

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

Writ Petition (WP) No. 3670 of 2022

Krushnakumar Trimbak Khadse (Dead) through legal heirs

Versus

Smt. Veenabai Wamanrao Pimpalkar

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

Court's or Judge's Order

Shri N.G.Jetha, Advocate for the petitioners.

CORAM : ANIL S. KILOR, J.

DATED : 13th APRIL, 2023.

Heard.

2. The judgment and decree dated 11th April, 2022 passed by the Special Judge, Special Court for Differently Abled Persons, Senior Citizens and Marginalized Section of Society, Nagpur in Regular Civil Appeal No. 27 of 2020, dismissing the appeal and confirming the judgment and decree dated 16th December, 2019, passed in Regular Civil Suit No. 125 of 2012 by the learned Judge, Small Causes Court, Nagpur, dismissing the suit for ejectment, possession, recovery of arrears of rent and damages etc, is under challenge in this petition.

3. The petitioner is the original plaintiff who filed a suit for ejectment, possession, recovery of arrears of rent and damages etc. against the respondent/tenant.

4. The learned Small Causes Court after scrutinizing of oral as well as documentary evidence dismissed the suit vide judgment and decree dated 16th December, 2019, on the ground that the plaintiff failed to prove that the defendant is in arrears of rent of Rs.2,94,750/-.

5. Feeling aggrieved by the same, the petitioner preferred an appeal vide Regular Civil Suit No. 27 of 2020, which came to be dismissed, vide judgment and decree dated 11th April, 2022, which is the subject matter of the present writ petition.

6. Shri Jetha, learned counsel for the petitioner submits that despite the fact that there was no compliance of Section 15(3) of Maharashtra Rent Control Act, 1999 (in short hereinafter referred as “Rent Act”), the suit was dismissed only on the ground that the respondent complied with Section 15(2) of the Rent Act. He further submits that even if there is a compliance of Section 15(2) and there is no compliance of Section 15(3) of the Rent Act, the decree of eviction can be passed. For this purpose, he has placed the reliance on a Full Bench of this Court in the case of Babulal S/o Fakirchand Agrawal Vs. Suresh S/o Kedarnath Malpani and others¹.

1 2017(4) Mh.L.J 406

7. Shri Jetha, learned counsel for the petitioner has drawn attention to the findings recorded by both the Courts below and therefrom, he has pointed that though it has come on record that after filing of the suit the directions were issued to pay the rent regularly, the respondent failed to pay it regularly and even for the said reason the defense was struck down. He therefore submits it is the case of non-compliance of Section 15(3) of the Rent Act and therefore denial of decree of ejectment, is erroneous.

8. None for the respondent, though served long back.

9. In the light of submissions made by the learned counsel for the petitioner. I have perused the record and judgment and decree of both the Courts below.

10. The Full Bench of this Court in Babulal S/o Fakirchand Agrawal Vs. Suresh S/o Kedarnath Malpani and others (supra) had an occasion to consider a question “If the tenant complies the notice issued by the landlord demanding arrears of rent and pays the entire amount as demanded within the time stipulated under section 15(2) of the Maharashtra Rent Control Act, then whether the landlord can still file a suit for eviction on the ground of arrears of rent and whether the

eviction can be ordered by invoking provisions of Section 15(3) of the Maharashtra Rent Control Acts". The Full Bench of this Court while answering the said question has held thus:

20. On the analysis of the provisions of Section 15 as well as various judgments, it must be concluded that the provisions of sub-sections (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 sub-section (2) of Section 15 of the Maharashtra Rent Control Act by the landlord, the tenant shall have to fulfill the conditions laid down under sub-section (3) of Section 15 of the Maharashtra Rent Control Act and there is no escape therefrom.

11. In the light of above referred observations, I revert back to the facts of the present case.

12. The learned Lower Appellate Court in Paragraph 15 of the Judgment has held thus:

"15. In the meantime, during the pendency of the suit the plaintiffs had filed an application u/s 15-A of CPC to direct the defendant to deposit the rent and occupation charges vide Exh.14. Said application was allowed by the learned trial court directing the defendant to deposit the outstanding arrears from

9.11.2011 to 28.2.2014 @ Rs.355/- per month within a period of one month and continue to pay the occupation charges till decision of the suit on or before 10th of each consecutive month by order dated 26.2.2014. Thereafter, according to the plaintiffs the defendant has not complied with the said direction of depositing the amount as per order dated 26.2.2014. Therefore, they have filed an application for striking off the defence vide Exh.25. The said application was allowed by order dated 15.11.2014, and the defence of the defendant was struck off.”

13. From the above referred paragraphs, it is evident that despite the order passed by the Court to deposit the rent and occupation charges, the respondent failed to comply with such directions vide order dated 15th November, 2014, resultantly the Court allow the application filed by the petitioner for striking down the defence of the respondent. This fact is sufficient to show that there was non-compliance of Section 15(3) of the Rent Act.

14. However, ignoring and not considering the provisions of Section 15(3) of the Rent Act and the fact that the respondent has failed to fulfill the condition of Section 15(3) of the Rent Act, both the Courts below have dismissed the suit on the ground that the respondent has complied with the notice under Section 15(2) of the Rent Act. In the circumstances, I am of the opinion that the matter needs to be remanded back to

the learned First Appellate Court to decide the appeal a fresh after taking into consideration the law laid down by the Full Bench of this Court in the case of *Babulal S/o Fakirchand Agrawal Vs. Suresh S/o Kedarnath Malpani and others* (Supra). Accordingly, I pass the following order.

- i. Writ petition is partly allowed;
- ii. The judgment and decree dated 11th April, 2022 passed by the Special Judge, Special Court for Differently Abled Persons, Senior Citizens and Marginalized Section of Society, Nagpur in Regular Civil Appeal No. 27 of 2020 is hereby quashed and set aside;
- iii. The Regular Civil Appeal No. 27 of 2020 is remanded back to the learned Special Judge, Special Court for Differently Abled Persons, Senior Citizens and Marginalized Section of Society, Nagpur and it is directed that the same shall decide the appeal a fresh after hearing both the parties within three months from today.

[ANIL S. KILOR, J.]

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