



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

952 WRIT PETITION NO. 6157 OF 2023

SHIVNANDINI DR B. DEVENDRASINH BHAT THROUGH GPA HOLDER
JITENDRASINH HANUMANSINH HAZARI

VERSUS

HYDRABAD MACHINERY COMPANY THROUGH ITS PROPRIETOR
PURVA AVINASH PHADKE

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Advocate for the Petitioner : Mr. Kulkarni Ashutosh S.

Advocate for Respondent : Ms. Anagha Rotte

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CORAM : R. M. JOSHI, J.

Dated : June 19, 2024

PER COURT :-

1. This petition is poses a question for determination of this Court as to whether the tenant can file application for fixation of standard rent and permitted increases by invoking Section 8 of the Maharashtra Rent Control Act in any proceeding or such application is permissible to be filed where there is a dispute with regard to the rent quantum thereof etc.

2. The facts which are admitted and appearing on record indicate that Regular Civil Suit No.138/2019 came to be filed by the tenant of the suit property against the landlord seeking an injunction against the landlord from dispossessing him from the tenanted premises. The cause of action for filing of the suit is mentioned in paragraph No.12 of the plaint. According to the plaintiff, the cause of action accrued on 02/02/2019, 03/02/2019 and 25/03/2019 when the

defendant and some Gundas sent by the defendant came to the suit shop and threatened the plaintiff to vacate the same.

3. The landlord appeared in the suit and filed a written statement denying the contentions raised by the tenant. He also filed a counter-claim for seeking a decree of eviction against the tenant in respect of the suit premises on the basis of bona fide requirement.

4. The tenant moved an application vide Exhibit 186 under Section 8 of the Act for fixation of the standard rent. The said application was opposed by the landlord. The learned Trial Court by passing order dated 09/02/2023 rejected the said application with observation that in the instant suit there is no dispute between the parties in respect of the amount of rent or permitted increases. It is further held that the issue between the parties is of bona fide requirement of the suit premises and the injunction sought by the tenant against the landlord. This order was challenged by filing Misc. Appeal No.28/2023 before the District Court, Nanded. By passing the impugned order dated 05/04/2023, the learned District Judge-3, Nanded set aside the order passed below Exhibit 186 and directed the Trial Court to reconsider the application under the

provisions of Section 8 (1) (d) of the Rent Control Act and to pass fresh order thereon.

5. Learned Counsel for the petitioner / landlord submits that the pleadings in the plaint as well as written statement do not show that there exist any dispute between the parties with regard to the rent amount or permitted increases. Though he does not dispute the right of the tenant to file any application for fixation of the standard rent, he raises objection to filing of such application in this suit when no issue is involved therein of the rent or quantum thereof. It is his submission that perusal of Section 8 of the Act indicates that the filing of application for fixation of standard rent in any suit would be subject to the satisfaction of the conditions laid down in Clauses (a) to (d). According to him, the present case does not fall in any of these clauses and hence the application filed in this proceeding is not tenable. According to him, learned Trial Court has rightly rejected the application. It is his contention that a direction given by the District Court to the Trial Court to consider the application amounts to hold that such application is tenable in the present suit and therefore order impugned cannot sustain.

6. Learned Counsel for the respondent / tenant submitted that the plain reading of Section 8 of the Act indicates that it is within the right of the tenant to file any application under Section 8 of the Act for fixation of standard rent and permitted increases in any suit or proceedings. It is her contention that the said right given to the parties is not subjected to any restrictions/ conditions. It is argued that the contentions in the plaint about rent agreement and payment of rent are denied by defendant and hence there exists a dispute about it between parties. This entitles the plaintiff to file application.

7. Perusal of the plaint shows that the plaintiff has accepted the landlord and tenant relationship in respect of the suit property. So also, there is specific pleading to the effect as to the amount of rent paid by the tenant to the landlord. It is specifically stated that it is a practice that rent is paid by cheque. In Paragraph No.12, it is the cause of action for filing of the suit is disclosed about the incidents occurred on the dates mentioned therein wherein the tenant was threatened to vacate the premises. In the light of these pleadings, a suit for injunction is filed against the landlord restraining them from dispossessing the plaintiff without following due process of law from

the suit premises. The landlord filed a written statement wherein there is a denial of the contents of the plaint including averments made in respect of rent and payment of rent etc. It is pertinent to note that landlord does not specifically claim any different rent agreement or rent amount other than claimed by the plaintiff in the plaint. It is not sufficient for defendants to simply deny the contents of plaint in order to frame any issue in that regard, unless specific case is made out contrary to pleadings of plaintiff. Thus, no issue is involved in the suit as covered by Clauses (a) to (d) of Section 8 of Act for decision of the Trial Court.

8. In the light of the aforestated facts, it would be relevant to take into consideration the provision of Section 8 (1) (a) to (d) and (2) of the Maharashtra Rent Control Act :-

"8. Court may fix standard rent and permitted increases in certain cases :

(1) Subject to the provisions of Section 9 in any of the following cases, the Court may, upon an application made to it for the purpose, or in any suit or proceedings, fix the standard rent at such amount as, having regard to the provisions of this Act and the circumstances of the case, the Court deems just -

(a) Where the Court is satisfied that there is no sufficient evidence to ascertain the rent at which the premises were let in any one of the cases mentioned in paragraphs (i) and (ii) of sub-clause (b) of clause (14) of Section 7; or

(b) where by reasons of the premises having been let at one time as a whole or in parts and at another time, in parts or as a whole, or for any other reasons ; or

(c) where any premises have been or are let rent free or, at a nominal rent ; or for some consideration in addition to rent ; or

(d) where there is any dispute between the landlord and the tenant regarding the amount of standard rent.

2) If there is any dispute between the landlord and the tenant regarding the amount of permitted increase, the Court may determine such amount."

9. The opening words of the provision indicate that in certain cases and not in all cases Court may fix standard rent and permitted increases. Sub-section (1) permits filing of an application for fixation of standard rent, not in all cases but in cases specified therein. The intention of legislature is clear from the words "in

following cases". Filing of an application is permissible for that purpose i.e. for fixation of standard rent. It is also permissible to file such application in a suit or proceeding. This however is not unqualified as it is stated in no uncertain terms that such application would be depend upon circumstances of the case. This is further explained by stating that "having regard to provisions of Act and circumstances of case, court deems just ;" Clauses (a) to (d) are the circumstances in which such application can be filed in a suit or proceeding. Thus Court cannot entertain any such application unless one of the conditions contemplated by Clauses (a) to (d) is satisfied.

10. Now reverting back to the factual matrix, in the instant case as observed herein above, the suit filed by the plaintiff is for injunction whereas the counter claim is for bona fide requirement. From pleadings i.e. plaint and written statement, it is clear that none of the situations/ conditions contemplated by Clauses (a) to (d) exist in the suit before Trial Court.

11. Thus, for want of involvement of issue of fixation of standard

rent in this suit, Trial Court was justified in dismissing the application Exhibit 186. The learned District Court has committed error in not appreciating the provisions of Section 8 of the Act in its proper perspective to allow entertainment of such application in this suit. The impugned order therefore cannot sustain and is set aside. Order passed by Trial Court stands restored.

12. It is however clarified that it is open for the tenant to make independent application for fixation of standard rent and permitted increase. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

vj gawade/-.