

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.473 OF 2024

Gulab Abdul Nadaf
since deceased, through legal heirs
Jubeda Gulab Nadaf
since deceased through legal heirs
Ayesha Gulab Nadaf & Anr.

....Applicants

V/S

Kurshna Vyankat Jamadar & Ors.

....Respondents

Mr. Mandar Soman i/b Mr. Rushabh D. Phade *for the Applicants.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 09 DECEMBER 2024.**

P.C.:

1 The Applicants have filed this Revision Application under provisions of section 115 of the Code of Civil Procedure, 1908 (**the Code**) for setting up a challenge to the judgment and decree dated 30 March 2024 passed by the Principal District Judge, Solapur, dismissing Regular Civil Appeal No.107 of 2017 and confirming the eviction decree dated 2 March 2017 passed by Civil Judge Junior Division, Akkalkot. The Trial Court initially decreed the suit on the grounds of default in payment of rent and *bonafide* requirement of the landlord. In Appeal, the Appellate Court has rejected the ground of *bonafide* requirement of the

landlord, but has concurrently upheld the decree for eviction on the ground of default in payment of rent. The short issue that therefore requires examination in the present Revision Application is whether there is any palpable error in the concurrent findings recorded by the Trial and the Appellate Courts with regard to the ground relating to default in payment of rent.

2 I have heard Mr. Soman, the learned counsel appearing for the Applicants. His main ground of challenge to the impugned decrees is maintainability of the suit on account of absence of a valid notice under provisions of section 15(2) of the Maharashtra Rent Control Act, 1999 (**MRC Act**). He would submit that the notice demanding arrears of rent was received on 8 October 1998 when the provisions of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947 (**the Bombay Rent Act**) were in vague. He would submit that suit was not filed after expiry of one month from the date of service of demand notice dated 8 October 1998. The suit has been filed only after the provisions of the MRC Act came into force on 31 March 2000. He would accordingly submit that for institution of the suit under provisions of section 15 of the MRC Act, a proper notice has required under sub-section (2) of section 15 thereof was necessary for maintaining the suit for eviction. Mr. Soman would rely upon provisions of section 58 of the MRC Act and according to him what is saved are provisions of section 58 of the MRC Act are only 'proceedings' and the said provision does not save

'notice' issued under provisions of section 12(2) of the Bombay Rent Act. Secondly Mr. Soman would submit that Plaintiffs themselves were lessees in respect of the suit premises and their lease has been determined by the Government and that therefore they have no right to seek eviction the Defendant-tenant.

3 I have considered the submissions canvassed by Mr. Soman. So far as first ground of invalidity of notice dated 8 October 1998 is concerned, the same was apparently issued when provisions of the Bombay Rent Act were in vague. Under provisions of sub-section (2) of section 12 of the Bombay Rent Act, the landlord could not institute a suit for ejectment on the ground of non-payment of rent until expiration of one month after service of demand notice. Section 12 of the Bombay Rent Act provided thus:

“12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3) No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of

standard rent and permitted increases if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine per cent per annum; and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the Court.

Provided that, the relief provided under this sub-section shall not be available to a tenant to whom relief against forfeiture was given in any two suits previously instituted by the landlord against such tenant.

(4) Pending the disposal of any such suit, the Court may out of any amount paid or tendered by the tenant pay to the landlord such amount towards payment of rent or permitted increase due to him as the Court thinks fit.

Explanation I - In any case where there is a dispute as to the amount of standard rent of permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the Court under sub-section (3) of section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court.

Explanation II - For the purposes of sub-section (2), reference to 'standard rent' and "permitted increase" shall include reference to "interim standard rent" and "interim permitted increase" specified under sub-section (3) or (4) of section 11.

Explanation III - For the purposes of this section where, a tenant has deducted any amount from the rent due to the landlord under section 173C of the Bombay Municipal Corporation Act for recovery or any water tax or charges paid by him to the Commissioner, the tenant shall be deemed to have paid the rent to the extent of deductions so made by him."

4 The Bombay Rent Act came to be repealed and got substituted by MRC Act with effect from 31 March 2000. Section 58 of the MRC Act provides for repeal and saving. Section 58 of the MRC Act provides thus:

“58. Repeal and saving

(1) On the commencement of this Act, the following laws, that is to say,-

(a) the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947;

(b) the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 including the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949; and

(c) the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954; shall stand repealed.

(2) Notwithstanding such repeal-

(a) all applications, suits and other proceedings under the said Acts pending, on the date of commencement of this Act before any Court, Controller, Competent Authority or other office or authority shall be continued and disposed of, in accordance with the provisions of the Acts so repealed, as if the said Acts had continued in force and this Act had not been passed;

(b) the provisions for appeal under the Acts so repealed shall continue in force in respect of applications, suits and proceedings disposed of thereunder;

(c) any appointment, rule and notification made or issued under any of the repealed Acts and in force on the date of commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been made or issued under this Act and shall continue in force until it is superseded or modified by any appointment, rule or notification made or issued under this Act;

(d) all prosecutions instituted under the provisions of any of the repealed Acts shall be effective and disposed of in accordance with the law.”

