



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

CIVIL REVISION APPLICATION NO.65/2024

Sarjubai Madanlalji Rathi (Since Deceased through subsequent purchasers
added in appeal)

Mohd. Tarekh Mohd. Yakub and another

...Versus...

Sk. Shakeel Sk. Sattar and another

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

Court's or Judge's orders

Mr. V.A. Lohia, Advocate for applicants
Mr. S.S. Dhengale, Advocate for respondent No.2

CORAM : ROHIT W. JOSHI, J.

Date of reserving the order : 25/09/2025

Date of pronouncing the order : 09/10/2025

1. The applicant No.1 is the original plaintiff. She had filed a suit for eviction initially against the respondent No.1. Respondent No.2 was thereafter arrayed as defendant in the suit by amending the plaint.

2. The suit property is situated within the municipal limits of Mangrulpir Municipal Council. The provisions of the Maharashtra Rent Control Act, 1999 (for short hereinafter referred to as "MRC Act") are applicable to the premises located within the municipal limits of Mangrulpir Municipal Council. The term "premises", as defined under Section 7 (9) of the MRC Act means any building or part of a building. The definition does not include open land.

3. As per the applicant/plaintiff, the suit property was initially let to respondent No.2 in the year 1984 vide rent note dated 26/09/1984 (Exh.72). The applicant states that she

had let out open land to respondent No.2. According to the applicant, respondent No.2 had erected a tin-shed over the suit property and was running business of manufacture and sale of cotton mattress therefrom. The applicant has stated that respondent No.2 had sublet the premises to respondent No.1 in the year 1996 and that subsequently the applicant had let out the premises to respondent as per rent note dated 18/11/1997 (Exh.83).

4. As stated above, the suit was filed initially against the respondent No.1 alone. The suit is filed on 14/08/2003. Prior to filing of the suit, the applicant had issued notice dated 17/05/2003 to respondent No.1 stating that he was in arrears of rent from 01/04/2001. The said notice is at Exh.66.

5. The respondent No.1 filed written statement in the suit *inter alia* contending that he was not tenant of the suit property. He contended that respondent No.2 was the tenant and that he was merely working with respondent No.2. The respondent No.1 also denied executing of the rent note dated 18/11/1997.

6. As stated above, the applicant had arrayed respondent No.2 as tenant in the suit subsequently. The respondent No.2 filed his written statement vide Exh.29. The respondent No.2 stated that he had taken the suit property on rent from applicant and continued to occupy the same as a tenant. The respondent No.1 claimed that the suit property comprises of constructed portion of walls with roof of tin-sheets. The respondent No.2 claimed protection under the provisions of MRC Act. He also contended that the applicant had never terminated his tenancy.

7. It will be pertinent to mention here that respondent No.2 is maternal uncle of respondent No.1.

8. The case of the applicant is that initially the suit property was let out to respondent no.2. He states that the respondent No.2 had erected a tin-shed over the open land let out to him. The applicant contended that respondent No.2 vacated the suit property and sublet the same to respondent No.1. He has thereafter contended that the respondent No.1 was inducted as subtenant of respondent No.2. The applicant also stated that he accepted the respondent No.1 as his tenant and rent note dated 18/11/1997 was executed between the applicant and respondent No.1. It is stated that respondent No.1 had removed his tin-shed from the suit property and respondent No.2 erected new tin-shed over the same.

9. The contention regarding removal of tin-shed by respondent No.2 and installation of new tin-shed by respondent No.1 is raised probably to come out of the clutches of the MRC Act. The protection thereof is available only to lease for constructed building and not to lease of open land.

10. The son of the applicant entered into witness box on her behalf. The applicant examined another tenant in the premises, namely, Ramesh Rathi. Respondent Nos.1 and 2 both entered the witness box. The learned trial Court has recorded finding that the applicant had let out open land on lease to respondent No.2 in the year 1984 as per rent note dated 26/09/1984. The learned trial Court has recorded that the applicant had failed to establish that the respondent No.1 was inducted by respondent No.2 as sub tenant. It is, however, held that the respondent No.1 was inducted as a tenant by the

applicant, as per rent note dated 18/11/1997 (Exh.83). The learned trial Court has also found that the respondent No.1 was inducted as a tenant in a constructed tin-shed. The case of the applicant that respondent No.2 had removed the tin-shed erected by him is disbelieved.

11. It is held that notice terminating tenancy issued by applicant to the respondent No.1 on 17/05/2003 was not a valid notice as per Section 15 of the MRC Act and therefore, the applicant was not entitled to decree for eviction and possession. The learned trial Court has held that except for arrears of rent no other ground for eviction was raised by the plaintiff and since notice was not issued in accordance with Section 15, the suit was liable to be dismissed. However, the defence of respondents that respondent No.2 was a tenant is not accepted.

