



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

MISC. CIVIL APPLICATION NO. 911 OF 2024

IN

WRIT PETITION NO. 2233 OF 2021 (D)

Hasan Abdullah Dawawala

... APPLICANT

Versus

Mrs. Shobha Shrichand Kungwani

... NON-APPLICANT

Mr. R. M. Sharma, Advocate for Applicant.

Mr. Arjun Raoka, Advocate for Non-applicant.

CORAM : ANIL L. PANSARE, J.

DATE : MARCH 17, 2025.

ORAL ORDER

. Heard Mr. R. M. Sharma, learned Counsel for the Applicant and Mr. Arjun Raoka, learned Counsel for the Non-applicant.

2. The Review Application arises out of the Judgment and order dated 12/8/2024 passed by this Court.

3. The Non-applicant/Petitioner (*hereinafter referred to as 'the landlord'*) had filed Petition assailing the Judgment and Decree dated 16/2/2021 passed by the first appellate court in Regular Civil Appeal No. 284/2019, who had set aside the Judgment and decree dated 30/4/2019 passed by the Small Causes Court, Nagpur in Regular Civil Suit No. 196/2015. The Applicant/Respondent (*hereinafter referred to as 'the tenant'*) had filed a

suit for possession, arrears of rent, occupational charges and permitted increases.

4. It was the argument of the landlord that the tenant can be evicted in terms of Sub-section (1) of Section 15 of the Maharashtra Rent Control Act, 1999 (*for short, 'the Act of 1999'*), having failed to pay rent regularly. In support, he had relied upon the Judgment of Full Bench of this Court in the case of ***Babulal Fakirchand Agrawal V/s Suresh Kedarnath Malpani and others, 2017(4) Mh.L.J. 406***. This Court observed that the Full Bench has ratified the view expressed by the Division Bench in the case of ***Chandiram Dariyanumal Ahuja V/s Akola Zilla Shram Wahtuk Sahakari Sanstha, Akola, 2013(1) Mh.L.J. 28***. The learned Counsel for landlord had invited attention of this Court to paragraph No.9 of the Full Bench Judgment, wherein, the findings in ***Chandiram's case*** was reproduced. Paragraph No.9 of the Judgment reads thus :

"9. After taking survey of various judgments, the Division Bench has observed in paragraph No. 18 of the Chandiram's case as under :

18. The entire Scheme of Chapter III relief against forfeiture, as provided under the provisions of section 15, indicates that a tenant can perform his obligation and then claim protection in the form of relief against forfeiture as forfeiture occurs in accordance with general law governing lease under the Transfer of Property Act. The provision protects the tenant from the forfeiture when the tenant is paying rent or has proved his readiness and willingness to pay it. Section 15(3) added further obligation upon the tenant to pay entire arrears till date with interest and costs, as may be ordered by the Court. If tenant is continuing to pay rent due during the pendency

of the suit instituted against him on the ground of non-payment of standard rent and permitted increases, then such tenant is entitled to claim relief against forfeiture of tenancy. To put it otherwise, when tenant does not pay rent as agreed or pays rent only when legal notice is served upon him or Court summons is issued against him, the landlord is not helpless because sub-section (1) of section 15 enables the landlord to insist upon the tenant to pay rent and perform the conditions of tenancy. The tenant who disobeys legal provisions under section 15(1) of the Act can be evicted independently, though such tenant may not necessarily be in arrears of rent on the date of institution of the suit. A tenant who is prompted or induced to pay only after service of legal notice or after service of Court summons cannot be viewed as a tenant who either pays or is ready and willing to pay standard rent and permitted increases. Section 15 of the Maharashtra Rent Act has extended protection to a tenant after the landlord seeks to exercise his right to forfeit the tenancy in accordance with the provisions of general law. A tenant, in order to claim relief against forfeiture of tenancy, gets a period of 90 days after service of pre-suit statutory demand notice by the landlord calling upon the tenant to pay entire arrears of standard rent and permitted increases payable to the landlord. Thereafter when suit is filed, the tenant gets additional opportunity to pay entire arrears of rent and permitted increases demanded after the suit summons is served upon him. Such a tenant has a period of 90 days from the date of service of suit summons to pay or tender the arrears of rent with simple interest thereupon @ 15% p.a. During pendency of the suit, the protection is available as above to the tenant to claim relief against forfeiture of tenancy provided that the tenant shall continue to be regular in payment of standard rent and permitted increases payable during the pendency of the suit as also costs of the suit as

