



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 2233 OF 2021

Mrs. Shobha Shrichand Kungwani,
aged about 64 years, Occ. Proprietor,
Hina Jewellers, Opp. Bata Shop,
Beside New Medical Stores, Bhandara Road,
Itwari, Nagpur – 440002.

...PETITIONER

Versus

Mr. Hasan s/o Abdullah Dawawala,
aged about 38 years, Occ. Business,
M/s. New Medical Stores, Bhandara Road,
Itwari, Nagpur – 440002.

...RESPONDENT

Shri V.V. Bhangde, Counsel for the petitioner.
Shri R.M. Sharma, Counsel for the respondent.

CORAM : ANIL L. PANSARE, J.

ARGUMENTS WERE HEARD ON : JULY 24, 2024

JUDGMENT IS PRONOUNCED ON : AUGUST 12, 2024

JUDGMENT :

Rule. Rule made returnable forthwith and heard the
learned Counsel for the parties at the stage of admission itself.

2] The petitioner – original defendant is aggrieved by
the judgment and decree dated 16/2/2021 passed by the
Ad hoc District Judge – 3, Nagpur, in Regular Civil Appeal No.

284/2019. By said judgment, the Appellate Court allowed the appeal, thereby set aside the judgment and decree dated 30/4/2019 passed by the Additional Judge, Small Causes Court, Nagpur, in Regular Civil Suit No. 196/2015.

3] The respondent – plaintiff had filed a suit for recovery of possession, arrears of rent, occupational charges and permitted increase. The subject matter of the suit is/was a shop block admeasuring 44 square feet situated on ground floor in two storied building bearing house no. 688, ward no. 44, Bhandara Road, Itwari, Nagpur. The respondent averred that the petitioner was paying monthly rent of Rs.770/ and municipal tax of Rs.1212/- per year. The respondent then claims that the petitioner was duty bound to pay monthly rent along with 4% increase from 1/4/2000 to 1/4/2014. According to the respondent, the petitioner was in arrears of rent with enhanced rent and permitted increase to the tune of Rs.21597.58 Paise and further has also not paid municipal taxes for the period from April – 2006 to March – 2014

amounting to Rs.9,696/-. The respondent then states that he issued notice dated 28/10/2014 calling upon the petitioner to pay arrears of rent for the period from 1/3/2014 to 30/9/2014 along with permitted increase or in the alternative to vacate the suit shop. The petitioner did not comply the notice and, therefore, the suit came to be filed, which was contested by the petitioner by filing written statement.

4] Having heard both sides at length and having gone through the record, it is evident that the respondent, for the first time, vide notice dated 28/10/2014 called upon the petitioner to pay permitted increase.

5] Section 11 of the Maharashtra Rent Control Act, 1999 (for short “the Act of 1999”) provides that after commencement of the Act, a landlord shall be entitled to make an increase of 4% per annum in the rent of the premises. Thus, what is provided is that a landlord shall be entitled to make an increase of 4% per annum. However, the said provision only entitles a landlord to make an increase of 4% and, thus, the

said increase is not automatic. Therefore, unless a landlord makes a demand to that effect, there cannot be increase in rent. In the present case and as stated above, the respondent has, for the first time, vide notice dated 28/10/2014, called upon the petitioner to pay permitted increase. This increase, therefore, can be claimed from the month of November – 2014 and not prior thereto.

6] As regards rent, there appears no dispute that the petitioner was paying monthly rent of Rs.770/-. There is further no dispute that after receipt of suit summons, the petitioner has deposited arrears of rent in terms of sub-section (3) of Section 15 of the Act of 1999.

7] The petitioner has placed on record two charts showing calculations of rent for the period from October – 2014 to February – 2021. One chart contains permitted increase prior to filing suit, i.e., prior to April – 2015, which includes permitted increase for the period from April – 2002 to April – 2015. The other chart contains permitted increase

subsequent to filing suit, i.e., subsequent to April – 2015. The respondent has not disputed these two charts.

8] If the first chart is considered, the petitioner can be said to have committed defaults in payment of rent even after filing suit. However, if the second chart is considered, the petitioner has paid rent well in time, rather has paid advance rent and was never in arrears of rent pending suit.

