

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1023 OF 2020

M/s. Perfect Auto by its Proprietor,
Mohanlal Maniklal Gupta, Partner
of Perfect Auto, aged 62 years,
C/o. M/s. Perfect Auto, Hotel
Maharaj Complex, Irwin Hospital
Square, Amravati, Tahsil and
District : Amravati.

.... **PETITIONER.**

// **VERSUS** //

Santosh Narsingdasji Agrawal,
aged about 75 years, Karta (HUF)
D-Wing, Dotivalla Court, Camp,
Amravati, Tahsil and District :
Amravati.

.... **RESPONDENT.**

Shri Y.J.Chandurkar, Adv. h/f. Shri J.J.Chandurkar, Adv. for Petitioner.
Shri J.B.Kasat, Advocate for Respondent.

CORAM : **ANIL S. KILOR, J.**
DATED : **FEBRUARY 02, 2023**

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by
consent for the parties.

Brief facts of the present case are as under:

3. The respondent/ landlord is the owner of shop premises in question. The petitioner is a tenant and it was a partnership firm, however, in the year 1992, due to retirement of the partners, the petitioner firm was converted into the proprietorship concern.

4. The respondent/landlord filed Regular Civil Suit No.290 of 2016 under Section 8 of the Maharashtra Rent Control Act, 1999 (hereinafter referred as “the Act of 1999”) for fixation of the standard rent and permitted increase with the following prayer clause :

“A) The Hon’ble Court may be pleased to determine the standard rent/ fare rent of the suit shop premises at Rs.10,000/- per month excluding municipal taxes payable by defendant or as such other higher rate which may be made applicable in view of the commercial importance and commercial locality and suit premises being situated in the heart and middle of the city.

B) The Hon’ble Court may be pleased to order the defendant to pay statutory interest at 15% per annum on the rent so determined from the date of this suit.

C) The Hon’ble Court may also be pleased to grant any other suitable relief that may be deemed fit.

D) Cost of the suit be awarded to the plaintiff as against the defendant.”

5. The petitioner filed its written statement opposing the claim.

6. The respondent filed application under Section 8(4) of the Act of 1999 for interim rent till decision of the suit, to which the reply was filed by the petitioner.

7. The learned trial Court allowed the application Exh.24 by the impugned order dated 26/07/2018 and fixed the interim rent @ Rs.4,000/- per month.

8. Feeling aggrieved by the same, revision was preferred under Section 34(4) of the Act of 1999 by the petitioner. The revisional Court, vide impugned judgment and order dated 15/11/2019 dismissed the revision and the same is subject matter of the present petition.

9. The order of fixation of interim rent by Joint Civil Judge Junior Division, Amravati and confirmation of the same by the District Judge-1, Amravati in revision petition is under challenge on the ground that under Section 8(4)(a) of the Act of 1999 only in case of suit for

recovery of rent the Court can make such order directing to pay interim standard rent and not in any other suit.

10. The learned counsel for the petitioner submits that admittedly, in the present case, the suit is only for fixation of standard rent and not for the recovery of rent. It is pointed out that the application for grant of interim standard rent was moved under Section 8(4)(a) of the Act of 1999 and in view of the prerequisite to attract the provisions of Section 8(4)(a) of the Act of 1999, the application itself was not maintainable.

11. The learned counsel for the petitioner has placed reliance on the Full Bench judgment of this Court in the case of *Jamnadas Motilal Vanwari ..vs.. Ishwaribai Tejandas Alwani*, reported in **1981 Mh.L.J. 701(FB)**.

12. On the other hand, the learned counsel for the respondent supports the impugned order and prays for dismissal of the writ petition.

13. As the controversy involved is about applicability of Section 8(4)(a) of the Act of 1999 to the suits other than the suit for recovery of rent, at this stage, it is appropriate to refer to Section 8(4)(a), which reads thus:

“8. Court may fix standard rent and permitted increases in certain cases. -

(1) ...

(2) ...

(3) ...

(4) (a) Where at any stage of a suit for recovery of rent, whether with or without a claim for possession, of the premises, the court is satisfied that the rent is excessive and standard rent should be fixed, the court may, and in any other case, if it appears to the court that it is just and proper to make such an order, the court may make an order directing the tenant to deposit in court forthwith such amount of the rent as the court considers to be reasonable due to the landlord, or at the option of the tenant, an order directing him to pay to the landlord such amount thereof as the court may specify.”

14. It is to be noted here that, Section 11(4) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as “Act of 1947”) is *pari materia* with the provision of Section 8(4)(a) of the Act of 1999. Section 11(4) of the Act of 1947 reads thus:

“11. Court may fix standard rent and permitted increases in certain cases.

(1) ...

(2) ...

(3) ...

(4) Where at any stage of a suit for recovery of rent, whether with or without a claim for possession of the premises, the Court is satisfied that the tenant is withholding the rent on the ground that the rent is excessive and standard rent should be fixed, the Court shall, and in any other case if it appears to the Court that it is just and proper to make such an order the Court may, make an order directing the tenant to deposit in Court forthwith such amount of the rent as the Court considers to be reasonably due to the landlord, or at the option of the tenant an order directing him to pay to the landlord such amount thereof as the Court may specify. The Court may further make an order directing the tenant to deposit in Court periodically, such amount as it considers proper as interim standard rent, or at the option of the tenant an order to pay to the landlord such amount thereof as the Court may specify, during the pendency of the suit. The Court may also direct that if the tenant fails to comply with any order made as aforesaid, within such time as may be allowed by it, he shall not be entitled to appear in or defend the suit except with leave of the Court, which leave may be granted subject to such terms and conditions as the Court may specify.”
(emphasis supplied)

