



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 1104 OF 2011

Shri Ramchandra s/o Sakaram Mahajan
(since deceased) through LR
Sunil s/o Ramchandra Mahajan,
aged about 60 years, Occ. Tax Practitioner,
R/o Mahajan Market, Sitabuldi, Nagpur.

...PETITIONER

Versus

Hafeez s/o Rahim Beg
(since deceased) through Lrs

- i] Razia Baig wd/o Hafeez Baig,
aged about 71 years, Occ. Business.
- ii] Shakeel Baig s/o Hafeez Baig,
aged about 52 years, Occ. Business.
- iii] Ashfaq Baig s/o Hafiz Baig,
aged about 50 years, Occ. Business.
- iii-a] Altaf Baig s/o Hafiz Baig,
aged about 37 years, Occ. Business.

All above R/o Near Prakash Hospital,
Near Residency School, Residency Road,
Sadar, Nagar – 440007.

- iv] Anjun Khan w/o Rizwan Khan (D/o Hafeez Baig),
aged about 44 years, Occ. Housewife.
- v] Tabassum Khan w/o Javed Khan (D/o Hafeez Baig),
aged about 44 years, Occ. Housewife.

Respondent nos. iv and v are R/o 49, Kamgar Nagar,
Near Police Line Takli, Nagpur – 440013.

...RESPONDENTS

Shri R.M. Sharma, Counsel for the petitioner.
None for the respondents.

CORAM : ANIL L. PANSARE, J.

DATE : JUNE 20, 2024

ORAL JUDGMENT :

On 5/1/2023, the following order was passed :

“In a suit by the landlord for eviction on the ground of the arrears of rent having been demanded and not paid and thereafter not paid regularly within the meaning of Section 15 (3) of the Maharashtra Rent Control Act (for short “MRC Act”), the learned Trial Court by the judgment dated 27.04.2009 (page 55) directed eviction of the respondent/tenant from the suit premises and also an enquiry into future mesne profit.

2. In appeal, the Appellate Court by the judgment dated 30.11.2010 (page 82), has quashed and set aside the judgment to the extent of ejectment of the respondent/tenant from the suit premises.

3. The relationship of the landlord and tenant is an admitted position so also in view of the judgment in Letters Patent Appeal No. 108/2012 decided on 28.06.2012 the finding rendered therein, that the tenancy from month to month cannot now be gone into. The only question is whether eviction ought to be ordered on account of the rent not been paid regularly within the meaning of Section 15(3) of the MRC Act.

4. Mr. Sharma, learned counsel for the petitioner/landlord submits, that the obligation of the respondent/tenant to pay the rent in a tenancy which is month to month is monthly and each and every occasion when the rent is not paid for the particular month the same would result in a default thereby attracting the provisions of Section 15(3) of the MRC Act mandating eviction. He further submits, that even if during the pendency of the suit, the payment is not

paid from month to month or deposited in the Court, that would also buttress the plea regarding Section 15(3) of the MRC Act. It is also contended, that even if certain amounts are paid during the pendency of the suit, that by itself, would not whittle the rigor of Section 15(3) of the MRC Act. He further submits, that inspite of the tenant being aware of this position and his obligation to pay rent monthly, he has not paid the rent from January 2016 till March 2017 on account of which Civil Application (CAW) No. 689/2018 was filed before this Court which has been disposed of on account of deposit of payment of rent subsequently. He therefore submits, that the entire conduct of the respondent/tenant, would indicate that he has been regularly irregular in payment of rent, and therefore, the mandate of Section 15(3) of the MRC Act, would require direction of eviction. It is contended, that the learned Appellate Court clearly erred in law, in overturning the decree passed by the learned Trial Court merely on the ground that the payment was being made on year to year basis (para 20 page 80), and therefore, there were no arrears. He further contends, that the reliance by the learned Appellate Court on provisions of Section 55 of the MRC Act, to hold that since there was no written agreement, the version of the respondent/tenant would prevail, is clearly misconceived as admittedly since the tenancy was oral, the provisions of Section 55 of the MRC Act, would not be attracted for which reliance is placed on Mangesh Dnyaneshwar Fulzele Vs. Mohan Purushottam Agrawal (HUF), Thr. Its Karta Mohan Purushottam Agrawal, Writ Petition No. 4293/2018 decided on 12.02.2019 para 7. He therefore submits, that since the default in payment for rent every month, is writ large on the face of record the decree of eviction as passed by the learned Small Causes Court, ought not to have been upset by the learned Appellate Court, for which reliance is placed upon Suman Shankar Unde since deceased through her LRs. Shankar Martand Unde Vs. Shamsunder Lekhraj Khatri, 2005 (4) Mh.L.J. 462 para 7.

