



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

SECOND APPEAL NO.501/2018

Santosh alias Ambadas s/o Jayendra Deorankar

...Versus...

M/s Khemka Automobiles, Amravati a Partnership Firm by Partner Shri J.P.
Khemka and others

WITH

SECOND APPEAL NO.474/2018

Santosh alias Ambadas s/o Jayendra Deorankar

...Versus...

Sandeep S/o Ratheshyamji Chandak 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.J. Chandurkar, Advocate for appellant

CORAM : ROHIT W. JOSHI, J.

DATE : 13/10/2025

1. Vide order dated 14/10/2020, following substantial question of law was framed in the matter.

“Whether the learned lower appellate Court is right in modifying the amount of damages granted by the learned trial Court, considering the Rent Control Act applicable to the suit premises ?”

2. Despite being served the respondents did not put their appearance in the matter. Vide order dated 12/08/2021, it was directed that the appeal will be heard finally at the stage of admission.

3. The present appellant is the original plaintiff who had filed a suit for eviction, possession and damages against

the respondents. The suit was decreed by the learned trial Court vide judgment and decree dated 13/03/2015. The learned trial Court has directed the respondents to deliver the vacant possession of the suit property to the plaintiff after removing the structures standing thereon and has awarded damages of Rs.24,000/- in addition. The respondents filed two separate appeals being Regular Civil Appeal Nos.68/2015 and 70/2015 challenging the aforesaid decree. The decree for eviction and possession is upheld by the learned first Appellate Court. However, as regards the damages awarded, quantum thereof is reduced. The learned first Appellate Court has awarded damages @ Rs.80/- per day as against Rs.500/- per day awarded by the learned trial Court. In doing so, the learned first Appellate Court has referred to provisions of the Maharashtra Rent Control Act, 1999 (for short hereinafter referred to as "MRC Act"), particularly Section 11 thereof which permits increase in the standard rent @ 4% per annum. It is not in dispute that the lease was pertaining to open land and therefore, the provisions of MRC Act are not applicable. The learned first Appellate Court has also recorded a positive finding that the provisions of the MRC Act are not applicable to the said case. However, with a view to determine the quantum of damages the learned first Appellate Court took guidance from the statutory provisions of the MRC Act. The learned first Appellate Court has referred to the agreed rent with respect to the suit property and has arrived at the figure of damages by applying the permissible increase as per the provisions of the MRC Act.

4. The learned trial Court has placed reliance on evidence of a valuer, who was examined by the appellant/plaintiff as witness in the suit. The said witness testified that rent for the suit property in the year 2005 when the lease was terminated, was around Rs.26,293/- per month. The learned trial Court by considering this evidence has granted damages @ Rs.15,000/- per month i.e. Rs.500/- per day and accordingly awarded the damages of Rs.24,000/- for a period of 48 days.

5. Admittedly, the respondents have not led any evidence to the contrary. It is also not in dispute that the provisions of MRC Act are not applicable. The learned first Appellate Court was guided by the rent fixed between the parties in the year 1991. The learned trial Court, on the other hand, has placed reliance on the evidence of expert and has awarded the damages by moderating the valuation done by the valuer reducing the quantum of damages appropriately.

6. The learned first Appellate Court has reduced the amount of damages by taking recourse to provisions of law which are not applicable and therefore, in the considered opinion of this Court, the substantial question of law framed vide order dated 14/10/2020 deserves to be answered in favour of the appellant/plaintiff and against the defendants/respondents.

7. So far as Second Appeal No.474/2018 is concerned, it is not in dispute that both Courts have concurrently held that the suit property was sold by the defendant Nos.1 to 4 to the defendant No.5. In that view of the matter, the decree for damages will also be binding on

defendant No.5. Substantial question of law framed vide order dated 14/10/2020 in Second Appeal No.474/2018 is also answered in favour of the appellant and against the respondents. The second appeals are, therefore, allowed in the following terms :-.

The judgment and decree dated 05/05/2018 passed by the learned District Judge – 8, Amravati in Regular Civil Appeal Nos.68/2015 and 70/2015 are quashed and set aside only to the extent of reduction of damages. Rest of the decree is maintained. The judgment and decree dated 13/03/2015 passed by the learned 6th Joint Civil Judge Junior Division, Amravati in Regular Civil Suit No.12/2011 (Old Sm.C.S. No.67/2005) stands confirmed.

8. No order as to costs.

(ROHIT W. JOSHI, J.)