

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.3449 of 2018

Dhananjay Bhagwanji Fule Vs. Rupchand Khemraj Badule

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Prashant Gode, Advocate for the Petitioner
Shri J.B. Gandhi, Advocate for the respondent-sole.

**CORAM : ANIL S. KILOR, J.
DATED : 21.02.2023**

1. Heard.

2. In this petition, a challenge is raised to the judgment and order dated 02.11.2017 passed by the District Judge-1, Gondia in Regular Civil Appeal No.52 of 2014, dismissing the appeal arising out of the judgment and decree dated 28.02.2014 passed by the Jt. Civil Judge Junior Division, Gondia in Regular Civil Suit(RCS) No.116 of 2007 and thereby partly decreeing the suit and directing the petitioner to deliver vacant possession of the suit block and hand over the same to the respondent within two months and to pay the arrears of Rs.4727.72/- along with interest @ 15 % p.a. from the date of the suit till realization of decretal amount.

3. The brief facts of the present case are as under:

The petitioner is a tenant of the respondent claiming to be in possession of one room admeasuring 90 sq. ft. The petitioner is occupying the said suit block since 01.12.1992 on monthly rent.

4. The respondent filed RCS No.314 of 2000 dated 03.10.2000 for recovery of possession of the suit block against the petitioner on the ground of default in payment of rent and arrears of rent. In the said suit, the application for fixation of standard rent of suit block was filed. The said suit was dismissed but it was directed to the petitioner to pay permitted increases of 4 % p.a. in addition to rent fixed from the date of commencement of the Maharashtra Rent Control Act, 1999 (in short “the Act”).

5. The petitioner did not pay the permitted increases as directed by the trial Court in the said suit and therefore, the landlord issued notice to the petitioner on 15.12.2006, demanding arrears of rent. Despite the same, the petitioner did not pay the arrears of rent and therefore, Regular Civil Suit No.116 of 2007 was filed for recovery of possession of suit block on the ground of default in payment of rent and permitted increases.

6. The petitioner filed the written statement and resisted the suit on various grounds, including that the respondent is not entitled to recover 4 % p.a. permitted increases along with the fixed rent. He also challenged a tenability of the suit on the ground that the petitioner has already deposited the arrears of rent as demanded by notice within 90 days.

7. The learned trial Court, after scrutinizing the oral as well as documentary evidence, passed the judgment and decree dated

28.02.2014, partly allowing the suit and directing the petitioner to deliver vacant possession of suit block within two month and to pay arrears of rent of Rs.4727/- along with interest @ 15 % per annum till realization of decretal amount. The said judgment and decree was carried in appeal which came to be dismissed vide judgment and decree dated 02.11.2017, which is the subject matter of the present writ petition.

8. The learned counsel for the petitioner submits that both the Courts below have committed error in ignoring the case of the petitioner that once the amount of arrears of rent as claimed by notice is paid within 90 days, there cannot be an eviction on the ground of arrears of rent. For this purpose, he has placed reliance upon the judgments of the Co-ordinate Bench of this Court in the case of *Rajendra Muralidhar Kadam and Ors. Vs. Prakash Vitthal Rao* dated 18.06.2019 passed in Civil Revision Application No.118 of 2019, *Gulam Ahmad Shamin Gulam Zafar Vs. Kaisar Hsasan Mohd. Issaque* dated 21.03.2018 passed in Writ Petition No.1261 of 2018 and *New Laxmi Cycle Company, Akola Vs. Jagdishchandra s/o Amrutlal Vakharia*¹.

9. He further submits that the Section 11 of the Act entitles to landlord to increase rent by 4 % p.a. after commencement of the Act. However, it is not automatic but at the discretion of the landlord. It is submitted that as in the present matter the landlord never increased rent by 4 %, the eviction on the ground that that petitioner failed to pay arrears of rent with 4 % p.a. permitted increases, is erroneous.

1 2009 SCC OnLine Bom 1715

10. On the other hand, the learned counsel for the respondent/landlord submits that even if the payment of arrears of rent is made within 90 days, the compliance of sub-Section (3) of Section 15 at the same time is necessary and if the tenant fails to pay the rent at the permitted increases regularly until the decision in the suit, a decree of eviction can be granted. For this purpose, he has placed reliance upon the judgment of the Full Bench of this Court in the case of *Babulal Fakirchand Agrawal Vs. Suresh Kedarnath Malpani and others*².

11. He further points out that once the order was passed by 3rd Joint Civil Judge Junior Division in RCS No.314 of 2000, directing the petitioner to pay permitted increases of 4 % p.a. in addition to rent fixed from the date of Commencement of the Act, the petitioner cannot raise a ground that the eviction is bad on the ground that the petitioner failed to pay the arrears of rent at the permitted increase of 4 % p.a.

12. In the light of the rival contention of the parties, I have perused the writ petition, the documents filed along with it and the impugned judgment and order.

