



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

WRIT PETITION NO.2531 OF 2024

PETITIONERS :- Prakash S/o Laxmandas Damwani,
Aged 47 years, Occ. Business,
Proprietor of Gazal Bar, Khamla,
Nagpur. Since Dead through Legal heirs
already on record.

1(a) Sharda Prakash Damwani, Aged 50
years, Occ. Housewife,

1(b) Pankaj S/o Prakash Damwani, Aged 29
years, Occ. Business,

1(c) Hitesh S/o Prakash Damwani, Aged 27
Occ. Business,
All 1(a) to 1(c) R/o Flat No.201, Devika
Towers, Opp. Power Gird, Nari Road,
Nagpur.

1(d) Bharti Sunnay Tejawani, Aged 30 years,
Occ. Housewife, R/o B.K. No.1491/12,
Section 30-B, Opp. Gurunanak Darbar,
Ulhas Nagar 421004 Thane.

..VERSUS..

RESPONDENT :- Dhanraj Chuhamal Jaikalyani, Aged 53
years, Occ: R/o Khamla, Tah. & Dist.
Nagpur.

Mr. J.J. Chandurkar, Advocate for Petitioners.
Mr. H.D. Dangre, Advocate for Respondent.

CORAM : ROHIT W. JOSHI, J.

DATE OF RESERVING THE JUDGMENT: 07.07.2026

DATE OF PRONOUNCING THE JUDGMENT: 04.08.2026

JUDGMENT :

1. Heard finally with consent of learned advocates for the respective parties.

2. The present petition is filed in order to assail judgment and decree dated 23.12.2016 passed by the learned Judge, Additional Small Causes Court, Nagpur in Regular Civil Suit No. 584 of 2003, whereby suit for eviction and possession filed by the original plaintiff/respondent against the original defendant/petitioners has been decreed, and the judgment and decree dated 15.03.2024 passed by the learned District Judge-10, Nagpur, dismissing Regular Civil Appeal No.97 of 2017, thereby confirming the decree for eviction and possession passed by the learned trial Court. The petitioners in the present petitions are legal representatives of original defendant, who will be referred to as defendant. The respondent is the original plaintiff and will be referred as plaintiff in the judgment.

3. The plaintiff has filed the aforesaid suit against the defendant, *inter alia*, stating that the defendant is his tenant with respect to the suit property, which comprises of two shop blocks admeasuring 360 square feet situated on the upper ground floor and

one hall admeasuring 720 square feet and first floor respectively of a building known as “Balaji Towers”, bearing N.M.C. House No.3854/87, Ward No.75, Khamla, Nagpur.

4. It is the case of plaintiff that the suit property was let to the defendant under an agreement dated 28.11.2000. The plaintiff claims ownership over the suit property on the basis of a partition, which is evidenced by a memorandum of partition dated 01.11.2000. It is the case of plaintiff that the agreed rent for the suit premises was Rs.8,400/- per month and that the parties had agreed that after the business of bar of the defendant was to commence, rent would be enhanced to Rs.14,000/- per month. According to the plaintiff, the operations of the bar of the defendant have commenced from 18.08.2002. The plaintiff had issued notice dated 03.12.2002 stating that the defendant was not paying the rent as agreed and also sought eviction of the defendant on other grounds. Since the defendant did not vacate the suit property as per the notice, the aforesaid suit came to be filed on 21.10.2003.

5. The defendant opposed the suit stating that the plaintiff alone was not the landlord. According to the defendant, the plaintiff and his brother, Khushal, both were landlords. The defendant also claimed that the property was let to him under an agreement dated

