



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

WRIT PETITION NO.2517 OF 2024

Shri Umeshchandra S/o Sundarlal
Wajpeyee, Aged about 59 years,
Occ: Retired, R/o Vidarbha Mill Colony,
Juni Chawl, Achalpur, Tahsil Achalpur,
District Amravati. M.No.9421740261.

...PETITIONER
(Ori. Defendant)

...V E R S U S...

The Vidarbha Cooperative Marketing
Committee Ltd. Regd. No.702, Ganesh
Peth, Nagpur, through its Factory
Manager, Authorized by Managing Director,
Vidarbha Cooperative Marketing Society
Ginning and Pressing Factory, Achalpur
Tahsil Achalpur, District Amravati.

...RESPONDENT
(Ori. Plaintiff)

Shri K.B. Zinjarde, Advocate for petitioner.
Ms Aparna Telange, Advocate for respondent.

CORAM:- M.W. CHANDWANI, J.
DATED :- 23.02.2026

ORAL JUDGMENT:

1. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of both parties.

2. The petition challenges the order dated 06.01.2024
passed by the learned Adhoc District Judge-2, Achalpur, District
Amravati (for short, "Appellate Court") in Regular Civil Appeal
No.07/2012 whereby the Decree of Dismissal of suit passed in
Judgment and Decree dated 04.01.2012 passed by the learned 3rd

Joint Civil Judge, Junior Division, Achalpur (for short “Trial Court”) in Small Cause Civil Suit No.05/2003 has been overturned.

3. The petitioner is a tenant of respondent-Society living in Quarter No.2 (for short, “Suit House”) on monthly rent basis. Respondent – Society filed suit for eviction, possession and arrears of rent *inter alia* alleging that the petitioner had agreed to pay ₹700/- per month towards rent of the Suit House. Respondent-Society served a notice to the petitioner on 29.01.2002 for executing an agreement of lease with it, but the petitioner did not comply the same and hence on 04.07.2002 respondent-Society issued a notice of termination and thereby the tenancy of the petitioner was terminated. Thereafter, respondent-Society filed a suit for Decree of possession of the Suit House along with recovery of arrears of rent of ₹8,400/- along with interest @18% p.a. and inquiry into the damages from the date of the suit till delivery of possession.

4. The Trial Court dismissed the suit filed by respondent-Society. The Dismissal Order came to be challenged before the Appellate Court and vide impugned order said appeal came to be allowed and the petitioner is directed to hand over the possession

of Suit House to respondent-Society apart from arrears of ₹8,400/- alongwith interest at the rate of 7% per annum from the date of suit till delivery of possession of the Suit House.

5. Heard learned counsel for the petitioner as well as learned counsel for the respondent. Perused the record, proceedings and orders impugned.

6. Perusal of the plaint filed before the Trial Court reveals that, basically respondent – Society was seeking eviction on the ground that, the petitioner failed to execute the agreement of lease. Nowhere in the plaint it is stated that the petitioner is in arrears of rent or irregular in payment of rent. Only in prayer clause decree for arrears of rent of ₹8,400/- was sought. The suit was filed by respondent – Society in body of plaint only on the ground of non-execution of agreement of lease by the petitioner. Finding of the Trial Court reveals that, the petitioner was ready to execute the agreement of lease. The relevant para 15 is reproduced here:

“15. The plaintiff has sought the relief of recovery for possession. But, the reason mentioned for the recovery of possession is that, the plaintiff served notice to the defendant on 29.01.2002 for executing an agreement of tenancy. But, the defendant did not comply with the same. Hence, on 04.07.2002 the plaintiff issued notice of

termination of tenancy and same is received by the defendant. But, the Rajendra (P.W.No.1) has admitted it in the cross examination that, the procedure to execute said tenancy agreement was to be carried out in the office of the plaintiff. He has also admitted that, the defendant furnished blank stamp paper of Rs.20/- for execution of said agreement. Therefore, it is clear that the plaintiff was ready to execute said agreement. When and how he refused to execute the agreement is not at all clear in the plaint as well as in the evidence of Rajendra (P.W. No.1). No material particulars are given in this regard. It means that, the defendant was ready to execute the agreement of the tenancy. The plaintiff has not shown how the defendant was not ready for the same.”

7. The Trial Court, further, rightly observed that there is no ground available for respondent – Society under Section 16 of the Maharashtra Rent Control Act, 1999 to recover the possession on the ground of non-execution of agreement of lease. However, the Appellate Court did not touch upon this finding / observation of the Trial Court and the Decree of Eviction came to be passed only on the ground that for several months there was delay of one month in payment of rent. The relevant observation of the Appellate Court is as under:

“18. Umeshchandra (DW1) has testified that he is regularly paying monthly rent to the plaintiff as agreed. However, he has not denied issue of notice (Exh.23) to him. He has filed on record rent receipts issued by the plaintiffs to him at Exh.37 to Exh.192. In his evidence the defendant admitted that monthly rent was required to be paid in the first week of each month. However, many receipts including rent

receipts at Exh.111, 112, 114, 119, 120 and 121 show that the defendant has paid rent of two months simultaneously after completion of earlier month and caused delay of one month in payment of rent for some months.”

