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

**WRIT PETITION NO.2315 OF 2022**

1. Mukesh S/o Gulabchand Kasliwal,
   Aged about 60 years, Occu: Business,
2. Ravi S/o Gulabchand Kasliwal,
   Aged about 58 years, Occu: Business,
   Both R/o C/o Sanmati Cloth Traders,
   In front of Gondia Police Station (City),
   Main Road Gondia, Tah. & Dist. Gondia. … Petitioners

// **VERSUS** //

Chaturbhuj S/o Rameshwardas Agrawal (Bajaj), Aged about 56 years, occ; Nil.
R/o Opp. Dr. Shedke House, Panchayat Samiti Colony, Shastri Ward, Gondia. Tah & Dist. Gondia-441601. … Respondent

Shri R.L. Khapre, Senior Adv. a/w Shri A.P. Thakre and Shri S.U. Kothekar, Advocates for the petitioners.
Shri V.R. Borkar, Advocate for the respondent.

**CORAM : ANIL S. KILOR, J.**
**DATED : 18.04.2023**

**JUDGMENT**

1. Heard Shri R.L. Khapre, learned Senior Advocate for the petitioners and Shri V.R. Borkar, learned counsel for the respondent.

2. In the present writ petition, the challenge is raised to the order dated 28.02.2022 passed by the learned Joint Civil Judge Junior Division Gondia in M.J.C. No.67 of 2014, allowing the application for fixation of standard rent and thereby fixing the fare rent of the suit premises @ Rs.9,000/- per month and further held the respondent entitled to recover the difference of the rent @ Rs.9,000/- per month from the date of application by adjusting the amount deposited or paid by the respondent.

3. Shri Khapre, learned Senior Advocate for the petitioners submits that, in the earlier round this Court in Writ Petition No.3583 of 1999, had held that as the landlord/respondent did not make all the partners as party to the proceeding before the rent controller, the landlord is not entitled for permission to terminate the tenancy. Hence, it is submitted that the respondent/landlord has made similar mistake by not making all the partners to the application filed under Section 8 of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as "the Act of 1999) for fixation of the standard rent. It is tried to canvass that the application under Section 8 of the Act of 1999, is therefore not maintainable.

4. He further argues that the standard rent fixed by the learned trial Court is contrary to the well settled principle of law. He, accordingly, prays for quashing and setting aside the impugned judgment and order dated 28.02.2022. In support of his submissions, Shri Khapre, learned Senior Advocate for the petitioners has relied upon the judgments of the Co-ordinate Bench of this Court in *New Laxmi Cycle Company, Akola vs. Jagdishchandra s/o Amrutlal Vakharia*[1].

5. On the other hand, Shri Borkar, learned counsel for the landlord/respondent argues that the learned trial Court has rightly entertained the application filed under Section 8 of the Act of 1999. It is submitted that, it has came in the oral evidence of the petitioner No.2 that, the suit premises was let out in the name of "M/s Sanmati Cloth Traders, Gondia" and they are the partners of Sanmati Cloth Traders. He, accordingly, submits that in view of the admission of the petitioner No.2 that he and his brother are the proprietor of the Sanmati Cloth Traders and the suit premises was let out to the petitioners in the name of Sanmati Cloth Traders, the petitioners were rightly made party and it cannot be said that the application is bad for non-joinder of necessary party.

1 (2009) 6 Mh.L.J. 906

6. He further argues that under Order XXX, Rule 1 of the Code of Civil Procedure, if more than two or more partners is made party to the suit against the partnership firm, it is permissible. He, therefore, submits that no error has been committed by the learned trial Court in entertaining the application and deciding the same.

7. As far as the standard rent is concerned, it is submitted that, from 1987, there was no increased in the rent. Hence, he submits that the learned trial Court has rightly granted Rs.9,000/- as a standard rate. He, therefore, prays for dismissal of the petition.

8. In light of the rival contentions, I have perused the record and the impugned judgment and order.

9. Order XXX, Rule 1 of the Code of Civil Procedure (C.P.C.) is relating to the suits of partners in the name of firm which reads thus:

> *"1. Suing of partners in name of firm. - (1) Any two or more persons claiming or being liable as partners and carrying on business in [India] may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.*

*(2) Where persons sue or are sued as partners in the name of their firm under Sub-rule(1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons."*

10. From the language of Order XXX, Rule 1 of the C.P.C., it is evident that any two or more persons claiming or being liable as partners and carrying on business may sue or be sued in the name of the firm of which such persons were partners at the time of the accruing of the cause of action.

11. This Court while deciding the Writ Petition No.3583 of 1999 has not referred to and taken into consideration the provisions of Order XXX, Rule 1 of the C.P.C.

12. Moreover, it is evident from the oral evidence of the petitioner No.2 that, he has admitted that the tenant is the Sanmiti Cloth Traders and he and his brother are the proprietor. In view of the said admissions, the judgment passed by this Court in Writ Petition No.3583 of 1999 dated 25.08.2006 will not help to the petitioners to raise any objections to the tenability of the application filed by the respondent under Section 8 of the Maharashtra Rent Control Act, 1999 for fixation of standard rent.

Accordingly, the objections to the tenability raised by the petitioners is rejected, in view of Order XXX, Rule 1 and in light of the oral evidence of petitioner No.1.

13. The Co-ordinate Bench of this Court in the case of *New Laxmi Cycle Company, Akola* (Supra) has held thus:

> *"19. Section 11 of the Maharashtra Rent Control Act entitles landlord to increase rent by 4% per annum after its commencement. It is, therefore, apparent that said increase by 4% is not automatic, but at the discretion of landlord. If particular landlord does not want to increase rent by 4%, law does not compel him to increase it. In other words, tenant is not voluntarily required to pay 4% more. The respondent-landlord has not pointed out that before issuing notice at Exh.29, he had after 01/4/2000 increased rent by 4%. It is to be noticed that said increase would then apply even for rent payable for period from Diwali-2000 to Diwali-2001. Such an increase or arrears on that account are not pointed out or pleaded by the respondent. In view of this position, it is apparent that effort to justify such 4% increase granted by lower Appellate Court as a part of standard rent or as a part of permissible increase must fail."*

14. After going through the impugned order dated 28.02.2022, it is evident that, the above referred observations or the law in regard to the fixation of the standard rent was not properly considered and appreciated. In that view of the matter, I am of the opinion that the matter needs to be remanded back to the learned trial Court for deciding the standard rent afresh after taking into consideration the above referred law laid down by

the Co-ordinate Bench of this Court. Accordingly, I pass the following order:

i) The writ petition is **partly allowed**.

ii) The impugned judgment and order dated 28.02.2022 passed by the Joint Civil Judge Jr. Dn. Gondia in M.J.C. No.67 of 2014, is hereby quashed and set aside.

iii) The matter is remanded back to the learned trial Court to fix the standard rent afresh.

Rule is made absolute in above terms. No costs.

**[ANIL S. KILOR, J.]**