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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.827 OF 2014

Chandrasen Purshottam Bhimji,
Age 85 years, Occ. Business having office
at C/o Industrial Electrical Engineering Co.
10, Ambalal Doshi Marg,
Raj Bahadur Building, Mumbai 400 023

...Petitioner

Versus

Kisan Kondu Gaikwad
Age 67 years, Occ. Service then residing
at Madhusudan Bungalow, No.52 A,
C Ward, S. P. Road Lonavala, Taluka Maval,
Dist. Pune and now residing at Shree Ram
Apartment 2nd floor, Flat No.14, Bhangarwadi,
Opp. Kale Hospital, Lonavala 410 401.

...Respondent

Mr. Surel Shah, Senior Advocate a/w Mr. Nihar Chitre a/w Mr. Rohan Marathe i/by Ms. Archana Yadav for the Petitioner
Mr. Drupad Patil a/w Ms Srushti Chalke i/by Mr. Ratnesh Dubey for the Respondent

CORAM : M. M. SATHAYE, J.

RESERVED ON : 22nd DECEMBER 2025

PRONOUNCED ON : 5th MAY 2026

JUDGMENT:

1. This Petition is filed under Article 226 and 227 of Constitution of India, challenging the judgment and decree dated 07.10.2013 passed by District Judge-20 Pune in Civil Appeal No. 65/2012, by which the said Appeal filed by the Respondent is allowed, setting aside the judgment and



decree dated 02.01.2012 passed by the Second Joint Civil Judge, Junior Division, Vadgaon, Maval, Pune in Regular Civil Suit No. 256/2008. By the impugned decree of the Appellate Court, the Suit filed by the Respondent/Plaintiff has been decreed, declaring him as tenant in respect of Suit premises.

2. The Respondent is the Original Plaintiff and the Petitioner is the Original Defendant in a Suit filed under for declaration of tenancy under the provisions of the Maharashtra Rent Control Act, 1999 ('MRC Act' for short).

3. A room measuring 8x8 sq.ft. situated in Madhusadan bungalow, House No. 52A, C Ward, S. P. Road, Lonavala, Taluka-Maval, District-Pune is the Suit premises.

4. In December 2008, the Respondent filed a said suit contending *inter alia* as under. That he was working in a company and had no place to stay at Lonavala and therefore, mother of Petitioner (Smt. Pushpabai Bhimji) let out the Suit premises to him on monthly tenancy for rent of Rs.50/- per month. That after the death of Petitioner's mother, Petitioner had disputes with his tenants and therefore the Petitioner got Respondent's signatures on blank stamp papers. That from 1996, the rent of the suit premises was increased to Rs.100/- per month. That the Respondent never demanded rent receipts because he was needy and illiterate. That the Petitioner was insisting with the Respondent for vacating the suit premises and therefore the Respondent issued a suit-notice dated 03.11.2008 showing readiness to pay rent for proper receipts issued. That Petitioner sent false notice-reply. That contention in the notice-reply is false. That taking advantage of the Respondent's illiteracy and neediness, his signatures are taken on blank stamp-papers for fabricating documents. However, the Respondent was



always monthly tenant. On these grounds, the said suit was filed seeking declaration of tenancy, for fixation of standard rent and for perpetual injunction, not to disturb possession.

5. The Petitioner filed written statement denying that the suit premises was given on rent to the Respondent. He contended as under. That the bungalow in question was a big property, having many rooms and open space and since his mother was an old lady, she was in need of a gardener. That the Respondent was appointed as a gardener on monthly salary and by virtue of his service as gardener, the suit premises was permitted to be used. That the Respondent has signed *nokar-namas* and declarations yearly and salary has been paid to the Respondent and the Petitioner paid tip/gift-money of Rs. 600/- to 800/- from time to time on every visit, over and above salary. That the service of the Respondent as a gardener has been terminated and therefore he is a trespasser.

6. Counter claim was filed by the Petitioner for declaration and recovery of possession and injunction with claim for *mesne profit*. By order dated 02.01.2012, the Trial Court returned the counter-claim to the Petitioner for presenting before Competent Authority appointed under provisions of MRC Act, so far as the counter claim is concerned.

7. The Respondent examined himself. The Petitioner examined himself as well as Advocate Shriram Gopal Kuber in support of his case for proving *nokar-namas* and declarations. Documentary evidence in filed.