directed by the Court. The Court cannot be oblivious of landlords who may have to survive only on rental income. Habitual irregular payment of rent and permitted increases by the tenant will prejudice and jeopardize very survival of such landlords who survive on rental income only. Therefore, such a tenant who may be habitually irregular in payment of standard rent and permitted increases can invite eviction in view of section 15(1) of the Maharashtra Rent Act when the Court considers the case of such a tenant who commits breach of conditions of tenancy as also remains habitual in rental arrears. In such exceptional case, provisions of section 15(1) are applicable and procedural compliances under section 15(2) and 15(3) will not apply.”

5. On the basis of aforesaid findings, the learned Counsel for landlord argued that the tenant, who disobeys the legal provisions under Section 15(1) of the Act of 1999, can be evicted independently. This submission has been rejected by this Court by referring to what has been observed by Full Bench in paragraph 9 itself. This Court has rendered following finding while rejecting the aforesaid contention :

“14] I do not find substance in the aforesaid contentions inasmuch as the learned Counsel for the respondent has conveniently ignored the later part of the finding rendered in Chandiram Dariyanumal Ahuja’s case. The Division Bench continued further and later referred to sub-section (3) of Section 15 of the Act of 1999 to say that a tenant, in order to claim relief against forfeiture of tenancy, gets a period of 90 days after service of pre-suit statutory demand notice and thereafter when suit is filed, the tenant gets additional 90 days to pay entire arrears of rent and permitted increase demanded after the suit summons is served upon him. The Court has then

held that protection is available as above to the tenant to claim relief against forfeiture of tenancy provided the tenant continue to be regular in payment of standard rent and permitted increases payable during the pendency of the suit. Thus, the Division Bench has held that the tenant who pay arrears of rent within 90 days from the date of service of suit summons with interest of 15% and thereafter continues to pay the standard rent and permitted increase payable to the landlord during pendency of suit, he is entitled for relief against forfeiture of tenancy. As an exception, the Division Bench observed that the tenant can be evicted under Section 15(1) of the Act of 1999, like when landlord's survival is dependent on rental income. Such is not the case here."

As could be seen, this Court has taken a view that the Division Bench, as an exception, observed that the tenant can be evicted under Section 15(1) of the Act of 1999, in a case where landlord's survival is dependent on rental income only.

6. The learned Counsel for landlord submits that this finding is apparently not in tune with what has been held by the Division Bench in ***Chandiram's case*** (*supra*). According to Mr. Sharma, learned Counsel for the landlord, the Division Bench has just quoted an illustration, which this Court took as an exception. He submits that a tenant, who is habitually irregular in making payment of rent can be evicted independently under Section 15(1) of the Act of 1999.

7. In my view, the last three lines of paragraph 9 of the Full Bench Judgment would support the view taken by this Court. The last three lines read thus :

“In such exceptional case, provisions of Section 15(1) are applicable and procedural compliances under Section 15(2) and 15(3) will not apply.”

8. The expression “such exceptional case” is used in context with the irregular payment of rent by the tenant in a case where landlord’s survival is dependent on the rental income only.

9. Thus, the remedy under Section 15(1) is available to the landlord independent to Sections 15(2) and 15(3), where a case of exceptional nature is made out. To have any other interpretation of Section 15(1) will lead to put Sections 15(2) and 15(3) otiose.

10. In any case, this Court has taken a view, after due consideration to the material placed before the Court. The point raised by the Petitioner is something that would require a lengthy argument and additional reasons, if at all a different view is to be taken, which is not permissible in the review jurisdiction. Misc. Civil Application is, accordingly, rejected.

(ANIL L. PANSARE, J.)