5. *Mr. Bastian learned counsel for the respondent/tenant, is absent.*

6. *In order to afford an opportunity, list the matter on 11.01.2023.”*

As could be seen, to afford an opportunity to the respondents, the petition was listed on 11/1/2023. Since then, the petition was listed from time to time, but none appeared for the respondents. In the circumstances, the petition is taken-up for final hearing in absence of the respondents.

2] The learned Counsel for the petitioner submits that the petitioner – landlord had filed a suit against the defendant – tenant for eviction on the ground of arrears of rent.

3] The trial Court has found that the respondent did not deposit rent regularly in terms of sub-section (3) of Section 15 of the Maharashtra Rent Control Act, 1999 (for short “Act of 1999”). The provision reads thus :

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

(1) XXXX

(2) XXXX

(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.”

Thus, sub-section (3) provides that not only the tenant is required to pay or tender in Court the standard rent and permitted increases, if due, but continue to pay or tender in Court regularly such standard rent and permitted increases till the suit is finally decided and also pay cost of the suit as directed by the Court.

4] In the present case, it appears that pending suit, the respondent failed to tender in Court the amount of rent regularly and accordingly the Court below passed an order of eviction against the respondent.

5] The learned Counsel for the petitioner submits that the First Appellate Court has, by taking recourse to Section 55

of the Act of 1999, reversed the finding. The First Appellate Court has taken a view that since there was no written agreement, the contention of the tenant (respondent herein), about the terms and conditions subject to which the premises under question was given to him by the petitioner – landlord on rent, shall prevail.

6] The learned Counsel for the petitioner submits that the respondent, in his written statement, has pleaded that the tenancy was monthly tenancy, but used to pay rent in lumpsum for years together. The First Appellate Court has accordingly found that the rent was being paid in lumpsum for years together and inferred that the parties agreed for payment of rent in lumpsum.

7] This finding is said to be erroneous. The petitioner has taken aid of the judgment of a Co-ordinate Bench of this Court delivered in *Writ Petition No. 4293/2018 [Mangesh Dnyaneshwar Fulzele Vs. Mohan Purushottam Agrawal (HUF) thr. its Karta Mohan Purushottam Agrawal* decided on

12/2/2019]. The Court, while dealing with sub-section (2) of Section 55 of the Act of 1999, has held that sub-section (2) of Section 55 would first require an agreement for leave and licence in writing, and if such agreement in writing had existed, the burden of getting of the same registered would be on the respondent, and in absence thereof, the tenant would be justified in contending that the terms and conditions of such agreement, as raised by the tenant, will have to be accepted. The Court then proceeded to hold that in the case before it, since the agreement was oral, the benefit as sought in terms of sub-section (2) of Section 55 was not available to the tenant.

8] Similar are the facts in the present case. The agreement of tenancy is oral. The respondent has admitted, in written statement, that it was monthly tenancy. In the circumstances, the First Appellate Court could not have taken aid of sub-section (2) of Section 55 of the Act of 1999 to overturn the well reasoned findings of the trial Court, which even otherwise is supported by the judgment of a Co-ordinate Bench of this Court in the case of *Suman Shankar Unde since*

deceased through her Lrs. Shankar Martand Unde Vs. Shamsunder Lekhraj Khatri [2005(4) Mh.L.J. 462]. In the said case, the suit was filed by the landlord on the ground of defaults in payment of rent. The tenant therein failed to deposit standard rent and permitted increases in the trial Court till decision of the suit. This Court held that there was total failure on part of the tenant to comply with the mandate of Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (which is *pari materia* of Section 15 of the Act of 1999) and upheld the order passed by the trial Court granting decree of ejectment in favour of the landlord.

9] In the light of above, the petitioner has made out a case in his favour, particularly when his submissions remained uncontroverted because of the absence of the respondent. The impugned judgment is thus unsustainable.

10] Accordingly, the judgment and decree dated 30/11/2010 passed by the District Judge – 9 & Additional Sessions Judge, Nagpur, in Regular Civil Appeal No. 270/2009,

is quashed and set aside. The judgment and decree dated 27/4/2009 passed by the 2nd Additional Judge, Small Causes Court, Nagpur, in Regular Civil Suit No. 110/2008, is restored.

11] Rule is made absolute in the aforesaid terms.

JUDGE

Sumit