15. At this stage, it is important to note that the Full Bench of this Court had an occasion to consider the scope of Section 11(4) of the Act of 1947 in the case of *Jamnadas* (supra), wherein it is held thus:

“6. This sub-section authorises the Court to direct the tenant to deposit such amount of the rent forthwith in the Court as it considers to be reasonably due to the landlord and, at the option of the tenant, direct him to pay to the landlord such amount thereof as it may specify. This authority can be exercised by the Court, as the opening words of the sub-section indicate, "at any

stage of the suit for recovery of rent". The words that follow, namely, "whether with or without a claim for possession" indicate how relief of possession or omission thereof in the suit is absolutely irrelevant for the Courts exercising this power to so direct. Thus the Court's power to make such directions is conditional to the suit being for "recovery of rent". In other words, such powers cannot be exercised in any other suit between the landlord and the tenant. It is not possible to trace any such power if the suit is for possession of the premises simpliciter."

7. ...

8. ...

9. ...

10. *With respect, the view of the Division Bench does not appear to us to be correct. Firstly, the words "with or without possession" go to emphasize how the contemplated directions are intended to be made in suits for recovery of rent alone and in no other suits or proceedings. Secondly, the occasion to direct payment towards rent ordinarily can arise only in suits for rent and not otherwise. The special situation in which direction for fixation of interim standard rent can arise even in claim for possession for breach of Section 12(3) (a) is covered by Section 11(3) of the Act and no provision to meet such contingency was necessary under Section 11(4) of the Act. Thirdly, the words "and in any other case" are sandwiched between the words "the Court shall" and "the Court may" demonstrating how the words "and in any other case" are intended to refer to other cases than in which standard rent is required to be fixed for withholding of the rent on account of its being excessive. Fourthly, the said words cannot be assumed to go with the words "suit for recovery of rent" by the sheer force of the grammar and syntax. Shorn of all the unnecessary verbiage, the sentence would read, "where at any stage of a suit for recovery of rent, and in any other case". The sentence sounds incongruous and the groups of words*

do not fit in with each other. And fifthly, the suggested interpretation would require division of cases into (1) suits for recovery of rent and (2) other proceedings under the Act, and it would necessarily prevent division by reference to the ground of withholding the rent. Resultantly, relief of interim arrears of rent will have to be restricted to the tenant's withholding rent only on the ground of its being excessive. No such relief will be competent if rent is withheld on any other ground. Nothing could have been farther from the legislative intendment.

11. The referring judgments do refer to the ratio of the Full Bench of this Court in Dattu Subhana's case. The question that essentially arose in Dattu Subhana's case was whether the dispute with regard to the standard rent also could be raised in the written statement by the tenant even if he did not so raise it by filing an application for fixation of standard rent under Section 11(3) of the Act within one month of the receipt of the notice contemplated under Section 12(2) of the Act. Affirmative answer of the Full Bench is now expressly overruled by the Supreme Court in Harbanslal's case. Section 11(4) of the Act is relied on by the Full Bench and its interpretation thereof to that extent must be deemed to be not a good law. While analysing the language of Section 11(4) of the Act the Full Bench also further held that the power under Section 11(4) of the Act to direct the tenant to pay arrears of rent and fix the interim standard rent for that purpose can be exercised by the Court only when the suit happens to be "for recovery of rent". This part of the process of reasoning is not the integral part of the interpretation of Section 11(4) or that which is overruled in Harbanslal's case (supra). It can still have persuasive effect, if not binding on us. Suffice it to note that our conclusion accords with the said view."

16. Considering the fact that Section 8(4)(a) of the Act of 1999 and Section 11(4) of the Act of 1947 are *pari materia*, the judgment of the Full Bench of this Court is squarely applicable to the present case.

17. From the observations made by the Full Bench of this Court, it is clear that the authority to direct the tenant to deposit such amount of rent forthwith in the Court as the Court considers to be reasonably due to the landlord, or at the option of the tenant, directing to pay to the landlord such amount thereof as it may specify, can be exercised by the Court at any stage of the suit for recovery of the rent. The said power is conditional to the suit being for recovery of the rent, meaning thereby such powers cannot be exercised in any other suit except in a suit for recovery of rent between the landlord and the tenant.

18. Admittedly, the application moved by the respondent in the present matter is for the interim standard rent, filed in a suit for fixation of standard rent and permitted increase and not in a suit for recovery of the rent. Thus, the prerequisite for issuance of direction for interim standard rent under Section 8(4)(a) of the Act of 1999 is absent in the present case and as such the order passed by the trial Court is without jurisdiction and passed on an untenable application.

19. In the circumstances, as the impugned order below Exh.24 passed by the learned Joint Civil judge Junior Division, Amravati suffers from lack of jurisdiction, the judgment and order dated 15/11/2019 passed by the Revisional Court maintaining the order below Exh.24 as well is erroneous and liable to be quashed and set aside.

- i) The writ petition is allowed.
- ii) The impugned order dated 26/07/2018 passed below Exh.24 by Joint Civil Judge Junior Division, Amravati in Regular Civil Suit No.290 of 2016 and the judgment and order dated 15/11/2019 passed by District Judge-1, Amravati in Civil Revision Application No.1 of 2018 are hereby quashed and set aside.
- iii) The trial Court is directed to decide the suit expeditiously.

Rule made absolute accordingly. No order as to costs.

(ANIL S. KILOR, J)

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