



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.41 OF 2024

Sanjay Bapurao Londhe And Others.

VERSUS

Atul Fulchand Munot (Power of Attorney Holder)

Chandrashekhar Dattatraya Gongale.

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Advocate for applicants : Mr. N.C. Garud

Advocate for Respondents : Mr. P. D. Digraskar

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CORAM : S. G. CHAPALGAONKAR, J.

Reserved on : April 02, 2025

Pronounced on : June 09, 2025.

FINAL ORDER :-

1. The applicants/original defendants impugn the judgment and order dated 6.2.2023 passed by the District Judge, Ahmednagar in Regular Civil Appeal No.466 of 2019, thereby upholding the judgment and decree dated 18.11.2019 passed by the Civil Judge J.D., Ahmednagar in Regular Civil Suit No.776 of 2012, by which the decree of eviction under the Provisions of the Maharashtra Rent Control Act, 1999 (for short the Rent Act) has been passed. (Parties hereinafter are referred to as per their original status).

2. The respondent/plaintiff is owner of CTS No.5113, having municipal house no.4663, admeasuring 54.3 square meters. In all three rooms of constructed portion are let out to defendants for residence purpose. The Standard rent was fixed @ Rs.100/- per month excluding electricity charges. According to the plaintiff, defendants failed to regularly pay agreed rent. They are defaulters since 15.4.2005. Further, plaintiff bonafide needs suit property for his own use as his children were growing. On 3.11.2021 plaintiff served a notice of termination of tenancy to defendants, demanded arrears of rent, mesne profit and asked defendants to hand over vacant possession. Defendants failed to comply the aforesaid notice. Conversely, they denied landlord/tenant relationship with plaintiff vide reply dated 8.11.2011. Hence, plaintiff filed suit for eviction and possession of suit property and recovery of arrears of rent.

3. Defendants refuted plaintiffs claim on all counts. Trial Court framed issues based on pleadings of the parties, recorded evidence and concluded that plaintiff proved bonafide requirement of residence. The issue of comparative hardship is also decided in favour of plaintiff. However, Trial

Court refused to accept other grounds of eviction set out by the plaintiff.

4. Aggrieved defendants filed Regular Civil Appeal no.466 of 2019 before the District Judge, Ahmednagar. Plaintiff also filed cross-objection assailing adverse findings. Learned District Judge, after hearing respective parties, pleased to uphold finding of Trial Court on the point of bonafide need of the plaintiff so also allowed cross-objection of the plaintiff that defendants are defaulters in payment of rent from 15.4.2005 to 31.10.2011 and during pendency of proceeding.

5. Mr. N.C. Garud, learned advocate appearing for applicant vehemently submits that both the Courts below recorded erroneous findings on the point of bonafide requirement and comparative hardship. He would further submit that appellate court erroneously allowed cross-objection of plaintiff and recorded finding of default against defendants. Mr. Garud invites attention of this Court to admission of plaintiff that he has purchased two properties i.e. CTS No.5113 and 5124, which are adjacent to the suit property. Apart from that, plaintiff's wife is having her business in an independent office at 'Ashtavinayak Apartment'. He would further point out

that' plaintiff runs his business through mobile phone and does not require independent office space. There are only four members in plaintiff's family; as against nine members in the family of defendants. As such, issue of comparative hardship ought to have been decided in favour of defendants. Mr. Garud would further submit that defendants have deposited amount of rent in the Court since 2005 to 2011. Receipts are produced on record. Therefore, finding on the point of default is also contrary to the record. He would therefore urge that impugned judgment and decree under revision be quashed and set aside.

6. Per contra, Mr. P.D. Digraskar, learned advocate appearing for respondent/plaintiff submits that defendants cannot dictate upon plaintiff to compromise his bonafide need. Landlord is the best judge of his residential requirement. In present case, plaintiff has family consisting of two children who are taking education. The family has need of additional space to ensure comfort of children. Although, plaintiff was managing his business through Mobile, he cannot continue business in same manner without having his own office. Defendants were served with eviction notice, but they made no

efforts to find out alternate premises. Therefore, the comparative hardship is not established by them by leading cogent evidence. Mr. Digaskar, would also point out that, as per section 15 (3) of the Rent Act, land lord is entitled to recover possession if the tenant is in default in making regular payment of rent. In the present case, suit property has been leased out on monthly tenancy. Defendants failed to pay rent. Even, during pendency of this proceeding, from 2015 onwards, they made no deposit towards rent. Eventually, the Appellate Court has rightly recorded findings on all points and confirmed decree of eviction on the count of bonafide requirement as well as answered issue of default in favour of plaintiff. According to him, concurrent findings on the point of bonafide requirement and the finding on the point of default recorded by the District Court needs no interference in revisional jurisdiction of this Court. In support of his contentions, he relies upon observations of Single Judge of Allahabad High Court in case of **Zulfikar Ahmad and 7 others Vs. Jahangir Alam** reported in **2024 AHC 185522**.

7. Having considered the submissions advanced, it can be observed that a decree of eviction has been passed

against applicants/defendants on two counts i.e. bonafide requirement of the landlord and default on the part of tenant to pay agreed rent.

