

Pallavi

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7496 OF 2021

Mr. Nevin Thomas Peters	... Petitioner
Versus	
Mrs. Sarla Satyaprakas Taneja & Ors.	... Respondents

Mr. Nevin Thomas Peters, Petitioner in person present.
Ms. Nikita K. Dharamshi i/b. C.K. Legal for the Respondents.

CORAM: MADHAV J. JAMDAR, J.
DATE : 12th JANUARY, 2023

P.C.:

1. Heard Mr. Nevin Thomas Peters, Petitioner who appears as party in person and Ms. Nikita K. Dharamshi, learned counsel appearing for the Respondents.

2. In this Writ Petition, the Petitioner is challenging legality and validity of the impugned judgment and decree passed by the learned Appellate Court of Small Causes passed in Appeal No.403 of 2019 as well as the Judgment and Decree passed by the learned Judge, Small Causes Court, Mumbai in RAE Suit No.491/742 of 2009. The learned Trial Court as well as the learned Appellate Court of Small Causes has come to the conclusion that defendant no.1 i.e. Petitioner is in arrears of rent and has committed breach in payment of rent. The learned Appellate Court has considered the submission of

the Petitioner regarding non-payment of interest as well as recovery of society maintenance charges in paragraphs 15 and 16. The said paragraphs read as under :

- “15. He further submits that before issuance of demand notice, the defendant No.1 bona fide had tendered an amount of **Rs.12,600/- through a cheque dated 15.09.2008 as rent for 2002-2008 (84 months) at Rs.150/- per month** with reply to the demand notice which has been accepted by the original plaintiff. **However, the original plaintiff had appropriated the same towards arrears of society charges allegedly payable by the defendants since 1975, as would seen from demand notice.** The Ld. Counsel further submitted that as per said demand notice, it is alleged that as per the terms of the license/ deemed tenancy, the society charges have been shown payable by defendant No.1 to which defendant No.1 had not shown any willingness to pay the arrears of society charges. Learned Counsel further pointed out that as per statement of arrears of rent alongwith society charges dues as enclosed with that notice, rent due for the period 2002 to 2008 has been shown only as Rs.12,600/- which has already paid by the defendant No.1. But unfortunately and without any support or consent of defendant No.1, **the plaintiff has wrongly shown it as adjusted towards arrears of society charges.** He further pointed out that society charges are not part of rent and it's claim is illegal. Since the defendant No.1 has paid the rent amount as shown due by tendering cheque which has been accepted, the demand notice has been complied and therefore, the suit on the ground of default is absolutely not tenable.
16. The Ld. Counsel further submitted that it is a counter written submission of the plaintiffs with reference to Section 15(3) of the Maharashtra Rent Control Act, that **after institution of the suit and service of suit summons on the defendants, there had been no tender of rent as claimed in the suit inclusive of rent in demand notice in the stipulated prescribed period under Section 15(3) of the Act.** In this regard, the

defence counsel submitted that defendant No.1 on the very day of service of summons i.e. on date 29.06.2009 (as per the endorsement on the copy of summons (Exh.8) to defendant No.1 is served on 29.06.2009) the defendant No.1 applied (Exh.14) for permitting him to deposit Rs.3000/- as the rent from January 2002 to August 2009 i.e. for 7 years 8 months has been amounting to Rs.15,600/- @ Rs.150/- per month, out of that, he has paid Rs.12,600/- by cheque dated 15.09.2008 and therefore, only Rs.3000/- is outstanding on the day of suit and also applied for permitting him to pay at same rate per month. Accordingly, as per observation in the order dated 15.12.2009 passed by the Court, said amount of Rs.3000/- has been deposited on 16.12.2009 by the defendant No.1 and he has been regularly deposited the further monthly rent @ Rs.150/- per month since then till the period upto December 2019. It is further submitted that **said deposit of rent upto August 2009 is within stipulated period, but it is deposited without interest thereon and without costs of the suit as provided in Section 15(3) of the Act.** So accordingly to Ld. Counsel, the defendant No.1 has made deposit of the arrears of rent at the rate of Rs.150/- per month which is admitted rate of rent within ninety days from the receipt of the suit summons of the Court and thus no relief as prayed by the plaintiffs can be granted.”

3. The factual position on record clearly shows that the Petitioner made a statement before this Court that between 15th June 2022 and 20th June 2022 vacant possession of the suit property shall be handed over to the Respondents and appropriate compliance to that effect shall be reported on 21st June 2022. The learned Single Judge recorded the said statement in the order dated 4th May 2022 and adjourned the matter for consideration on 27th June 2022.

4. It is the contention of Mr. Nevin Peters, Petitioner who appears in person that the learned Single Judge was to consider the aspect of compensation to be paid to him on 27th June 2022. It appears that thereafter, the matter appeared before the learned Single Judge on 25th July 2022 and as the Petitioner was not present, the matter was adjourned to 28th July 2022. However, the learned Single Judge recorded in the order that as the landlords/owners have already received possession of the suit premises from the Petitioner, the Petition has rendered infructuous. Thereafter, on 28th July 2022, the Petitioner who appeared in person sought time and therefore, the matter was adjourned to 25th August 2022 for hearing the matter on merits.

5. I have heard Mr. Nevin Peters in person and Ms. Nikita Dharamshi, learned counsel appearing for the Respondents. There are concurrent findings of fact regarding arrears of rent. There is no illegality in recording the said finding. The Appellant has already handed over possession. His only contention is that the learned Single Judge was to hear the parties on the compensation to be paid to him but that does not appear to be the correct position as reflected in subsequent orders passed by the same learned Single Judge. In fact, in order dated 25th July 2022, the learned Single Judge has recorded that the Writ Petition has rendered infructuous.

6. In view of order dated 25th July 2022 passed by the learned Single Judge, there is no substance in the said contention raised by the Petitioner. As observed earlier, even on merits also the Writ Petition deserves to be dismissed and accordingly, the same is dismissed. However, there is no order as to costs.

(MADHAV J. JAMDAR, J.)