. Therefore, there is a clear finding that the Defendant was a willful defaulter, which finding, as will be seen, has been confirmed by the Appellate Court.

21. As far as the question of bonafide requirement is concerned, the trial Court, after considering the evidence, has observed that even though it is proved that the house at Vihitgaon was owned by the Plaintiff, however, the same was not sufficient for his entire family which consists of two rooms admeasuring 10 feet x 10 feet and 15 feet x 10 feet without latrine and bathroom. That, the two small rooms without the facility of latrine and bathroom cannot be considered as reasonable alternate accommodation for entire ten members' family of the Plaintiff. That, the Defendant's father and brother were residing adjacent to her house and being the legal heir, she is having inheritance right in her father's house, which is an admitted position. She has also given her address as Main Road, Deolali Camp in the Maintenance Petition and as House No. 578, Vitthalwadi, Lam Road, Deolali Camp in her Suit RCS No.92 of 2010 and this address has been admitted by the Defendant in

her cross-examination. Further, as her brother and parents are residing adjacent and being a daughter and legal heir, she can be accommodated there. Also, the record indicates that even after receiving termination notice dated 22nd June 2010, she did not search for an alternate accommodation giving an impression that she has presumed that she will never have to vacate the suit premises. The trial Court has observed that the tenant must try to search other accommodation when he gets an intimation that the original landlord is desirous of receiving back possession of the tenanted premises.

22. As far as the damages are concerned, the trial Court has rightly observed that although the tenancy was terminated with effect from 31st August 2010, the possession from that date by the Defendant over the suit premises was wrongful, and therefore, the damages of Rs.1,000/- per month from the date of termination of tenancy are payable by the Defendant to the Plaintiff till the date of actual handing over of the vacant possession by the Defendant. This, according to me, is only fair. The trial Court had,

accordingly, decreed the suit along with damages as above.

23. Aggrieved by this decision, the Revision Applicant filed an Appeal before the District Court, Nashik. The District Court, Nashik, has after perusing the trial Court's order and after considering the arguments made on behalf of the Revision Applicant and the Respondent, confirmed the decision of the trial Court and dismissed the Appeal with costs.

24. There can be no doubt from the above that there is a landlord-tenant relationship between the Respondent and the Applicant. Further, as rightly observed by both the Courts, the Revision Applicant had failed to firstly comply with the provisions of Section 15(2) of the Rent Control Act by failing to make payment as well as vacate the premises after receipt of notice dated 22nd June 2010, whereafter, the suit was filed on 3rd May 2011, after expiry of ninety days as contemplated in Section 15(2) of the Rent Control Act. Thereafter, even after receipt of the suit summons, no payment was made. There are unambiguous findings that the packet containing the suit summons was

returned “not claimed” on 13th February 2012 and even after the expiry of more than ninety days, the Defendant did not deposit the rent, which she did for the first time only on 21st July 2012. Therefore, there was clearly breach of Section 15(3) of the Rent Control Act, which cannot be found fault with.

25. The Appellate Court has also confirmed the bonafide requirement of the Plaintiff. The Appellate Court has held that the Plaintiff is residing in two rooms at Vihitgaon, where there is no facility of attached bathroom and latrine and that the Defendant-tenant cannot dictate the landlord regarding convenience and accommodation of his family members, who is the best Judge of his residential requirements and decide how and in what manner he should live. The Respondent herein had bought the said premises out of his hard earned money and now wishes to reside there with his family. In my view, it has been correctly held by the Appellate Court that the Plaintiff has produced sufficient and cogent evidence on record to prove his reasonable bonafide need. The testimony of the Plaintiff’s witnesses that the house in which

the Plaintiff is residing with 8 to 10 members is of only two rooms has not been disproved by the Applicant and despite receiving the notice that the Plaintiff needed the suit premises for his need, the Defendant did not try to search any accommodation. That, her father and brother are residing adjacent to the suit premises and she can always take help from them in case a decree of eviction is passed. The Appellate Court has also found that greater hardship would be caused to the Plaintiff if the decree of eviction was refused. These findings cannot be faulted with.

26. As far as arrears of rent and damages are concerned, the Appellate Court has, in my view, correctly confirmed that the Defendant was proved by the Plaintiff to be a willful defaulter and also proved his reasonable and bonafide need to the suit premises as well as greater hardship. And by using the property without the consent of the Plaintiff, the Defendant was liable to pay damages from the date of termination of tenancy as observed earlier.

27. In view of the above discussion, the contentions on behalf of the Revision Applicant cannot be countenanced.

28. Both the Courts have exercised jurisdiction vested in them by law. No fault or error of jurisdiction or law or otherwise can be found with the orders of the Appellate Court or the trial Court. The orders are neither illegal nor perverse. This is, therefore, not a case where the Appellate Court or the trial Court have exercised jurisdiction not vested in it by law or have failed to exercise jurisdiction so vested nor have they acted in the exercise of their jurisdiction illegally nor with material irregularity.

29. The Civil Revision Application is, therefore, dismissed. Parties to bear their own costs.

(ABHAY AHUJA, J.)