08.03.2000 and that the agreed rent was Rs.7,000/- per month and not Rs.8,400/- per month as contended by the plaintiff. The defendant stated that he was not in arrears of rent and further that plaintiff avoided to receive the rent. The defendant made reference to an earlier suit for declaration and injunction filed by him against the plaintiff and his brother, being Regular Civil Suit No.333 of 2003, which was decreed by the learned Civil Court vide judgment and decree dated 26.11.2009 and that appeal preferred by the plaintiff in order to challenge the said decree, being Regular Civil Appeal No.62 of 2010, was also dismissed vide judgment and decree dated 08.10.2012. The defendant contended that the suit filed by the plaintiff alone was not maintainable and was liable to be dismissed. The defendant stated that in the earlier round of litigation, the learned Small Causes Court had accepted the contention of the defendant (plaintiff in the said suit) that the property was let to the defendant under agreement dated 08.03.2000 and that, despite stand being taken by the defendants therein (plaintiff and his brother Khushal) that Khushal had no concern with the suit property, a categorical finding was recorded that both plaintiff and his brother Khushal were landlords and that the property was let on the basis of agreement dated 08.03.2000.

6. The plaintiff had filed an application under Order XV-A of the Code Civil Procedure, 1908, seeking directions against the defendant to deposit the amount of rent at the rate of Rs.14,000/- per month. The said application was partly allowed by the learned Small Causes Court by directing the defendant to deposit rent at the rate of Rs.8,400/- per month. The defendant, however, did not deposit the amount of rent as directed, as a consequence of which his defence was struck off. Nonetheless, the defendant has conducted cross-examination of the plaintiff, although he could not lead evidence in view of the defence being struck off.

7. It must be stated that the plaintiff had filed a petition before this Court challenging the order passed by the learned Small Causes Court to the extent to which direction for payment of Rs.14,000/- was not accepted and, instead, directions were issued for deposit of Rs.8,400/- per month. The said petition was dismissed by this Court.

8. Both the learned Courts have recorded a categorical finding that plaintiff was owner of the suit property. The foundation of this finding is memorandum of partition dated 01.11.2000. Objection with respect to admissibility of the said document on the ground of registration is rejected stating that the document is not a

document of partition but merely a memorandum of earlier partition arrived at orally. The learned Courts have also accepted the case of plaintiff with respect to the property being let by him to the defendant under agreement dated 28.11.2000. In this regard, it must be stated that the plaintiff has entered the witness box and proved the rent agreement, which is marked as Exhibit 70. Initially, the document was not exhibited. However, upon payment of appropriate stamp duty, the document came to be exhibited. It must also be stated that a copy of this rent agreement obtained from police records was produced by the plaintiff which is marked as Exhibit 176. The copy was provided to police department for obtaining No Objection Certificate for obtaining bar license to be operated from the suit property.

9. The Courts have held that the plaintiff has proved landlord-tenant relationship and that the defendant did not pay rent regularly as per mandate of Section 15 and was, therefore, liable to suffer a decree for eviction under the said provision. Apart from this, case of bonafide need and sub-letting without written permission is also accepted.

10. In view of such findings, the learned Trial Court passed a decree for eviction and possession dated 23.12.2016, which is

confirmed by the learned First Appellate Court. Although the plaintiff and his brother both are held to be landlords, in the earlier civil suit nonetheless, both the learned Courts have held that suit filed by the plaintiff alone will be maintainable.

11. Mr. J.J. Chandurkar, learned advocate for the tenant vehemently argues that earlier civil suit being Regular Civil Suit No.333 of 2003 filed by the tenant against the plaintiff and his brother was decreed by learned Small Causes Court. He contends that a clear declaration that defendant is tenant of plaintiff and his brother Khushal was granted by learned Trial Court. He further contends that this declaration was granted on the basis of agreement dated 08.03.2000. He draws attention to the judgment and points out that although the defendants in the said suit i.e. the present plaintiff and his brother did not enter the witness box, they had raised a specific contention that the present plaintiff alone is the landlord and that the suit was improperly instituted against the defendant no. 2 in the said suit (Khushal – plaintiff's brother). He contends that despite this, a clear declaration is given that the defendant herein (plaintiff in the said suit) is tenant of the plaintiff (defendant no. 1 in the said suit) and his brother Khushal. He further contends that appeal preferred against the said judgment

being Regular Civil Appeal No. 62 of 2010 was also dismissed on 08.10.2012 and that since the said judgment is not assailed further, the same has attained finality between the parties. He contends that the said judgment will operate as *res judicata* in the present suit which learned Courts have failed to appreciate.