8. The learned Trial judge on appreciation of evidence, held that the Respondent/Plaintiff has neither proved that he is tenant of the suit premises nor that monthly rent was Rs.50/-. It is held that the Respondent



could not prove that the Petitioner has got executed bogus and fabricated documents. Accordingly the Suit came to be dismissed. The Respondent filed the said Appeal challenging dismissal of Suit, in which impugned judgment and decree has been passed.

SUBMISSIONS

9. Mr. Shah, learned Senior Counsel appearing for the Petitioner, submitted that the Respondent has not produced single rent receipt in support of his case of tenancy. That no agreement of tenancy is in existence or produced on record. That in absence of either tenancy-document or rent receipts, declaration of tenancy cannot be granted. He submitted that long standing possession or even permissive long possession cannot establish that a person is tenant. He submitted that the burden of proving tenancy is on the person claiming to be tenant and the Respondent has miserably failed in discharging such burden. That the Appellate Court was not justified in interfering with the dismissal of the said suit and evidence on record clearly indicates that the Respondent/original Plaintiff was a gardener, who has executed various *nokar-namas*. He submitted that the conclusion drawn in the impugned judgment is perverse. That the documents on record i.e. *nokar-namas* and declarations are exhibited documents, not being objected. It is submitted that various payment receipts signed by the Respondent/Plaintiff are clear indication of salary. He relied upon following judgments in support of his case:

- (a) Rajaram Hiralal Bhoi since deceased through his LRs Smt. Gopabai Rajaram Bhoi and Others Versus Chintaman Waman Sathe since deceased through his LRs. Prakash Chintaman Sathe and Others 2012(2)Mh.L.J. 151.



(b) Hemendra Rasiklal Ghia, etc Versus Subodh Mody, etc
2008(5) CTC 577 - full bench

(c) Pandurang Dharma Gaikwad versus Mahamudmuya
Ahmadsaheb Patil 2013(2)Mh.L.J. 949

10. *Per contra*, Mr. Patil appearing for the Respondent submitted as under. That *nokar-namas*, which can be the best case documents relied upon by the Petitioner, are not after 1996. That the alleged salary paid upto March end 2008 (stated in notice-reply) is not proved. That there is no document in support of payment of salary as alleged, and therefore it cannot be concluded that the Respondent was a servant/gardener. He submitted that there was no need for the Respondent to work as a gardener because he was already working in a factory. He submitted that there is no legal requirement or necessity of giving any declarations/*nokar-namas* about service as alleged. That the last *nokar-nama* at Exh.-201 is for a period of 11 months from 01.02.1996 and not thereafter. That the Appellate Court has taken a plausible/possible view and therefore interference is not required. That D.W.2-Advocate cannot prove *nokar-namas* or alleged entries about receipt of salary. That if the case of Petitioner about the Respondent being a gardener is to be considered, then there is no termination of such service. That considering the long standing possession and alleged documents of *nokar-namas* only for intermittent periods, the Respondent cannot be taken in any other role than a tenant.

REASONS AND CONCLUSION

11. I have considered the rival submissions and perused the record with the assistance of learned Counsel for the parties.

12. At the outset, it is necessary to note that the burden of proving that a



party is a tenant is on such party claiming to be tenant. The judgment of **Rajaram Hiralal Bhoi (Supra)** directly supports the Petitioner in this regard. In present case, it is important to see how the Courts below have dealt with the aspect of 'proof of tenancy' because admittedly the said suit is filed for declaration of tenancy by the Respondent. In any case, weakness of defence if any, is not that important for the decision in the peculiar facts of this case.

13. The defence raised by the Petitioner is that the Respondent was employed as 'a gardener' with his mother, for which the Respondent has executed *nokar-namas* and has also signed various receipts towards payment of salary. Assuming that the Petitioner fails to prove this defence, still, the the Respondent/Plaintiff is not absolved from establishing his own case that he was a tenant in the suit premises.

14. In **Pandurang Dharma Gaikwad (Supra)**, the learned Single Judge of this Court was considering similar facts where long standing possession or permissive long possession was being considered. It is held in the said judgment that such long standing possession in itself will not establish that a person is tenant.

