

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

**SECOND APPEAL NO. 467 OF 2023
WITH
IA/2716/2022 IN SA/467/2023**

Nisar Yusuf Nalband ... Appellant
Versus
Shankar Bala Kamble(Decd. Thr. L. Rs.)
Mohan Shankar Kamble And Ors. ... Respondents

....

Mr. Sumedh Modak, i/b. Mr. Vijay Killedar, for Appellant.
Mr. Ashok b. Rajane, a/w. Mr. Yogesh Thorat, for Respondent
Nos.1A & 1B.

....

CORAM : SANDEEP V. MARNE, J.

DATED : 14 MARCH 2024.

P. C. :

By this Appeal Appellant challenges Judgment and decree dated 17 April 2018 passed by the District Court, Satara in Regular Appeal No.258 of 2015. The First Appellate Court has allowed the Appeal filed by Respondents and has reversed the decree dated 26 November 2010 passed by the Civil Judge, Junior Division, Wai in Regular Civil Suit No.161 of 2003. First Appellate Court has held that Plaintiff is entitled to recover arrears of rent of Rs.3,600/- alongwith interest thereon at the rate of 18% p. a. from the date of suit till its realization. Appellant-Defendant has further been directed to handover vacant possession of the suit land to the Plaintiff. Defendant is further directed to pay rent of Rs.500/- per month from the date of suit

alongwith interest thereon at the rate of 18% per annum till realization or till recovery of possession of the suit land.

2. I have heard Mr. Modak, the learned counsel appearing for Appellant and Mr. Tajne, the learned counsel appearing for Respondent.

3. According to Mr. Modak, the tenure of the lease which came to an end on 31 October 1998 got extended on account of conduct of the Plaintiff who kept on accepting rent from the Defendant till issuance of notice dated 22 October 2001. He would submit that the very fact that the notice was issued after 03 years from the date of expiry of lease would itself indicate that the Plaintiff was interested in extending tenure of lease. He would rely upon provisions of Sections 111 (g) and 112 of the Transfer of Properties Act in support of his contention that the notice issued by the Plaintiff seeking recovery of possession got waived on account of Plaintiff's conduct in accepting loan from the defendant after service of notice. He would further submit that Plaintiff waited for a period of two years after service of notice and in the meantime accepted rent from the Defendants.

4. The entire controversy is about payment of rent by the Defendant to the Plaintiff. It is Mr. Modak's case that right from the date of execution of lease deed, Plaintiff never issued rent receipts to Defendant which is a reason why Defendant was unable to produce such rent receipt in respect of period after 31 October 1998. The First Appellate Court has arrived at a conclusion that once Plaintiff came out with a case that Defendant defaulted on payment of rent after 31 October 1998, it was for the Defendant to prove payment of rent. What is more interesting is the fact that after service of notice dated 22

October 2001, Defendant claims that he continued payment of rent to the Plaintiff. However, even after Defendant acquiring knowledge about Plaintiff's desire to seek recovery of possession of the land on account of nonpayment of rent, Defendant did not ensure that the rent was paid either through money orders or bank transfer, etc. of which some proof could have been produced before the Court. Beyond a bold statement of payment of rent after 31 October 1998, Defendant could not prove such payment. In my view therefore, the decree of eviction passed by the First Appellate Court directing Defendant to handover vacant possession of suit land to Plaintiff cannot be found faulted with.

5. Mr. Modak would raise a grievance about direction of the First Appellate Court for payment of interest at the rate of 18% p.a. He would submit that such direction is issued in the nature of compensation in absence of any prayer made to that effect Mr. Tajane, after taking instructions, fairly submits that his client is willing to forgo interest and the direction for payment of interest at the rate of 18% p.a. on the amount of arrears of rent can be set aside.

6. I am of the view that, no substantial question of law is involved in the Appeal. Except to the limited extent of award of interest at the rate of 18% p.a. on the amount of arrears on rent, which the Plaintiff is willing to waive, no interference at the instance of this Court under provisions of Section 100 to Civil Procedure Code is warranted in the decree of the First Appellate Court. Second Appeal is accordingly partly allowed to the limited extent of direction for payment of interest while upholding the rest of the decree. As agreed by the Plaintiff, the direction for payment of interest at the rate of 18% p.a. on amount of arrears of rent of Rs.3,600/- as well as amount of rent of Rs.500/- is set aside. With the above directions Second Appeal is

disposed of. Decree stands modified. Since the Appeal is disposed of nothing survives in the Interim Application and it is also disposed of.

SANDEEP V. MARNE, J.

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