8. So far as of bonafide requirement is concerned, plaintiff has categorically pleaded that to meet out need of his family, particularly growing children who are taking education in 10th standard and 8th standard, separate rooms are required for their study. Similarly, he do not have separate office space for his business. Even, he do not have space to accommodate guests. Plaintiff stepped into witness box and reiterated his contentions as to bonafide need. Although, he admitted during cross-examination that he has purchased CTS No.5113 and 5124 situated opposite to suit property, separated by road in between, it has come on record that CTS No.5124 is open space. Even otherwise, nothing is brought on record to show plaintiff has suitable office space for his business or alternate suitable property to meet out his bonafide needs. At this stage, reference can be given to the observation of Supreme Court in case of **Kanhaiya Lal Arya Vs. Md. Eshan and others (Arising out of SLP © No.21965 of 2022)**, in paragraph no.10 reads thus :-

“10. The law with regard to eviction of a tenant from the suit premises on the ground of bonafide need of the landlord is well settled. The need has to be a real one rather than a mere desire to get the premises vacated. The landlord is the best judge to decide which of his property should be vacated for satisfying his particular need. The tenant has no role in dictating as to which premises the landlord should get vacated for his need alleged in the suit for eviction.”

9. In this case, it is not disputed that plaintiffs family consists of two children and wife and he require suit property for his own use. The Trial Court as well as Appellate Court have rightly dealt with aforesaid aspects and recorded finding that plaintiff bonafide needs suit property for his accommodation.

10. It light of observations of the Supreme Court in case of Kanhaiya Lal (supra), once it is established that, plaintiff has no alternate and suitable accommodation, the question of bonafide need has to be answered in his favour. The land lord can occupy as much as space for his business or comfortable accommodation of his family members. In such, case even assuming that the landlord has some kind of alternative accommodation, his judgment as to suitability of particular property cannot be objected by the tenant. The tenant cannot dictate the landlord to occupy particular

property in a particular manner or compromise his needs to accommodate the tenant. It is possible that a landlord, who was earlier managing in a smaller space, with growth of his family or business or change of life style, may need larger space for his own use. In such cases also, the tenant cannot be permitted to dictate landlord to shrink his need.

11. It is true that, comparative hardship will have to be examined depending upon facts of each case. However, the burden to prove comparative hardship would be on the shoulder of the tenant. In the present case, defendants failed to adduce evidence to show that despite their efforts, they couldn't find comparable or suitable accommodation for their family. Defendant candidly admitted during cross-examination that he didn't employ efforts in that regard. Only defence put into service is plaintiff's admission that defendants may not get suitable accommodation at the same rent. However, that itself cannot be the reason to accept comparative hardship to tenant. If tenant is occupying suit property for years together with meager rent, without adding permissible increments, he cannot expect that he will get alternate accommodation for same rent. Hence, no fault can be found in the finding

recorded by Courts below on issue of comparative hardship or bonafide need of landlord.

12. Second ground of eviction approved by appellate court is default of defendant in paying agreed monthly rent. Section 15 (3) of the Rent Act entitles landlord to recover possession of suit property from tenant, in case, tenant fails to pay standard rent and permitted increase. However, such decree can be passed subject to riders incorporated in sub-clause (1) & (2) of section 15 of the Act. In the present case, Trial Court observed in paragraph 34 that since 2005, defendants failed to pay the standard rent hence, in view of section 15 (3) of the Rent Control Act, plaintiff is entitled to recover possession of the suit property. However, such observations were not carried forward while answering issue no.1 although it deals with default in payment of rent for the period from 15.4.2005 to 31.10.2011. Appellate Court elaborately dealt with aforesaid aspect. In paragraph no.15, appellate Court observed that Deposit of rent was as per whims and not regular as expected under section 15 of the Act. At this stage, reference can be made to observations of the Supreme Court of India in case of **Vijay Amba Das Diware &**

Ors. Vs Balkrishna Wamaii Dande & Anr reported in (2000)

AIR (SCW) 1117. Paragraph nos.12 to 14 reads thus :-

“12. The Civil Court did not restrain the tenant from his legal liability to pay rent regularly at the end of the month and he was only directed to deposit the rent in the Court instead of paying to the landlord. We are, therefore, unable to accept the contention that the tenant had no legal liability to deposit rent regularly in the Court till the amount was fully satisfied.

13. In the application before the Controller it was alleged by the landlord that the tenant was in arrears of rent from 1-4-76 to 31-12-83 for about 93 months amounting to Rs.5,766/- and that the tenant deposited Rs.4,000/- in civil Court in view of the above order by four installments leaving balance of Rs. 1,766/-. In the written statement the above averments have not been denied but plea taken was that rent was to be paid as per the convenience of the tenant which was rejected by both the authorities below.

14. The above manner of depositing rent in installments clearly shows that the tenant repeatedly and continuously defaulted in payment of rent and he was, therefore, habitual defaulter. He was also in arrears of rent as he did not pay the full amount of rent.”

13. In light of aforesaid exposition of law, it can be observed that, Appellate Court has rightly adopted interpretation of word “Regularly” used in section 16 and noted that payment of rent must be substantive proximate to sequence of payments. Where rent is payable monthly; tenant must deposit rent every month as it falls due. As such, irregular payment of rent depicting inconsistent frequency can not be treated as compliance of mandate under section 15 of

the Act. Whimsical or irregular deposits without adhering to concept of monthly tenancy will have to be treated as tenants default in payment of regular rent.

14. In the present case, Appellate Court rightly recorded finding of default against the tenant. In result concurrent decree of eviction is maintained and Civil Revision Application is **rejected**. No costs. Pending civil application, if any, stands disposed of.

(S. G. CHAPALGAONKAR)
Judge.

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aaa- (final)