13. The Full Bench of this Court in the case of *Babulal Fakirchand Agrawal* (supra) had an occasion on a reference to consider a question, whether the tenant complies the notice issued by the landlord demanding the arrears of rent and pays the entire amount as demanded within the time stipulated under Section 15(2) of the Act, the landlord can still file a suit for

eviction on the ground of arrears of rent by invoking provision of Section 15(3) of the Act.

14. The Full Bench of this Court in the case of *Babulal Fakirchand Agrawal* (supra) while answering the said reference, has observed thus:

“20. On the analysis of the provisions of section 15 as well as various judgments, it must be concluded that the provisions of subsections (1), (2) and (3) of section 15 shall be read independently. In order to claim relief against forfeiture, the tenant must satisfy all the conditions in respect of payment of rent or tender in Court all the arrears then due on the first day of hearing of the suit or within contemplation of provisions of law and to deposit the rental liability regularly in the Court till the suit is finally decided and there is no extinction of the cause of action by reason of payment of existing arrears by the tenant. It is, thus, clear that in order to avoid decree, once the notice is issued within contemplation of subsection (2) of section 15 of the Maharashtra Rent Control Act by the landlord, the tenant shall have to fulfil the conditions laid down under subsection (3) of section 15 of the Maharashtra Rent Control Act and there is no escape therefrom.

21. It would be inappropriate to infer something which is not specifically recorded in the provision and to read the restrictions on the entitlement of the landlord to present proceeding for eviction of a tenant on payment of the amount of rent or permitted increases, if any, as demanded by the landlord under a notice within contemplation of subsection (2) of section 15, without considering the impact of subsection (3) of section 15. It would amount to adding to the provision in place and making violation and thereby putting unnecessary restrictions on the right of the landlord. The principle that the Statute must be read as a whole is equally applicable to different parts of the same section. The section must be construed as a whole whether or not one part is a saving clause. Similarly, "elementary rule of construction of section is to be made of all the parts together" and that "it is not permissible to omit any part of it; the whole section must be read together". The words of

Statute are first understood in their natural, ordinary and popular sense and phrases and sentences are constructed according to their grammatical meaning unless there be something in the context, or in the object of the statute in which they occur or in the circumstances in which they are used, to show that they were used in special sense different from their ordinary grammatical meaning.”

15. In the light of the above referred observations and as the Full Bench of this Court has categorically observed that the provision of Section 15 of the Act protects the tenant, who is paying the rent regularly and has established his readiness and willingness to the same. Further protection is also provided in sub-Section (3) of Section 15 of the Act, if the tenant pays the entire arrears of rent on receipt of notice within contemplation of sub-Section (2) of Section 15 before the period prescribed under sub-section (2) together with interest and costs as may be ordered by the Court and continues to pay the rent and permitted increases regularly, until a decision in the suit. If the tenant does not pay rent regularly and offers to pay only after issuance of notice within contemplation of subsection (2) of section 15 and does not observe the other terms and conditions which include regular payment of rent, the landlord is not disabled from proceeding against such tenant.

16. In the circumstances, the first contention of the petitioner that because he has complied with the requirements of Section 15(2) of the Act by depositing the amount of arrears of rent within 90 days, the suit is for eviction is not maintainable, needs to be rejected.

17. As far as second contention of the learned counsel for the petitioner is concerned, the judgment and order passed in Regular Civil Suit No.314 of 2000 shows that there was a direction issued by the trial Court to the petitioner to pay permitted increases of 4 % p.a. in addition to the rent. This order was challenged in appeal by the petitioner in the lower Appellate Court, which was dismissed. Thereafter, he challenged it in this Court by way of writ petition, which was also dismissed in default for want of prosecution. Hence, the order dated 28.08.2006 in RCS No.314 of 2000 has attained finality.

18. In view of that matter, the petitioner now cannot say that there is no 4% p.a. permitted increases in the present matter and there cannot be eviction on such ground. This ground of the petitioner also fails and accordingly it is rejected.

19. In view of the observations made herein above, the judgments cited by the learned counsel for the petitioner in the case of *New Laxmi Cycle Company, Akola (supra)*, *Rajendra Muralidhar Kadam and Ors. (supra)* and *Gulam Ahmad Shamin Gulam Zafar (supra)*, are of no help to the petitioner. Accordingly, I pass the following order:

The writ petition is **dismissed**.

20. At this stage, the learned counsel for the petitioner points out that this Court vide order dated 07.08.2018 directed the petitioner to deposit Rs.3,000/- per month as occupation charges, which he has deposited regularly.

21. The learned counsel for the respondent seeks permission to withdraw the said amount, as it was deposited towards occupation charges. As the learned counsel for the petitioner has no objection to withdraw the said amount, a permission is granted to respondent to withdraw the amount deposited by the petitioner as occupation charges along with interest, if any, accrued thereon.

[ANIL S. KILOR, J.]