12. Mr. J.J. Chandurkar, learned advocate argues that although the defence of defendant was struck out in the present case, the aforesaid judgment ought to have been looked into, in order to ascertain as to whether findings therein would operate as *res judicata*. He argues that the fact that earlier suit was filed by the defendant and it was decreed up to the first appeal and the said judgment had accordingly assumed finality is an admitted fact. He, therefore, contends that the suit filed on behalf of the plaintiff alone was not maintainable and that his brother Khushal was also a necessary party. He contends that since the suit is filed by the plaintiff claiming himself to be the sole owner, doctrine of agency will not apply, and as such, the legal principle that a co-owner can maintain a suit for eviction against a tenant will not be applicable to the case at hand. He, therefore submits that the suit ought to have been dismissed for non-joinder of necessary party.

13. He states that two things follow from the aforesaid

judgment and decree; (i) the plaintiff alone is not the landlord and (ii) the tenancy is created under the agreement dated 08.03.2000 and not under the agreement dated 28.11.2000 as contended by the plaintiff. He further states that if 08.03.2000 is considered to be the date of agreement of tenancy, the rent would be Rs.7,000/- per month to be increased @ 5% every year and not Rs. 8,400/- and Rs. 14,000/- from the date of commencement of bar, as contended by the plaintiff.

14. As regards the decree on the ground of arrears of rent, the contention of Mr. J.J. Chandurkar, learned advocate is that the notice was issued claiming rent @ Rs. 8,400/- per month and @ Rs. 14,000/- per month from 18.08.2002 and onwards. He contends that the notice is illegal since the agreed rent was only Rs.7,000/- per month which was to be increased at the rate of 5% every year. He also contends that as on the date of issuance of notice i.e. 03.12.2002, the defendant was not in arrears of rent and rather cheques issued by the defendant were not accepted by the plaintiff and his brother. With respect to bonafide need, the contention is that although there is pleading in the plaint with respect to bonafide need, in the evidence of examination-in-chief, there is no whisper about the alleged bonafide need. He also contends that learned

Courts have erred in granting a decree on the ground of unlawful subletting, since except for mere word of the plaintiff, there is no material on record to infer such subletting.

15. Mr. H.D. Dangre, learned advocate for the plaintiff vehemently argues that the earlier suit was a suit for injunction and as such the findings recorded in the said suit will not operate as *res judicata* in the subsequent suit for eviction. He argues that the earlier suit was a suit for injunction, whereas the present suit is a suit for eviction under sections 15 and 16 of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as “MRC Act, 1999”) and therefore, section 11 of the CPC will not be applicable. He contends that since the plaintiff had already instituted suit for eviction against the defendant, he did not contest the suit seriously, since there was no intention ever to take forcible possession of the suit property. It is also contended that it is clear from the stand taken in the said suit itself that even according to the plaintiff's brother Khushal, he had no concern with the suit property, and accordingly, it was specifically stated that he was not a necessary party to the suit. He contends that the suit is, therefore, competently instituted.

16. Learned advocate for the plaintiff would contend that even if it is assumed that the plaintiff and his brother are co-owners,

suit for eviction filed by a co-owner will be maintainable. He contends that the other brother had already cleared his stand in Regular Civil Suit No. 333 of 2003 that he had no concern with the suit property, and as such, it is clear that the plaintiff alone was competent to maintain the suit. He states that leave apart doctrine of agency, there is an express authority in the plaintiff to institute the suit alone as can be seen from the stand taken by his brother in the earlier suit.

17. As regards the rent agreement, the contention of Mr. Dangre, learned advocate is that the rent agreement dated 28.11.2000 is duly proved by entering the witness box and that a copy of the same was obtained from police records which was also proved and marked as an exhibit during the course of evidence of the plaintiff. He, therefore, contends that there is overwhelming evidence to establish that the defendant had executed tenancy agreement dated 28.11.2000 and was in occupation of the suit property on the basis of the said agreement.