9] The moot question, therefore, is whether the respondent was right in claiming permitted increase for the period from 1/4/2002 to 1/4/2015. The answer is in the negative for the reasons stated in paragraph no.5 above. The respondent will be entitled for permitted increase of 4% with effect from November – 2014 and not prior thereto because the notice claiming permitted increase was issued, for the first time, on 28/10/2014.

10] The suit has been filed in April – 2015. The petitioner has, in July – 2015, deposited Rs.62,000/-as against

Rs.28991.5 Paise towards arrears, which includes payment of rent due plus municipal taxes plus 15% on arrears of rent. Thus, the petitioner has deposited Rs.33,000/- as advance rent and continued to deposit lump sum amount in the intervening period pending suit and by February – 2021, an amount of Rs.54,000/- approximately was lying to the credit of the respondent towards advance rent. Thus, pending suit, the petitioner has duly complied with the requirement of sub-section (3) of Section 15 of the Act of 1999.

11] The Appellate Court, however, in paragraph 22, has erroneously held that the petitioner though paid rent in lump sum, was in arrears of rent for the month of December – 2017, January – 2018, February – 2018, April – 2019 to September – 2019, December – 2019 to February – 2020. This finding is contrary to the chart of calculations of rent mentioned above.

12] The learned Counsel for the respondent submits that the petitioner can be evicted in terms of sub-section (1) of Section 15 of the Act of 1999, having failed to pay rent

regularly.

13] In support, he has relied upon judgment of Full Bench of this Court in the case of *Babulal s/o Fakirchand Agrawal Vs. Suresh s/o Kedarnath Malpani and others* [2017(4) Mh.L.J. 406]. The issue referred for consideration to the Full Bench was as under :

“If the tenant complies the notice issued by the landlord demanding arrears of rent and pays the entire amount as demanded within the time stipulated under section 15(2) of the Maharashtra Rent Control Act, then whether the landlord can still file a suit for eviction on the ground of arrears of rent and whether the eviction can be ordered by invoking provisions of section 15(3) of the Maharashtra Rent Control Act ?”

The reference has been answered as under :

“25. To infer that once the tenant pays the amount recorded in the notice or tenders the same, the landlord has no right to institute a suit for recovery of possession for non-payment of those arrears or continue with such proceeding for eviction and no decree for possession can be asked for, is not within contemplation of provisions of section 15 of the Act. The provision does not interfere with the right of the landlord to initiate proceeding for eviction, however, sub-section (2) of section 15 prescribes precondition for presentation of suit, that is to say that no suit can be initiated without issuing a notice within contemplation of said sub-section (2) of section 15 and tenant's entitlement to

claim relief against forfeiture shall be subject to fulfilment of conditions stipulated under sub-section (1) and (3) of section 15 of the Rent Act.”

In doing so, the Full Bench has ratified the view expressed by the Division Bench in the matter of *Chandiram Dariyanumal Ahuja Vs. Akola Zilla Shram Wahtuk Sahakari Sanstha, Akola* [2013(1) Mh.L.J. 28]. The learned Counsel for the respondent has invited my attention to paragraph 9 of the judgment, wherein the finding in the case of *Chandiram Dariyanumal Ahuja (supra)* was reproduced. Paragraph 9 reads as under :

“9. After taking survey of various judgments, the Division Bench has observed in paragraph No. 18 of the Chandiram's case as under :

18. The entire Scheme of Chapter III relief against forfeiture, as provided under the provisions of section 15, indicates that a tenant can perform his obligation and then claim protection in the form of relief against forfeiture as forfeiture occurs in accordance with general law governing lease under the Transfer of Property Act. The provision protects the tenant from the forfeiture when the tenant is paying rent or has proved his readiness and willingness to pay it. Section 15(3) added further obligation upon the tenant to pay entire arrears till date with interest and costs, as may be ordered by the Court. If tenant is continuing to pay rent due during the pendency of the suit instituted against him on the ground of non-payment of standard rent and permitted increases,