8. The Appellate Court further observed that, despite of issuance of notice mentioning the rate @ ₹700/- per month the petitioner is paying ₹650/- per month only. The Appellate Court further observed that, if there was dispute on the amount of rent but no application was filed by the petitioner for fixation of standard rent and relied on the decision of ***Girish Gangadhar Agrawal Vs. Jiteshkumar Hasmukh Vakhariya***¹. It has been further observed that, the petitioner did not deposit the arrears of rent within 90 days from the date of receipt of suit summons.

9. I have gone through the notice (Exh.24) issued by respondent – Society and relied by the Appellate Court, which is reproduced as under:

*“From : S.D. BABREKAR, Advocate, Paratwada-444805
Counsel for - Vidarbha Co-operative Marketing Society
Regn. No. 702, Ganeshpeth, Nagpur, through
Factory Manager, Authorised by Factory
Manager, V.C.M.S. Ginning & Pressing Factory,
ACHALPUR Tq. Achalpur DISTT. Amravati.*

To,

1.Shri. U.M. Wajpycee, Quarter No.2.

2.Shri. D.N. Hame, Quarter No.3;

3.Shri. H.R.Kumbharo, Quarter No.4.

4.Smt. Leena Gajanan Vidhale, Quarter No.5.

5.Shri. S.V.Vaidya, Quarter No.6.
6.Shri. D.P.Roopnarayan, Quarter No.7
7.Shri. G.J.Dhoke, Quarter No. 8
all residents of V.C.M.S. Quarters, Paratwada-444805
Distt. Amravati.
Sirs/Madam;

As per the instructions, information and authority given by my client, I hereby serve you with this notice as under :-

My client is having the Residential Quarter Nos. 1 to 8 within the premises of V.C.M.S. Factory. You Nos. 1 to 7 acquire the Quarters as described in the Title and their Numbers. You are the tenants of the quarters respectively. You all notice have to pay the rent to my client. The month of tenancy commences from first day of each calendar month. The rent is to be payable up to 5th day of the each and every month to my client. The rent is to be decided by my client of Rs. 700/- to all notices respectively. My client has also decided to execute a Agreement of the period of 11 months at the rate of Rs. 700/- and Rs. 5,000/- towards the Deposit of the quarters respectively. You all notices have to pay Electricity charges, Water charges and Municipal Taxes excluding the rent. My client also decided to execute the written agreement for the period of 11 months with conditions as above. Therefore, you noticee nos. 1 to 7 hereby are directed to execute the Agreement in favour of my client as per terms and conditions. My client has issued you a notice dt.29-1-2002 to execute the Agreement of Lease, and if you fail to execute the Agreement of Lease then my client will be entitled for Termination of your tenancy. Still you have not executed the Agreement of lease till now.

Therefore, by this notice, I hereby terminate your tenancy in respect of your respective quarter and intimate you to live therein up to 31-7-2002 and vacate on first of August,2002 and deliver vacant possession to my client; then you possession and occupation thereon will be illegal and unauthorized and you will be liable to pay damages at Rs.50/- per day for such illegal use and occupation. Please pay up the rent due till 31-7-2002. else please note my client will take necessary action against you to get the quarters vacated. Please also remit costs of the notice Rs. 200/- to my client. You all notices will be responsible for the costs and consequences.

Dt. 4-7-2002.

*Signature
(S.D.Babrekar) Adv.
Adv. Shrikant D. Babrekar
4/7/2002 B.A. LL.B.
PARATWADA P.O. No.78'*

10. Thus, essentially in the notice respondent-Society terminated the tenancy w.e.f. 31.07.2002 on the grounds that he has not executed the agreement of lease and asked him to pay the rent up to 31.07.2002. In the suit as well there is no reference of arrears of rent. There is no such detail either in the notice or in the suit as to how much amount is due to respondent-Society, till the date of issuance of notice. The notice as well as suit lack the information from which date the petitioner has not paid the rent. Even there is no whisper in the evidence of respondent-Society about this. When a claim is made for arrears of rent it is duty of the landlord to prove how much rent is outstanding and from which date. But all these information are lacking in the notice, suit as well as evidence. Rather, the suit lacks to depict that respondent-Society is asking for eviction/recovery of possession on the ground of non-payment of rent. The Appellate Court lost sight of this legal position and went ahead on the belief that suit for eviction has been filed on the premise of non-payment of rent, which is factually incorrect. Therefore, the impugned order passed by the Appellate Court does not stand and reliance placed by the Appellate Court on the decision of *Girish Agarwal (surpa)* is

misplaced. Therefore, the writ petition succeeds. Hence, this order:

11. The writ petition is allowed.

12. The judgment and order dated 06.01.2024 passed by the learned Adhoc District Judge-2, Achalpur, District Amravati in Regular Civil Appeal No.7/2012 is set aside.

13. The judgment and decree dated 04.01.2012 passed by the learned 3rd Joint Civil Judge, Junior Division, Achalpur, District Amravati in Small Cause Civil Suit No.5/2003 dismissing the suit is restored.

14. Rule is made absolute in the aforesaid terms.

(M.W. Chandwani, J.)

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