12. The plaintiff's witness had stated that when the property was let to the defendant No.1 a tin-shed was standing. It is thus clear that open land was not let out to defendant No.1. The suit property is situated within the Municipal limits of Mangrulpir, Mangrulpir Municipal Council. The provisions of the MRC Act are applicable to the suit property. Apart from arrears of rent which is a ground for eviction under Section 15 of the MRC Act no other ground is set up for seeking a decree for eviction. The notice for termination of tenancy is issued on 17/05/2003 and it is served on the defendant No.1 on 20/05/2003. The suit is thereafter filed on 14/08/2003. The suit is clearly filed within a period of 90 days from the date of service of notice. Section 15 (2) of the MRC Act provides that no suit for

possession shall be instituted by the landlord against the tenant on the ground of non-payment of standard rent till expiry of 90 days from the date of service of demand notice on the tenant. The bar is couched in negative terms, which implies that it is mandatory and absolute. The bar is to the institution of the suit itself. The learned trial Court has therefore rightly held that the suit was not maintainable since it was filed before the time period specified under Section 15 (2) of the MRC Act. This Court has held in the matter of *Jitendra s/o Vasantrao Nagarkar Vs. Mohanlal s/o Maluramji Agrawal*, reported in *2016 (6) Mh.L.J. 797* that the suit instituted before 90 days from the date of service of demand notice is not maintainable.

13. In view of the above, if one goes with the case of the plaintiff that defendant No.1 is the tenant then the suit must be dismissed as is rightly dismissed by the learned trial Court.

14. As regards the defendant No.2, both the defendants claimed that he is the tenant. The plaintiff has denied the same. The learned trial Court has held that defendant No.1 is the tenant. This finding is reversed by the learned first Appellate Court by holding that the defendant No.2 is the tenant. The defendant No.2, as can be seen from the rent note dated 26/09/1984 at Exh.72, had taken open land on lease. The definition of term “premises” as defined under Section 7 (9) of the MRC Act will demonstrate that open plot is not covered within the definition of the term “premises”. Therefore, protection of MRC Act cannot be claimed by the defendant No.1. The plaintiff could have

instituted suit for eviction against defendant No.1 by issuing notice for termination of tenancy in accordance with Section 106 of the Transfer of Property Act, 1882. However, as is apparent from the plaint averments, the plaintiff has not accepted the defendant No.2 to be his tenant. The plaintiff has not issued notice terminating tenancy in accordance with the Transfer of Property Act to the defendant No.2.

15. The learned trial Court has disbelieved the case of the plaintiff regarding subletting of the premises by defendant No.2 to defendant No.1. However, the learned trial Court has accepted the case of the plaintiff that defendant No.1 was inducted as a tenant vide rent note dated 18/11/1997 (Exh.83). The learned trial Court has also taken into consideration that after issuance of notice dated 17/05/2003, the defendant No.1 had paid rent to the plaintiff by money orders for two months and the message sent in the money order did not indicate that rent was paid by defendant No.1 on behalf of defendant No.2.

16. In view of such findings, the learned trial Court has held that defendant No.1 was in occupation of suit property as a tenant of the plaintiff. The learned first Appellate Court has reversed this finding. The learned first Appellate Court has recorded that the notice dated 17/05/2003 issued by the plaintiff to defendant No.1 contained a recital that the tenancy of defendant No.1 was oral tenancy. The learned first Appellate Court has disbelieved the rent note dated 18/11/1997 at Exh.83, in view of inconsistent stand of the plaintiff with respect to creation of tenancy inasmuch as in the notice issued by the plaintiff it was categorically stated that

the tenancy was created orally and thereafter the stand was altered placing reliance on rent note at Exh.83. The learned first Appellate Court has also taken into consideration the fact that the plaintiff further admitted that defendant No.1 was in occupation of the suit property and had come up with an explanation that defendant No.1 had once again sublet the premises to defendant no.1. Considering the evidence on record, the learned first Appellate Court found that the case of further subletting was not proved by the plaintiff. The learned first Appellate Court has reversed the finding recorded by the learned trial Court that defendant No.1 was a tenant on re-appreciation of evidence. As Court hearing a first appeal, it was open for the learned first Appellate Court to re-appreciate the evidence to arrive at a finding of fact accordingly. The view taken by the learned first Appellate Court is a possible view. It is supported by the evidence on record. In the considered opinion of this Court, there is no reason for taking a different view on this finding of fact recorded by the learned first Appellate Court.

17. The suit could be decreed against defendant No.2 since defendant No.2 cannot claim protection of MRC Act, in view of the fact that the tenancy of defendant No.2 was with respect to open land, which does not fall within the definition of premises, as defined under Section 7 (9) of the MRC Act. However, as noted above, the plaintiff has not terminated the tenancy of the defendant No.2 in accordance with Transfer of Property Act. The suit is, therefore, liable to be dismissed against defendant No.2 as well.

18. For the reasons recorded above, the civil revision application deserves to be rejected and the same is rejected accordingly. It is held that defendant No.2 – Sk. Akbar Sk. Imam is the tenant of the suit property. The defendant No.2 is not entitled to protection of MRC Act. It will be open for the plaintiff to file fresh suit for eviction against defendant No.2 in accordance with law. The parties to bear their own costs.

(ROHIT W. JOSHI, J.)

Wadkar