5 So far as the eviction of a tenant on the ground of non-payment of rent under the MRC Act is concerned, the same is dealt with under section 15 thereof which provides thus:

“15. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the, standard rent and permitted increases, if any, and observes and performs the other, conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court.

(4) Pending the disposal of any suit, the court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the court thinks fit.

6 Thus the notable difference under provisions of section 12 (2) of the Bombay Rent Act and section 15 (2) of the MRC Act is

about the period for which the landlord must statutorily wait before institution of the suit after service of demand notice. While the said period was one month under provisions of section 12(2) of the Bombay Rent Act, the said period is now increased to 90 days. Otherwise both on the provisions of section 12(2) of the Bombay Rent Act as well as section 15(2) of the MRC Act, what is required is service of notice on the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882 (**TP Act**).

7 In my view, provisions of section 12(2) of the Bombay Rent Act or section 15(2) of the MRC Act are essentially aimed at granting an opportunity to the landlord to make good default in payment of rent and obviate filing of suit by the landlord. Therefore even if the notice was issued on 8 October 1998 during the period when the Bombay Rent Act was in vogue, the same did provide an opportunity to the Defendant-tenant to make good the default. Upon expiration of time limit of one month provided under section 12(2) of the Bombay Rent Act, the landlord became entitled to file a suit for eviction of Defendant-tenant on the ground of default in payment of rent. Merely because the landlord waited for filing of such suit and tolerated the presence of tenants for some more time and merely because the Bombay Rent Act got repealed and substituted by MRC Act in the meantime, the same would not mean the tenant must be given another opportunity of making good default by serving a fresh notice under section 15(2) of the MRC Act. This is

important more so because the eviction of tenant on expiry of period specified under section 12(2) of the Bombay Rent Act and section 15(2) of the MRC Act is not automatic or eminent as was the position prior to the 1987 amendment. Both under provisions of section 12(3) of the Bombay Rent Act as amended in 1987 as well as under section 15(3) of the MRC Act, tenant gets a second opportunity of making good default in payment of rent either by depositing the arrears of rent before first date of hearing of the suit under section 12(3) of the Bombay Rent Act or within a period of 90 days of service of suit summons under section 15(3) of the MRC Act. Thus the second opportunity is provided under both enactments to the tenant for making good default and frustrating the ejectment action brought in by the landlord. Thus it cannot be stated that by virtue of repeal of the Bombay Rent Act or by enactment of MRC Act, the opportunities granted to the tenant to save eviction action is in any manner hampered. In the present case the Defendants-tenants have failed to avail both the opportunities for avoiding decree for eviction.

8 Reliance of Mr. Soman on provisions of section 58 of the MRC Act does not cut any ice. This is because under both the provisions of section 12(2) of the Bombay Rent Act or section 15(2) of the MRC Act, what is required is service of notice on tenant in the manner provided in section 106 of the TP Act. What is done by provisions of section 12 (2) of the Bombay Rent Act or section 15(2) of the MRC Act is to merely delay filing of the suit by the landlord for a period specified in the said two

provisions. However the notice issued under section 106 of the TP Act remains unaffected. Thus the intention behind incorporation of section 12(2) of the Bombay Rent Act or section 15(2) of the MRC Act is only to delay filing of eviction action after service of notice under section 106 of the TP Act. In that view of the matter, the notice issued in accordance with provisions of section 106 of the TP Act would not get invalidated only because of repeal of the provisions of Bombay Rent Act or enactment of provisions of the MRC Act. The notice would still remain valid for the purpose of institution of suit even under the provisions of the MRC Act. Therefore the first point of validity of notice dated 8 October 1998 sought to be raised by Mr. Soman deserves to be rejected.

9 So far as the second point of expiry of lease granted by the Government in favour of Plaintiffs is concerned, it is an admitted position that the Defendants continued paying rent in respect of the suit premises to the Plaintiff-landlord even after determination of such lease. On account of payment of rent to the landlord, the landlord tenant relationship continued to survive. It is well established position of law that a landlord need not be a owner of the suit premises. All that is required is to establish existence of landlord tenant relationship, which in the present case is clearly established on account of Defendants' action in payment of rent to the landlord.

10 In my view therefore, no interference is warranted in the concurrent decrees passed by the Trial and the Appellate Courts. Civil Revision Application is accordingly **dismissed**. Considering the facts and circumstances of the case, the Revision Applicants are granted time upto 28 February 2025 to vacate the suit premises, subject to non-creation of any third party rights therein.

(SANDEEP V. MARNE, J.)

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by SUDARSHAN
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