then such tenant is entitled to claim relief against forfeiture of tenancy. To put it otherwise, when tenant does not pay rent as agreed or pays rent only when legal notice is served upon him or Court summons is issued against him, the landlord is not helpless because sub-section (1) of section 15 enables the landlord to insist upon the tenant to pay rent and perform the conditions of tenancy. The tenant who disobeys legal provisions under section 15(1) of the Act can be evicted independently, though such tenant may not necessarily be in arrears of rent on the date of institution of the suit. A tenant who is prompted or induced to pay only after service of legal notice or after service of Court summons cannot be viewed as a tenant who either pays or is ready and willing to pay standard rent and permitted increases. Section 15 of the Maharashtra Rent Act has extended protection to a tenant after the landlord seeks to exercise his right to forfeit the tenancy in accordance with the provisions of general law. A tenant, in order to claim relief against forfeiture of tenancy, gets a period of 90 days after service of pre-suit statutory demand notice by the landlord calling upon the tenant to pay entire arrears of standard rent and permitted increases payable to the landlord. Thereafter when suit is filed, the tenant gets additional opportunity to pay entire arrears of rent and permitted increases demanded after the suit summons is served upon him. Such a tenant has a period of 90 days from the date of service of suit summons to pay or tender the arrears of rent with simple interest thereupon @ 15% p.a. During pendency of the suit, the protection is available as above to the tenant to claim relief against forfeiture of tenancy provided that the tenant shall continue to be regular in payment of standard rent and permitted increases payable during the pendency of the suit as also costs of the suit as directed by the Court. The Court cannot be oblivious of landlords who may have to survive only on rental income. Habitual irregular payment of rent and permitted increases by the tenant will prejudice and jeopardize very survival of such

landlords who survive on rental income only. Therefore, such a tenant who may be habitually irregular in payment of standard rent and permitted increases can invite eviction in view of section 15(1) of the Maharashtra Rent Act when the Court considers the case of such a tenant who commits breach of conditions of tenancy as also remains habitual in rental arrears. In such exceptional case, provisions of section 15(1) are applicable and procedural compliances under section 15(2) and 15(3) will not apply.”

The learned Counsel for the respondent submits that a tenant, who disobeys the legal provisions under Section 15(1) of the Act of 1999, can be evicted independently. He further submits that a tenant, who is prompted or induced to pay only after service of legal notice or after service of Court summons cannot be viewed as a tenant. He further submits that since the petitioner herein was in arrears of rent at the time of filing suit and has deposited arrears only after filing suit, he could be evicted in terms of sub-section (1) of Section 15 of the Act of 1999.

14] I do not find substance in the aforesaid contentions inasmuch as the learned Counsel for the respondent has conveniently ignored the later part of the finding rendered in

Chandiram Dariyanumal Ahuja's case. The Division Bench continued further and later referred to sub-section (3) of Section 15 of the Act of 1999 to say that a tenant, in order to claim relief against forfeiture of tenancy, gets a period of 90 days after service of pre-suit statutory demand notice and thereafter when suit is filed, the tenant gets additional 90 days to pay entire arrears of rent and permitted increase demanded after the suit summons is served upon him. The Court has then held that protection is available as above to the tenant to claim relief against forfeiture of tenancy provided the tenant continue to be regular in payment of standard rent and permitted increases payable during the pendency of the suit. Thus, the Division Bench has held that the tenant who pay arrears of rent within 90 days from the date of service of suit summons with interest of 15% and thereafter continues to pay the standard rent and permitted increase payable to the landlord during pendency of suit, he is entitled for relief against forfeiture of tenancy. As an exception, the Division Bench observed that the tenant can be evicted under Section

15(1) of the Act of 1999, like when landlord's survival is dependent on rental income. Such is not the case here.

