

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

WRIT PETITION NO.3994 OF 2022

Wasudeo s/o Ramaji Atkare
Aged about 75 years,
Occupation: Business,
R/o C/o Golden Mens Parlour,
Plot No.25, Krida Chowk, Medical Road,
Hanuman Nagar, Nagpur. **PETITIONER**

...V E R S U S...

Kushabilal s/o Wazirchand Bahel
Aged about 60 years,
Occupation: Business,
R/o Plot No.25, Krida Chowk, Medical Road,
Hanuman Nagar, Nagpur. **RESPONDENT**

Shri Onkar A. Ghare, Advocate for Petitioner.
Shri Deepak G. Paunikar, Advocate for Respondent.

CORAM: **ANIL S. KILOR, J.**
DATE: **9th FEBRUARY, 2023.**

ORAL JUDGMENT:

In this writ petition, the challenge is raised to the judgment and decree dated 30.03.2022 passed by the Ad hoc District Judge – 7, Nagpur in Regular Civil Appeal No.402/2016, dismissing the appeal and confirming the judgment and decree of eviction passed in favour of the respondent by the Small Causes Court in Regular Civil Suit 115/2011, vide judgment and decree

dated 09.03.2016.

2. In the present matter the decree of eviction was granted in favour of the plaintiff on the ground of *bona fide* requirement by holding that the plaintiff has required the disputed premises for son and nephew doing the business.

3. Shri Ghare, the learned counsel for the petitioner has made a statement on 02.02.2023 that he wants to waive ground nos. A, C, E, F and G raised in the petition and to restrict the challenge only on the two points arising namely:- 1) the date from which the mesne profit was directed to be inquired into and 2) point the comparative hardship.

4. As regards the date from which the mesne profit should be granted, a reliance is placed on the judgment of the Hon'ble Supreme Court of India in the case of ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*** reported in ***(2005) 1 SCC 705*** and submits that, from the date of decree only it can be said that the tenant is in illegal occupation of the suit premises and from that date the landlord may be entitled to claim damages.

5. He, therefore, submits that in this case the date of decree is 09.03.2016, whereas, the inquiry was erroneously directed to be conducted the mesne profit from the date of institution of suit i.e. from 18.04.2011. Accordingly, he prays for necessary modification.

6. As far as comparative hardship is concerned, he submits that the findings recorded by both the courts are based on presumption and not on the evidence and therefore, such findings are perverse.

7. On the other-hand, the learned counsel for the respondent – landlord Shri Paunikar supports the concurrent findings recorded by both the courts below as regards the comparative hardship and submits that it is based on evidence and there is no perversity committed by both the courts below.

8. He further submits that the mesne profit is rightly granted from the date of institution of the suit and not from the date of decree.

9. In the back-drop of rival contentions, I have perused

the writ petition, the documents filed along with the petition and the impugned judgment and decree.

10. The Hon'ble Supreme Court in the case of ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*** while dealing with the issue as regards the damages in relation to tenanted premises has observed thus:

13. In Shyam Sharan v. Sheoji Bhai this Court has upheld the principle that the tenant continuing in occupation of the tenancy premises after the termination of tenancy is an unauthorized and wrongful occupant and a decree for damages or mesne profits can be passed for the period of such occupation, till the date he delivers the vacant possession to the landlord. With advantage and approval, we may refer to a decision of the Nagpur High Court. In Bhagwandas Lakhamsi v. Kokabai the learned Chief Justice of Nagpur High Court held that the rent control order, governing the relationship of landlord and tenant, has no relevance for determining the question of what should be the measure of damages which a successful landlord should get from the tenant for being kept out of the possession and enjoyment of the property. After determination of the tenancy, the position of the tenant is akin to that of a trespasser and he cannot claim that the measure of damages awardable to the landlord should be kept tagged to the rate of rent payable under the provisions of the rent control order. If the real value of the property is higher than the rent earned then the amount of compensation for continued use and occupation of the property by the tenant can be assessed at the higher value. We find ourselves in agreement with the view taken by the Nagpur

High Court.

19. *To sum up, our conclusions are:*

(1) ...

