



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1469/2021

Arun s/o Krushnarao Deogirikar

...Versus...

Rameshwar Ramrao Ambulkar (Died) through Legal heirs
Smt. Jyoti Wd/o Rameshwar Ambulkar and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. J.B. Gandhi, Advocate for petitioner
Mr. R.D. Bhuibhar, Advocate for respondents

CORAM : ROHIT W. JOSHI, J.

DATE : 19/11/2025

1. Suit for eviction filed under Sections 15 and 16 1 (g) of the Maharashtra Rent Control Act, 1999 (for short hereinafter referred to as "MRC Act") by the present petitioner against the deceased Rameshwar Ramrao Ambulkar, predecessor of the respondents, was dismissed by the learned trial Court and appeal, arising out of the said decree met with the same fate. These concurrent decrees, refusing decree for eviction, are subject matter of challenge in the present petition.

2. As regards the findings with respect to *bona fide* need, learned Advocate for the petitioner fairly stated that findings are just and proper and do not warrant any interference. Learned Advocate, would however, canvass that the learned Courts have erred in refusing to grant decree for eviction under Section 15 of the MRC Act. Learned Advocate states that the respondent/tenant was in arrears of rent from January, 2010 to September, 2010 and notice, as contemplated

under Section 15 of the MRC Act, was issued on 06/09/2010, that the same was duly served on the tenant on 08/09/2010 and that the tenant has replied to the notice on 13/09/2010, refusing the contention with respect to any outstanding rent, as claimed in the notice issued by the landlord. He contends that since rent is not paid in compliance of notice, decree for eviction under Section 15 of the MRC Act should have been passed.

3. The learned trial Court has held that the tenant had proved payment of rent on the basis of a document at Exh.41, which is extract of account maintained by the defendant/tenant. The learned trial Court accordingly dismissed the suit holding that the tenant was not in arrears of rent. The learned first Appellate Court has also confirmed the findings recorded by the learned trial Court and has dismissed the appeal accordingly.

4. It is not in dispute that apart from the document at Exh.41, which is purported to be an extract of account maintained by the defendant, there is no other evidence to demonstrate payment of rent by the tenant to the landlord. Perusal of the document at Exh.41 will demonstrate that it cannot be said to be a book of account, maintained in regular course of business. Perusal of Exh.41 will demonstrate that certain entries pertaining expenses alone are recorded in the said document of the tenant. There are no entries pertaining to the income. The document at Exh.41 cannot, therefore, be turned to be a book of account and is, therefore, not admissible in evidence to establish the payment of rent, as claimed by the defendant/tenant.

5. In view of the above, in the considered opinion of this Court, both the learned Courts have erred in placing

reliance on the said document to hold that the tenant was not in arrears of rent.

6. It will be pertinent to state that the burden of proving payment of rent is always on the tenant. The tenant in the present case has failed to discharge the said burden. The fact that demand notice was duly served on the tenant is not in dispute. The suit is filed after a period of 90 days from the date of service of demand notice. It is also not in dispute that the tenant did not make payment of arrears of rent within stipulated period of 90 days and even after the civil suit commenced, arrears of rent were not deposited along with interest within a period of 90 days from the date of service of suit summons.

7. In view of the aforesaid, in the considered opinion of this Court, case for eviction under Section 15 of the MRC Act is made out. The impugned judgments and decrees, therefore, warrant interference. Writ Petition is allowed in the following terms :-

(i) Judgment and decree dated 30/03/2017, passed by the learned Joint Civil Judge Junior Division, Akola in Small Cause Suit No.13/2011 and judgment and decree dated 13/12/2019, passed by the learned Ad hoc District Judge -I Akola in Regular Civil Appeal No.47/2017 are quashed and set aside.

(ii) Small Cause Suit No.13/2011, decided by the learned Joint Civil Judge Junior Division, Akola is decreed by passing decree for eviction in favour of the petitioner/plaintiff under Section 15 of the MRC Act.

(iii) Parties to bear their own costs.

8. At this stage, the learned Advocate for the respondent/tenant states that since the plaintiff/landlord has failed to make out a case of *bona fide* need and the suit premises are utilized by the respondent/tenant for earning livelihood, time of one year should be granted to vacate the property, so as to enable the respondents to make alternate arrangement for running the business and earning their livelihood.

9. Learned Advocate for the petitioner states that period of around nine months can be granted.

10. However, having regard to the fact that case of *bona fide* need is not proved, I am inclined to grant time of one year for vacating suit property. The respondents shall vacate the suit property and handover peaceful vacant possession of the same to the petitioner/landlord on or before 30/11/2026.

11. Mr. Bhuibhar, learned Advocate for the respondents makes a statement that respondent No.2-Ashish Rameshwar Ambulkar will file written undertaking in this Court that the suit property will be vacated and possession thereof will be handed over to the petitioner/landlord on or before 30/11/2026 and further that this undertaking will be filed for and on behalf of other respondents, namely, Smt. Jyoti Ramesh Ambulkar and Manish Rameshwar Ambulkar and shall be binding on all three of them.

(ROHIT W. JOSHI, J.)