15. In the present case, admittedly no rent-receipts are produced on record by the the Respondent who claims to be tenant. Also admittedly, no rent-agreement is produced. He has admitted that he has not taken any action for last 30 years about alleged non-issuance of rent receipts. 116 salary/payment receipts are produced from Exhibit-71 to 187, showing that the Respondent was receiving salary, initially of Rs.50/- per month and later on since 1996, of Rs.100/-. These receipts are not signed by Petitioner/Defendant and therefore not rent-receipts. A person who claims to be tenant cannot sign rent-receipts. Rent receipts have to be signed by the



landlord. This is elementary. Therefore, the original entries in a diary produced by the Petitioner/Defendant with list Exhibit-30 from April 1982 till March, 2008 are indicating payment 'to the Respondent' and not 'from the Respondent'.

16. It is argued that various *nokar-namas* produced on record are one-sided or unilateral documents and not signed on behalf of the Petitioner/Defendant. But these are documents about defence. Assuming that *nokar-namas* are not signed by the Petitioner/Defendant, they indicate the Respondent/Plaintiff accepting his status as a gardener and therefore not entitled to claim any tenancy.

17. The Appellate Court has entered into the aspect as to whether there is any legal requirement about such declarations or *nokar-namas* under the provisions of law. The Appellate Court has lost sight of the fact that 'whether there was valid agreement of service between the parties' is not the question involved. The question was whether tenancy is proved or not. It can be seen from paragraph 10 of the impugned judgment that such irrelevant consideration about 'requirement of declaration/*nokar-namas* under law' is considered. It is also seen from said paragraph that continuous/long possession of the Respondent/Plaintiff over the Suit premises in absence of *nokar-nama* for intermittent period has weighed with the Court and according to the Appellate Court, it casts doubt about the status of the Respondent as gardener.

18. The Appellate Court has also gone into the aspect of whether the Respondent/Plaintiff could have taken employment of gardener when he was already employed with a company. This is, once again, an extraneous consideration, which was not relevant for the purpose of claim made by the



Respondent/Plaintiff about tenancy. The Appellate Court was conscious of the fact that the Respondent/Plaintiff has failed in proving that his signatures were taken on blank stamp papers. The Appellate Court also entered into the aspect of the documents being executed by the Respondent/Plaintiff under compelling circumstances and not on his own will.

19. The Appellate Court has held that the last *nokar-nama* produced on record is for a period of 11 months from 01.02.1996 and no such document has been executed thereafter till filing of Suit even though the Respondent/Plaintiff continued to occupy the Suit.

20. All these observations of the Appellate Court are in respect of the documents of *nokar-namas* which was not the core issue at hand.

21. The Respondent/Paintiff has admitted in his cross-examination that with the help of his retirement benefits, he has acquired a flat in the name of his son. The Appellate Court has brushed aside this aspect by observing that suit is not for recovery of possession under bonafide requirement / greater hardship.

22. In paragraph No. 15 of the impugned judgment, the Appellate Court has held that defendant cleverly converted rent receipts into salary receipts. This observation is out of place. Assuming that the salary receipts are not proved, but they are not signed by the Petitioner/Defendant and therefore can not be rent receipts. The Appellate Court has ultimately held that '*when the case of the Petitioner/Defendant based on nokar-namas, declarations as well as payment of receipts are unsuccessful, ultimately positive contention of the plaintiff about tenancy is required to be accepted*'. Such line of



reasoning is perverse and the onus is illegally placed on the Petitioner/Defendant to prove his defence about the status of Respondent / Plaintiff. It can not be sustained. The Appellate Court has clearly lost sight of the settled position of law that in a suit for declaration of tenancy, primary burden is upon the Plaintiff - alleged tenant to establish tenancy.

23. From the overall reading of the impugned judgment, it clearly emerges that the Appellate Court has found that the defence is doubtful, therefore the case made out by the Plaintiff must be believed. This is perverse and cannot be sustained. It is based on illegal onus placed on Petitioner/Defendant, and if allowed to stand, would amount to miscarriage of justice. Therefore, this is a fit case to interfere.

24. The Petition therefore succeeds. The impugned judgment and decree dated 07.10.2013 is quashed and set aside. The Civil Appeal No. 65 of 2012 filed by the the Respondent is dismissed. The judgment and decree dated 02.01.2012 of dismissal of Suit, is confirmed.

25. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)