18. Mr. H.D. Dangre, learned advocate further contends that admittedly defense of the defendant – tenant was struck off for non-compliance of the order directing payment of rent, passed under Order XV-A of the CPC. He states that the defendant did not clear

the arrears of rent within stipulated period of 90 days from the date of receipt of notice under section 15, he did not clear the arrears of rent with interest @ 15% from the date of service of suit summons and further did not even pay the monthly rent regularly in the Court. He, therefore, contends that all three ingredients of section 15 are attracted in the present case warranting a decree under section 15 of the MRC Act, 1999, which is rightly granted by both the learned Courts. He further contends that there is no cross examination of the plaintiff on the point of subletting without permission.

19. It will first be appropriate to deal with the contention with respect to *res judicata*. The earlier suit was a suit for declaration and injunction. The declaration sought was that the defendant (plaintiff in the said suit) is tenant of the plaintiff (defendant No.1 in the said suit) and his brother Khushal. In the said suit, contention was raised by the present plaintiff and his brother that the brother Khushal had no concern with the suit property and that the suit property was let by the plaintiff alone. The learned Small Causes Court has recorded a finding that the present plaintiff and his brother Khushal both are landlords of the defendant. The finding is recorded on the basis of agreement dated 08.03.2000. Although the

present plaintiff had filed affidavit of examination-in-chief in the said suit, he did not lead further evidence and the suit proceeded without his evidence. The agreement dated 28.11.2000 was also not filed in the said suit. It appears that since present suit for eviction was clearly filed by plaintiff, the earlier suit filed by defendant was not contested seriously.

20. The contention that the earlier suit was a suit simpliciter for injunction cannot be accepted. Perusal of the prayer clause in the plaint and also the decree passed will indicate that a specific declaration was claimed that defendant is tenant of the plaintiff and his brother and the said declaration is granted. Moreover, the said declaration is granted on the basis of agreement dated 08.03.2000. In view of the above, the contention of the petitioner that the judgment in earlier suit will operate as *res-judicata* will have to be accepted.

21. The plaintiff has himself to blame for not contesting the said suit seriously. It appears that before the suit was decreed, the present suit for eviction was already filed by the plaintiff and therefore the said suit was not contested the way it ought to have been. Had the said suit been contested on merits, the subsequent rent agreement dated 28.11.2000 could be produced in the said suit

as well in order to prove that the defendant has himself relied on the said agreement for the purpose of obtaining license from the authorities. Be that as it may, the findings are recorded in the earlier round of litigation by a court of competent jurisdiction that the present defendant is tenant of the present plaintiff and his brother Khushal and the said finding is recorded on the basis of agreement of tenancy dated 08.03.2000. Although the prayer in the said suit was declaration and injunction and the prayer in the present suit is eviction, the issue of tenancy was directly and substantially in issue in the first round of litigation and also in the present suit where the defendant has come up with a stand that the plaintiff alone is not the landlord and that plaintiff and his brother Khushal both were landlords of the defendant. The finding with respect to declaration will certainly operate as *res judicata* in the present suit.

22. It is well settled that a co-owner can also institute a suit for eviction against the tenant without adding other co-owner/s as parties to the suit. Mr. Chandurkar, however, contends that since the plaintiff has filed the suit claiming himself to be the landlord and owner, the doctrine of agency will not be applicable. I am afraid, in the facts of the present case, the said contention cannot be accepted. Although, normally, doctrine of agency is applicable only in cases

where a co-owner files a suit as a co-owner, in the case at hand, the brother of the plaintiff, who according to the defendant, is the co-owner, has himself denied his status as co-owner and co-lessor in the earlier suit. He has stated in unequivocal terms that he has no concern with the suit property which belongs to the plaintiff alone. In the light of the stand taken by the plaintiff's brother in the earlier round of litigation, it cannot be said that plaintiff alone is not competent to institute the present suit. The objection that the suit filed by the plaintiff alone is not maintainable is, therefore, liable to be rejected.

