

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

WRIT PETITION NO.10364 OF 2023

Smt. Kalpana Sudhir Sadagale	...Petitioner
Vs	
Shekhar Anantrao Jadhav /Sarnaik	... Respondent

Adv. Manoj A. Patil for Petitioner.
Adv. Tanvi Tapkire for Respondent.

CORAM : RAJESH S. PATIL, J.

DATED : 6 MARCH 2024

P.C.:

1. RULE. Rule made returnable forthwith. With the consent of the parties, heard finally.

2. This writ petition filed under Article 227 of the Constitution of India, challenges the order dated 7 June 2022 passed by the Civil Judge Senior Division at Kolhapur on order below exhibit-10. The Civil Judge Senior Division at Kolhapur by its impugned order has rejected application exhibit-10 filed by the original defendant (tenant). Against the defendant an eviction suit was filed on the ground of “bona fide requirement”, “permanent additions and alterations” and “defaulter”, Defendant had preferred an application to deposit rent in the Court. The said application of the Defendant/tenant was opposed by the Landlord by filing reply. The CJSD at Kolhapur thereafter heard the parties and by its order has dismissed the application of the tenant. In the

impugned order the court in paragraph No.6 and 7 has recorded under :

6. From this it is clear that, Section 15(3) can be applicable only in case of arrears of standard rent and permitted increases, within a period of 90 days from the date of service of summons of suit. However, from the case record it is apparent that, the standard rent is not fixed in the present case. Therefore, the arguments advanced by the Ld. Advocate for the plaintiff inspires my confidence that, the provision is not applicable to the present case and for the sole reason the application deserves to be rejected.

7. It is worth mentioning here that, in the present application no prayer is made for permission to allow the rent amount as mentioned in the application, other than under Section 15(3) of the Act. In such circumstances, I have no reason to allow the present application. Hence, I pass following order, in the interest of justice.

3. Therefore, It appears from findings recorded that the Court should not accept the amount which according to defendant would be the outstanding rent and the rent payable in future. The said finding has been arrived by the Court in the view of the fact that the standard rent is not fixed in the present proceedings. So also it has been held that in the application preferred by the tenant there is no prayer seeking permission to allow the rent amount as mentioned in the application and hence, the application was rejected.

4. I have considered the findings arrived at by the CJSD, Kolhapur. It is the case of the tenant that he desired to deposit rent at the rate of Rs.275 per month. However, before me, learned advocate appearing for the landlord, on instructions, of her client submitted that the rent according to her client of the suit premises

is Rs.125 per month. Mr. Patel submits that even in the demand notice the said figure has been mentioned in paragraph no.2.

5. I have gone through the contents of the plaint in paragraph 9 of the plaint the plaintiff has categorically stated that the rent payable is Rs.125 per month. In the present proceedings tenant had desired to deposit a rent from category October 2019 at the rate of Rs.275 per month. In such a situation, where the tenant is ready and willing to deposit an amount of rent much more higher than what is claimed by the plaintiff, the learned Civil Judge Senior Division at Kolhapur should have, therefore, allowed the application exhibit-10 preferred by the defendant tenant.

6. Hence, the impugned order dated 7 June 2022 passed by the CJSD at Kolhapur is quashed and set aside. Application Exhibit-10 filed by the tenant, dated 17 January 2022 is allowed in terms of prayer clause (b) and (c). The tenant would deposit the amount of Rs.9,655/- within a period of two weeks before the Trial Court. Further, the outstanding amount from 17 January 2022 to March 2024 will also deposit within a period of two weeks from today. Henceforth, the tenant will also deposit a sum of Rs.275/- with the Trial Court on the 10 day of every month from April 2024 till the disposal of the suit. The above arrangement would be without prejudice to the rights and contentions of the parties.

(RAJESH S. PATIL, J.)