(2) in case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (1) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree;

11. The above referred judgment was under the Delhi Rent Control Act, 1958 and the present petition is under the Maharashtra Rent Act. The definition of tenant in Delhi Rent Control Act and under the Bombay Rent Act is not parameters or similar. However, in a matter under the Bombay Rent Act, in a case of ***State of Maharashtra and another v. Super Max International Private Limited and others (2009) 9 SCC 772***, it was argued before the Hon'ble Supreme Court that the decision in ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. (2005) 1 SCC 705*** would apply only to cases under the Delhi Rent Control

Act and shall have no application to tenancies governed by the provisions of the Bombay Rent Act. It was argued that the Delhi Rent Control Act defined in a way as to exclude a person against whom a decree of eviction was passed, but the position under the Bombay Rent Act was materially different. In the definition of Bombay Rent Act, there was no exclusionary clause. The Hon'ble Supreme Court of India while recording its finding to the above referred contentions has held thus:

70. The decision in Satyawati Sharma then referred to the doctrine of temporal reasonableness and in para 32 observed as follows: (SCC p.320)

“32. It is trite to say that legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent.”

71. We reaffirm the views expressed in Satyawati Sharma and emphasise the need for a more balanced and objective approach to the relationship between the landlord and tenant. This is not to say that the Court should lean in favour of the landlord but merely that there is no longer any room for the assumption that all tenants, as a class, are in dire circumstances and in desperate need of the Court's protection under

all circumstances. (The case of the present appellant who is in occupation of an area of 9000 sq ft in a building, situate at Fort, Mumbai on a rental of Rs 5236.58, plus water charges at the rate of Rs 515.35 per month more than amply highlights the point.)

74. In Atma Ram Properties the Court viewed the issue exactly in the same way (see paras 6, 8 and 9 of the decision). Further, the decision also answers Mr. Lalit's submission that the tenancy did not come to end on the passing of the decree but would continue until the tenant was actually physically evicted from the premises in execution of the decree.

75. In Atma Ram Properties the Court framed two issues arising for consideration as follows: (SCC p. 714, para 10)

"10. ... This submission raises the following two issues: (i) in respect of premises enjoying the protection of rent control legislation, when does the tenancy terminate; and (ii) up to what point of time is the tenant liable to pay rent at the contractual rate and when does he become liable to pay compensation for use and occupation of the tenancy premises unbound by the contractual rate of rent to the landlord?"

76. The Court answered the first issue as follows: (Atma Ram Properties case, SCC pp. 716-17, para 16)

"16. We are, therefore, of the opinion that the tenant having suffered a decree or order for eviction may continue his fight before the superior forum but, on the termination of the proceedings and the decree or order of eviction first passed having been maintained, the tenancy would stand terminated with effect from the date of the decree passed by the lower forum. In the case of premises governed by rent control

legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior forum at any subsequent stage or date, would not, by reference to the doctrine of merger have the effect of postponing the date of termination of tenancy.”

*The second issue was answered as follows:
(Atma Ram Properties case, SCC p. 718, para 19)*

*“(2) ... With effect from that date (the passing of the decree of eviction), the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.” (words in parenthesis added)
(emphasis supplied)*

We are in respectful agreement with the decision of the Court in Atma Ram Properties.

12. In the circumstances, I am of the opinion that the judgment in the case of *Atma Ram Properties (P) Ltd. (supra)* will squarely apply to the cases under the Bombay Rent Act or now Maharashtra Rent Act and as such it will squarely apply to the present case, as well.

13. From the above referred judgment in the case of ***Atma Ram Properties (P) Ltd. (supra)*** of the Hon'ble Supreme Court of India, it is evident, that the relationship of landlord and tenant

after determination of the tenancy, the position of the tenant is akin to that of a trespasser and he cannot claim the measure of damages awardable to the landlord should be kept tagged to the rate of rent payable under the provisions of the rent control order. This makes it clear that the date on which the tenancy is terminated from the said date the tenant is liable for measne profit or compensation for use and occupation of the premises of the landlord. It is evident from the observations of the Hon'ble Supreme Court of India, that the tenancy does not stand terminated under the general law, it terminates with the passing of the decree for eviction and therefore, the tenant is liable to pay measne profit.

14. Thus, I am of the opinion, inquiry into future measne profit under Order 22 Rule 12 (1)(c) from date of suit as directed by the Small Causes Court's Act, needs to be modified and it should be from the date of decree i.e. 09.03.2016 till the date of actual date of possession of the suit premises.

15. As far as the finding recorded as regards the comparative hardship, I do not find any substance in the argument of the learned counsel for the petitioner that the said finding is

based on presumption and not on evidence. The findings recorded by both the courts below are based on evidence available on record and there is no perversity committed by both the courts below in holding the point regarding issue of comparative hardship in favour of the plaintiff. Accordingly, I pass the following order:

[i] The writ petition is partly allowed.

[ii] The judgment and decree passed by the Small Causes Court is modified to the extent of above referred terms.

(ANIL S. KILOR, J.)

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