23. Having perused the record of the case, this Court is also of the opinion that the plaintiff has proved the subsequent agreement dated 28.11.2000, under which he has let out the suit property to the defendant alone. His brother, Khushal, is not party to the said agreement. The plaintiff has also produced copy of this rent agreement from police records. The defendant had provided the copy of rent agreement dated 28.11.2000 to police authorities for obtaining No Objection Certificate for a bar license to be operated from the suit property. Copy of rent agreement dated 28.11.2000 obtained from police records is also exhibited. However, the plaintiff did not contest the earlier suit on merits by leading

evidence, probably because he had already instituted suit for eviction while the earlier suit filed by the defendant seeking declaration and injunction against forcible eviction was pending. The plaintiff was not properly advised about all consequences of the prayer for declaration which was made in the said suit.

24. As regards Section 15 of the MRC Act, 1999, perusal of the evidence of the plaintiff will demonstrate that, although it is stated that the defendant has not cleared the arrears of rent despite service of notice, the defendant has not challenged the said statements in the examination in chief during the cross examination of the plaintiff. It must also be stated that notice for arrears of rent is duly proved and exhibited. Receipt of the notice is also not in dispute.

25. The contention of the defendant, however, is that the notice is not a valid notice inasmuch as against Rs.7,000/- per annum plus 5% annual increase, which was the agreed rent, the plaintiff has demanded sum of Rs.8,400/- per month towards rent and from 18.08.2002 the rent is claimed at the rate of Rs.14,000/- per month. The contention of Mr. Chandurkar is that since the notice makes a demand for rent which is not the agreed rent, the notice is bad and therefore suit on the ground of arrears of rent

cannot be decreed.

26. I am afraid, the said contention cannot be accepted. It is well settled that in cases under Section 15, when the quantum of rent is in dispute, the defendant cannot avoid a decree for eviction merely on the ground that the rent claimed by the landlord is not correct. In such a case, the defendant must to pay the rent to the landlord at the rate which according to him is the agreed rate of rent. In the case at hand, the record clearly indicates that the defendant has failed to deposit the rent at the rate which according to him was the agreed rate of rent to the landlord after filing of the suit. In this regard, it will be appropriate to refer to judgment of this Court in the case of *Smt. Fehameeda Begum Vs. Shri. Abdul Hafiz s/o Sheikh Anwar*¹, wherein this Court, after referring to divergent views of this Court on this point, held that even when the notice issued by a landlord under Section 15 mentions a higher amount of rent than the admitted rent, in such cases also a tenant must remit the rent which, according to him, is the agreed rent and failure on the part of the tenant to deposit rent admitted by him will ensue a decree for eviction against him under Section 15 of the MRC Act, 1999. Relevant observations of this Court in the said judgment are

¹ 2013(2) ALL MR 257

reproduced herein below for ready reference:-

“6....The first appellate Court was not justified in holding that the notice issued by the landlady under Section 15 of the Maharashtra Rent Control Act, 1999 was bad in law as the landlady claimed the arrears of rent at the rate of rupees four hundred and fifty per month instead of seeking the rent at the rate of rupees two hundred per month, which was admitted. The first appellate Court while relying on the judgment reported in 2010 (3) Mh.L.J. 807 : [2010(2) ALL MR 747] (Vinayak Narayan Deshpande and others. v. Deelip Pralhad Sisode), failed to consider the subsequent judgment of this Court reported in 2011 (2) Mh.L.J. 156: [2011(1) ALL MR 315] (Srinivas Babulal v. Ramakant s/o Shivnarayan Jaiswal) which in turn had referred to the judgments reported in 1983 Mh.L.J. 254 (Chhaganlal Mulchand Jain v. Narayan Jagannath Bangh) and 1998 (3) Mh.L.J. 237: [1998(4) ALL MR 446] (Lalji Lachhamdas v. Amiruddin Amanulla and another). It appears that when the learned Single Judge was considering the question of validity of the notice under Section 15 of the Maharashtra Rent Control Act, 1999 in the judgment reported in 2010 (3) Mh.L.J. 807:

