

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

**WRIT PETITION NO.317 OF 1995
WITH
CIVIL APPLICATION NO.2767 OF 2010
IN
WRIT PETITION NO.317 OF 1995**

Smt. Fatimabi Sk.Mohamed
Tinwala and Ors.

....Petitioners

V/s.

Gurunath Shantaram Shirsat and
Ors.

....Respondents

Mr. Sachindra B. Shetye with Mr. Akshay Pansare and Mr. Nipun Sawane for the Petitioners.

Mr. Shankar P. Thorat with Mr. Gurunath B. Walawalkar for Respondent Nos.1 to 4.

CORAM : SANDEEP V. MARNE, J.

Dated : 4 October 2024.

P.C.:

1) The Petition challenges judgment and decree dated 5 February 1994 passed by the learned Additional District Judge, Sawantwadi, dismissing Regular Civil Appeal No.128 of 1985 and confirming the eviction decree dated 29 March 1985 passed by the learned Civil Judge, Junior Division, Kudal.

2) Plaintiffs filed Regular Civil Suit No.63 of 1983 in the Court of Civil Judge, Junior Division, Kudal in respect of shop premises, in which the Defendants are tenants. It appears that recovery of possession of the suit premises was sought on twin

grounds of default in payment of rent and *bonafide* requirement by Plaintiffs. The Trial Court proceeded to accept both the grounds of default in payment of rent as well as *bonafide* requirement by Plaintiffs and decreed the suit on 29 March 1985. The decree has been confirmed by the Appellate Court, which is the subject matter of challenge in the present Petition.

3) I have heard Mr. Shetye, the learned counsel appearing for the Petitioners/Defendants and Mr. Thorat, the learned counsel appearing for the Respondents/original Plaintiffs.

4) One of the grounds, on which the Suit is decreed is default in payment of rent. In the plaint it was alleged that Defendants were in arrears of rent from 1 January 1981. This aspect is not specifically denied by the Defendants in the written statement. The only defence raised in the written statement was that Plaintiffs had proposed sale of the house property for Rs.20,000/- and on that count they were not accepting the rent. Plaintiff served notice dated **23 June 1983** on account of default in payment of rent. Though Defendants denied the assertion of Plaintiffs about refusal to accept service of notice, after considering the evidence on record both the Courts below have recorded a finding of fact that notice was attempted to be served on Defendants, who refused to accept the same. It is an admitted position that within 30 days of the date of attempted service of notice, the arrears of rent were not paid. Defendants showed willingness to deposit arrears of rent in the Court and filed application to that effect.

5) Provisions of Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (the **Bombay Rent Act**), prior to the amendment of 1987 were such that in the event of rent

being payable by month, arrears in excess of six months and absence of dispute about quantum of rent, tenant's failure to pay the rent after receipt of demand notice resulted in passing of decree for eviction on account of use of the word 'shall' under Section 12(3)(a) of the Bombay Rent Act. In the present case, since findings of fact are recorded about refusal of service by Defendants, failure to pay rent within 30 days of date of refusal of notice, left no other choice for the Trial Court but to pass decree for eviction. In my view, therefore, decree for eviction on the ground of default in payment of rent does not warrant any interference.

6) In the light of the fact that eviction decree can be sustained on the ground of default in payment of rent, it is not necessary to consider the other ground of *bonafide* requirement. However, for the sake of completion it is seen that both the Courts below have concurrently upheld the *bonafide* requirement of Plaintiff No.2. The issue of comparative hardship is also answered in favour of Plaintiffs and against Defendants. No interference is warranted in such concurrent findings on the issue of *bonafide* requirement. Resultantly, I do not find any valid reason to interfere in the decree passed by the Trial Court and the Appellate Court. Writ Petition is devoid of merits and is **dismissed** without any orders as to costs.

7) Considering the facts and circumstances of the present case, Defendants are granted time upto 31 December 2024 to vacate the suit premises subject to filing of usual undertaking before this Court on or before 25 October 2024.

8) Pending Application (s), if any, stand (s) disposed of.

[SANDEEP V. MARNE, J.]