15] The judgment of the Division Bench has been referred by the Full Bench to answer the reference, i.e., whether the landlord can file a suit for eviction on the ground of arrears of rent and whether the eviction can be ordered by invoking provisions of Section 15(3) of the Act of 1999 despite compliance of notice by the tenant. The Full Bench answered that once the tenant pays the amount recorded in the notice or tenders the same, the landlord has no right to institute a suit for recovery of possession for non-payment of those arrears. The Full Bench then clarified that the provision does not interfere with the right of landlord to initiate proceedings for eviction, subject to compliance of sub-section (2) of Section 15 and further that the tenant's entitlement to claim relief against forfeiture of tenancy shall be subject to fulfillment of conditions stipulated under sub-sections (1) and (3) of Section 15 of the Act of 1999. Thus, the tenant is entitled to claim

relief against forfeiture of tenancy subject to fulfillment of conditions stipulated under Section 15 of the Act of 1999. The petitioner has fulfilled the conditions. In the circumstances, when the respondent failed to make out a case of exception and when the First Appellate Court has not allowed the appeal on the count of exception and when the petitioner has duly fulfilled the conditions stipulated under sub-section (3) of Section 15, the judgment of the Division Bench will be of no advantage to the respondent.

16] The learned Counsel for the respondent has then relied on the judgment passed by the co-ordinate Bench of this Court in the case of *Balaji Devasthan, Itwari, Nagpur, through its Secretary Vs. Dhannalal Ramchand Bhagat (since deceased) through legal representatives Shri Mohankumar s/o Dhannalal Bhagat (since deceased) through representatives Smt. Kantabai wd/o Mohankumar Bhagat & Ors. [Writ Petition No. 3270/2015 decided on 22/1/2018]*, which has been also relied upon by the First Appellate Court to observe that if tenant fails

to show that there was a condition for payment of rent in lump sum, he would under obligation to pay rent every month. This is, however, not the ratio in the aforesaid judgment. The Court was considering the case under Section 15(3) of the Act of 1999 and found that tenant therein failed to establish that there was practice of paying rent in lump sum on demand by the landlord and, therefore, he was under obligation to pay rent regularly, i.e., every month. The Court noted that tenant failed to pay/deposit the amount of rent regularly during pendency of Civil Suit and also during pendency of appeal before the District Court. Accordingly and for non-compliance of Section 15(3) of the Act of 1999, the Court held that the tenant is liable to suffer decree for eviction.

17] In the present case, the facts are altogether different. It is not even the case of the petitioner that the practice between the parties was to pay rent in lump sum on demand by the respondent and, therefore, the issue whether such practice was adopted was never tried by the trial Court.

Secondly, the petitioner has deposited the rent in advance though in the form of lump sum payment. There is no bar, as such, to deposit the rent in advance even in the case where the tenancy is monthly. The moot question is whether the tenant has paid/deposited the amount of rent regularly. In the present case, at no point of time during pendency of suit or appeal, the tenant was found to have committed any default in payment of rent.

18] The learned Counsel for the petitioner has rightly placed reliance upon the judgment in the case of *Mohan Laxman Hede Vs. Noormohamed Adam Shaikh [(1988) 2 SCC 481]*, where the Hon'ble Supreme Court, while considering the scope of Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "Bombay Rent Act"), which is *pari materia* Section 15 of the Act of 1999, has observed that though the tenant was in default on few occasions as got little late ranging from 2 days to 23 days in depositing monthly rent, the rent for most of the months was

deposited in advance. Accordingly, the Supreme Court held that the tenant has deposited the rent with reasonable punctuality and can be said to have deposited the rent regularly as contemplated under Clause (b) of sub-section (3) of Section 12 of the Bombay Rent Act.

19] In the present case, the petitioner is on a better footing than the tenant before the Supreme Court in the above case. The petitioner here has deposited the entire arrears within stipulated time in terms of Section 15(3) of the Act of 1999 and further continued to pay the rent pending proceedings before the trial Court and the First Appellate Court. The petitioner has duly fulfilled the conditions stipulated under sub-section (3) of Section 15 of the Act of 1999 and, therefore, is entitled for relief against forfeiture of tenancy.

20] The Appellate Court has failed to consider the aforesaid status and further failed to take into account the benefit under sub-section (3) of Section 15 of the Act of 1999

and rendered a perverse finding. The judgment impugned is, therefore, unsustainable in law.

21] Accordingly, the Rule is made absolute. The judgment and decree dated 16/2/2021 passed by the Ad hoc District Judge – 3, Nagpur, in Regular Civil Appeal No. 284/2019, is quashed and set aside. The judgment and decree 30/4/2019 passed by the Additional Judge, Small Causes Court, Nagpur, in Regular Civil Suit No. 196/2015, is restored.

JUDGE

Sumit