2010(2) ALL MR 747] (Vinayak Narayan Deshpande and others. v. Deelip Pralhad Sisode), the judgment of the Division Bench reported in 1983 Mh.L.J. 254 (Chhaganlal Mulchand Jain v. Narayan Jagannath Bangh) and the judgment of the learned Single Judge reported in 1998 (3) Mh.L.J. 237: [1998(4) ALL MR 446] (Lalji Lachhamdas v. Amiruddin Amanulla and another) were not brought to the notice of the learned Single Judge. It was held by the Division Bench of this Court in the judgment reported in 1983 Mh.L.J. 254 (Chhaganlal Mulchand Jain v. Narayan Jagannath Bangh) that a notice seeking arrears of rent should not be construed strictly and if the notice seeks an amount higher than the admitted rent, it would be open to the tenant to send such amount as according to him is due subject to the liability that if ultimately a larger amount is found to be due, he could not be said to have complied with the requirements of the notice. A similar view was expressed in the judgment reported in 1998 (3) Mh.L.J. 237 : [1998(4) ALL MR 446] (Lalji Lachhandas v. Amiruddin Amanulla and another)...”

The suit is therefore rightly decreed by the learned courts

under Section 15 of the MRC Act, 1999 as well.

27. It will also be appropriate to refer to judgment in the case of *Babulal s/o Fakirchand Agrawal Vs. Suresh s/o. Kedarnath Malpani and ors*², it is held in the said case that Section 15(1), 15(2) and 15(3) are independent of each other and that in order to avoid a decree for eviction, the tenant must continue to pay rent with permitted increases even after filing of the suit till the same is disposed of, failing which a decree for eviction must be passed against him.

28. The contention of Mr. Chandurkar that the tenant was not in arrears of rent as on 03.12.2002, since the rent tendered cannot be accepted since the said contention is not made good by leading evidence. In the absence of any evidence in this regard the said contention which is based on a factual matrix cannot be accepted. It must again be stated that the tenant has admittedly not deposited the rent during the pendency of the suit.

29. The next ground on which decree for eviction is passed is that the defendant has sub-let the premises without seeking prior permission of the plaintiff. In this regard, the plaintiff has specifically stated in the plaint that the bar was let out by the

2 2017(4) Mh.L.J. 407

defendant to one Mr. Jain and thereafter one Mr. Agrawal and a portion of the property was also sub-let for running a paan shop. There are pleadings in this regard in the plaint and in the evidence also, the plaintiff has come up with the same statements. However, perusal of the cross-examination will demonstrate that the said stand taken by the plaintiff is not disputed at all. It is well settled that when a witness makes a statement in the examination-in-chief and the same is not questioned during his cross-examination, it must be taken that the party conducting the cross-examination accepts the correctness of the statement made by the witness in the examination-in-chief. Therefore, the case of sub-letting will have to be accepted.

30. As regards bonafide need, although pleadings in that regard are made in the plaint, the examination-in-chief of the plaintiff is completely silent in this regard. However, both the learned Courts have recorded a finding that the defendant did not challenge the case of bonafide need set up by the plaintiff during his cross-examination.

31. I am afraid, the said finding is not acceptable. Since there is no statement in the examination-in-chief with respect to bonafide need, the defendant has obviously not conducted cross-examination

on the said aspect. It is well settled that pleading cannot take the place of evidence. Pleadings, in the absence of evidence, are of no avail. The plaintiff has thus failed to prove the case of bonafide need.

32. In the light of reasons recorded above, this Court is of the opinion that the suit is competently filed by the plaintiff and that case for eviction is made out against the tenant under Section 15 and 16(1)(e) of the MRC Act, 1999.

33. In the result, Writ Petition is **dismissed**.

(ROHIT W. JOSHI, J.)

34. At this stage, Mr. Chandurkar, learned advocate for the petitioner/tenant makes a request to defer execution of the decree for a period of eight weeks in order to enable the tenant to approach the Hon'ble Supreme Court. This Court has rejected the findings by the learned Courts with respect to bonafide need. Decree is maintained on the ground of arrears of rent and subletting without prior permission. In that view of the matter, execution of the decree is stayed till **30.09.2026**.

(ROHIT W. JOSHI, J.)

C.L. Dhakate