



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 735 OF 2024

Tejas S/o Sharad Mahajan,
Through Power of Attorney Holder
Sharad S/o Mahadeo Mahajan,
Aged about 68 years, Occ.-Retired,
R/o. Mahajanwada, Sitabuldi,
Nagpur – 12.

.... **PETITIONER**

// **VERSUS** //

Pralhad S/o Gorakhnath Khemuka,
Aged about 75 years, Occ.-Business,
R/o. 16, New Verma layout, Nagpur.
Also at :
“Sachin Tailors”,
Mahajan Market, Sitabuldi,
Nagpur – 440012.

.... **RESPONDENT**

Mr. Adwait Manohar, Advocate with Mr. R. N. Borwankar,
Advocate for petitioner.
Mr. R. V. Shah, Advocate for respondent.

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 27th MARCH, 2025.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith.
2. Heard finally with the consent of the learned counsel appearing for the parties.

3. Present petition is filed being aggrieved by the order dated 26.09.2023, passed by the learned Special Judge, Nagpur in Civil Revision Application No.05/2023.

4. The petitioner herein is the owner and respondent is the tenant of the shop block of the house property bearing Municipal House No.84/C/2/O, building No.89, Ward No.1, City Survey No.3032, Mouza Sitabuldi, Nagpur. The petitioner has leased out the aforementioned shop block to the respondent and respondent is running business in the name and style as "Sachin Tailors". The petitioner has filed a suit for ejectment and possession against the respondent bearing Reg.C.S. No.282/2013 before the learned Additional Judge, Small Causes Court, Nagpur. The said eviction suit was dismissed vide judgment and order dated 28.08.2021. The petitioner then preferred an Appeal bearing Reg.C.A. No.158/2021, which was also dismissed on 28.07.2023. Therefore, the petitioner was constrained to file an Application under Section 8 of the Maharashtra Rent Control Act, 1999 (for short the "Act of 1999") for fixation of standard rent as since long there was no enhancement in the rent. It was registered as M.J.C. No.71/2018.

5. The petitioner has also filed an application under Section 8(4)(a) and (b) of the Act of 1999 for fixation of 'interim standard rent'. The respondent filed his reply on the said application. The learned 2nd Additional Judge, Small Causes Court, Nagpur vide its order dated 23.01.2023 partly allowed the said application filed by the petitioner and interim standard rent of the suit property is fixed at Rs.15,000/- per month from the date of filing of the said application. The respondent challenged this order by filing Civil Revision Application No. 05/2023 under Section 34(4) of the Act of 1999 before the learned Special Judge, Nagpur. The said Revision Application came to be allowed on 26.09.2023 and set aside the order dated 23.01.2023 passed by the learned 2nd Additional Judge, Small Causes Court, Nagpur in M.J.C. No.71/2018. This order dated 26.09.2023 is under challenge in this petition.

6. Learned Counsel for the petitioner submits that the learned Special Judge without considering the fact that the application was not in under Section 8(4)(a), it was also under Section 8(4)(b) of the Act of 1999 and learned Judge relying on ***Perfect Auto, Amravati Vs. Santosh Narsingdasji Agrawal***, reported in ***2023(2) Mh.L.J. 640***, only came to the conclusion that the

Court while dealing with an application under Section 8 of the Act of 1999, has no jurisdiction to fix interim standard rent.

7. Learned Counsel for the respondent submitted that the wording in Section 8(4)(a) of the Act of 1999 is clear and it is applicable only to a suit for recovery of rent whether with or without a claim for possession. The learned Counsel for the respondent also submitted that the wording in any other case appearing in Clause 8(4)(a) of the Act of 1999 is duly considered by the Full Bench, therefore, Section 8(4)(b) has to be read in conjunction with Section 8(4)(a) of the Act of 1999.

8. Learned Counsel for the petitioner relied on ***Jamnadas Motilal Vanwari Vs. Ishwaribai Tejandas Alwani***, reported in **1981 Mh.L.J. (F.B.) 701**.

9. Learned Counsel for the petitioner also relied on ***Perfect Auto, Amravati Vs. Santosh Narsingdasji Agrawal***, reported in **2023(2) Mh.L.J.640**, wherein this Court referred a Full Bench decision in ***Jamnadas Motilal Vanwari*** (supra), and observed in paras 16, 17 and 18 as under :

“16. Considering the fact that Section 8(4)(a) of the Act of 1999 and Section 11(4) of the Act of

1947 are pari materia, the judgment of the Full Bench of this Court is squarely applicable to the present case.

17. From the observations made by the Full Bench of this Court, it is clear that the authority to direct the tenant to deposit such amount of rent forthwith in the Court as the Court considers to be reasonably due to the landlord, or at the option of the tenant, directing to pay to the landlord such amount thereof as it may specify, can be exercised by the Court at any stage of the suit for recovery of the rent. The said power is conditional to the suit being for recovery of the rent, meaning thereby such powers cannot be exercised in any other suit except in a suit for recovery of rent between the landlord and the tenant.

18. Admittedly, the application moved by the respondent in the present matter is for the interim standard rent, filed in a suit for fixation of standard rent and permitted increase and not in a suit for recovery of the rent. Thus, the prerequisite for issuance of direction for interim standard rent under Section 8(4)(a) of the Act of 1999 is absent in the present case and as such the order passed by the trial Court is without jurisdiction and passed on an untenable application.”

10. Though learned Special Judge has not recorded any finding about Section 8(4)(b) of the Act of 1999, *prima facie* it appears that Section 8(4)(b) has to be read in conjunction with Section 8(4)(a) of the Act of 1999. However, it needs

consideration in view of Section 8(1) whether interim standard rent can be fixed in the application for fixing a standard rent. The Chapter II of the Act of 1999 itself provides that provisions regarding fixation of standard rent and permitted increase. In view of this, as there is no reference of Section 8(4)(b) of the Act of 1999 in the judgment relied on by the learned Counsel for the respondent, the learned Special Judge requires to adjudicate this issue considering Section 8 in whole by granting an opportunity to both the parties in support of their contention as to Section 8(1) and Section 8(4)(b) of the Act of 1999.

11. Admittedly, when decision of ***Jamnadas Motilal Vanwari*** (supra) was passed, there was a Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 was in effect. The Section 11 of the said Act is *pari materia* to Section 8. The Section 11(4) was not bifurcated in Section 4(a) and 4(b) as in the way it is bifurcated in Maharashtra Rent Control Act, 1999. As such, it requires a fresh consideration whether Section 8(4)(b) to be read in conjunction with Section 8(4)(a) of the Act of 1999 or it is independent of Section 8(4)(a). Moreover, in Section 8(1) the words used are, “the court may, upon an application made to it for the purpose, or in any suit or proceedings, fix the standard rent”,

which needs to be interpreted whether it covers proceedings filed by the petitioner herein.

12. As such, the Writ Petition is **partly allowed**. The impugned order dated 26.09.2023 passed by the Special Judge, Nagpur in Civil Revision Application No.5/2023 is hereby quashed and set aside. The matter is remitted back for a fresh consideration to the learned Special Judge, Nagpur.

13. The Special Judge, Nagpur to grant an opportunity to both the parties to advance their arguments in support of their contentions.

14. Parties to appear before the Revisional Court on **16.04.2025**.

The Writ Petition stands disposed of in the above terms. No order as to costs.

(SMT. M.S. JAWALKAR, J.)