



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

33 WRIT PETITION NO. 14088 OF 2017

Hayatbi Gulabkhan Pathan Died Lrs Gulabkhan Pathan Died Lrs Hasan
Gulabkhan Pathan And Others

VERSUS

Shrikrisan Kasturchand Lohe Trust Sangamner Behalf Of Trust Shivdas
Ramratan Hariyar And Others

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Advocate for the Petitioners : Mr. Shaikh Mazhar A. Jahagirdar

Advocate for Respondent No.2 : Mr. Bajaj Anil S.

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 04.05.2026

PER COURT :

1. Heard learned counsel for the respective parties.
2. The petitioners challenge the judgment and decree dated 10.06.1993 passed by the learned Civil Judge, 2nd Joint Junior Division, Sangamner in Regular Civil Suit Nos. 2018/1986, as well as the judgment and decree dated 05.10.2017 passed by the learned District Judge-1, Sangamner, Ahmednagar in Regular Civil Appeal No.306 of 2000.
3. Learned counsel for the petitioners, Mr. Jahagirdar, submits that the respondent-plaintiff/landlord had issued first notice of demand of rent on 06.06.1983. Pursuant thereto, the petitioners paid the entire arrears of rent. Thereafter, second notice was issued on 19.12.1985 and even pursuant to the said notice, the amount demanded was paid and accepted by the landlord. Hence, according to him, the petitioners cannot be termed as defaulters within the meaning of Section 12(3) of the The

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, “the Act”)

4. It is further submitted that the respondent-plaintiff instituted suit for eviction and possession on the grounds of default in payment of rent, bona fide requirement, material alteration and subletting. The learned trial Court dismissed the suit on the grounds of bona fide material alteration requirement, material alteration and subletting, however, decreed the suit on the ground of default in payment of rent.

5. Learned counsel submits that the findings recorded by the trial Court on the issues of bona fide requirement, material alteration and subletting attained finality as the same were not challenged by the plaintiff. The petitioners preferred appeal contending that there was no default as the arrears were not exceeding six months on the date of issuance of notice. However, the learned District Judge dismissed the appeal and confirmed the decree passed by the trial Court.

6. It is submitted that both the Courts below failed to properly consider the provisions of Section 12 of the Act. The provision clearly stipulates that the landlord is not entitled to recover possession so long as the tenant is ready and willing to pay the standard rent and permitted increases. According to the learned counsel, if the tenant pays the arrears within one month from the date of receipt of notice, no decree of eviction can be passed. In the present case, both the demand notices were duly complied with within stipulated period and, therefore, no cause of action

survived for filing the suit.

7. It is further submitted that first notice (Exhibit-35) dated 06.06.1983 demanded arrears for 52 months and the amount was duly paid. Similarly, second notice (Exhibit-42) dated 19.12.1985 was also complied with within one month and, therefore, the tenant cannot be termed as defaulter.

8. It is also contended that part of the claim for arrears was time-barred and, therefore, the demand itself was illegal. Further, the second notice was not in conformity with Section 12(2) of the Act and cannot be treated as valid demand notice. Hence, according to the petitioners, decree of eviction is unsustainable.

9. Per contra, learned counsel for respondent No.2, Mr. Bajaj, submits that tenancy commenced in respect of suit premises bearing CTS Nos.1675 and 1675/1, Municipal House No.1374 & 1374/1 at monthly rent of Rs.10/-. The defendant was in arrears of rent since 01.02.1979 and, therefore, the plaintiff issued first notice demanding arrears for 52 months.

10. It is submitted that though certain amounts were paid, the same were not regularly paid. Even after filing of the suit, the defendant failed to regularly deposit rent despite directions issued by the trial Court. The learned trial Court, therefore, rightly decreed the suit on the ground of default.

11. It is further submitted that the appellate Court, after re-

appreciating the evidence, confirmed the findings recorded by the trial Court. Reliance is placed on the following judgments:-

1. *Babulal s/o Fakirchand Agrawal v. Suresh s/o Kedarnath Malpani & Ors. CRA/76/2010 decided on 12.06.2017.*
2. *S. Nazeer Ahmed v. State Bank of Mysore and others, reported in (2007) 11 SCC 75*
3. *Mrugendra Indravadan Mehta and others Vs. Ahmedabad Municipal Corporation, reported in 2024 SCC Online SC 849*

12. It is submitted that both the notices were valid and clearly indicated arrears of rent. Despite opportunities, the defendant failed to make regular payments and, therefore, decree of eviction is justified.

13. Having heard learned counsel for the respective parties and upon perusal of the record, it appears that the suit was filed on multiple grounds. The trial court decreed the suit and same was confirmed by the Appellate Court. Both the Courts below have concurrently held against the plaintiff on the grounds of bona fide requirement, material alteration and subletting.

14. The only surviving issue is with regard to default in payment of rent. The learned Trial Court has recorded a finding that two notices were issued by the plaintiff on 06.06.1983 (Exhibit-35) and 19.12.1985 (Exhibit-42) respectively. The second notice was not complied by the petitioner within one month as mandated by Section 12 of the Act. Though money orders were sent pursuant to the said notice below Exhibit-42 the same were sent after a period of one month, which entitled the plaintiff to the decree of eviction. The petitioner had failed to

produce any documents showing that he has paid rent for the relevant period. Merely because money orders were sent, do not exempt him from the eviction, as the same were sent after the period of one month. The learned Trial Court had directed the petitioner to deposit arrears of rent and to pay monthly rent on or before 10th day of each month, but the petitioner had failed to do so, which shows the ignorant behavior of the petitioner. Therefore, persistent failure of petitioner to deposit rent entitled the plaintiff for decree of eviction.

15. Accordingly, the trial Court framed Issue No.2 as *“Does the plaintiff prove that the defendants are in arrears of rent for more than six months and has become defaulter?”* and recorded finding in the affirmative. Similarly, Issue Nos.7, 8 and 9 were also answered in favour of the plaintiff. The learned Trial Court has properly appreciated the evidence and material on record, thereby evicting the petitioner. The appellate Court, upon re-appreciation of evidence, confirmed the findings recorded by the trial Court and observed that the defendant was defaulter.

16. Upon consideration of the findings recorded by both the Courts below, it appears that the conclusions are based upon appreciation of evidence available on record. No perversity or illegality is demonstrated so as to warrant interference in writ jurisdiction.

17. Hence, the writ petition being devoid of merits, stands dismissed.

[SIDDHESHWAR S. THOMBRE]
JUDGE