

(2024) 11 BOM CK 0036

In the Bombay High Court

Case No : Civil Revision Application No. 470 Of 2022

Sangita Ravindra Sathe

APPELLANT

Vs

Ramakant Tulshiram Salunke

RESPONDENT

Date of Decision : 27-11-2024

Acts Referred:

Code of Civil Procedure, 1908 — Section 115

Maharashtra Rent Control Act, 1999 — Section 12(3)(b), 15, 15(2), 15(3)

Citation : (2024) 11 BOM CK 0036

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench

Advocate : Amar Ashok Gharte, Aishwarya Rajesh Dangle, Mandar Soman, Ishaan Kapse, Swaroop M. Karade

Final Decision : Dismissed

Judgement

Sandeep V. Marne, J

1) Revisionary jurisdiction of this Court is invoked under provisions of Section 115 of the Code of Civil Procedure, 1908 for setting up a challenge to the judgment and decree dated 28 September 2022 passed by District Judge-1, Solapur dismissing Regular Civil Appeal No. 25 of 2020 and confirming the eviction decree passed by the Trial Court on 19 November 2019 in Regular Civil Suit No. 1930 of 2012.

2) I have heard Mr. Gharte, the learned counsel appearing for the Revision Applicant and Mr. Soman, the learned counsel appearing for Respondents-Plaintiffs. I have gone through the findings recorded by the Trial and Appellate Courts and have also considered various documents placed on record.

3) After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that the suit has been decreed by the Trial Court on twin grounds of default in payment of rent and bonafide requirement of the Plaintiffs. The ground of nuisance came to be rejected by the Trial Court. The

findings recorded by the Trial Court on the issues of default in payment of rent and bonafide requirement have been confirmed by the Appellate Court.

4) So far as the ground of default in payment of rent is concerned, the same is governed by provisions of Section 15 of the Maharashtra Rent Control Act, 1999 (MRC Act), which provides thus:

RELIEF AGAINST FORFEITURE

15. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the, standard rent and permitted increases, if any, and observes and performs the other, conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court.

(4) Pending the disposal of any suit, the court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the court thinks fit.

5) Thus, for avoiding the decree for eviction, it was incumbent for Defendant to first pay to the Plaintiff the arrears of rent demanded in the Notice served in accordance with provisions of Section 15(2) of the MRC Act. It appears that Plaintiff's served notice dated 28 February 2012 on the Defendant alleging non-payment of rent from 1 July 2011 to 31 January 2012 at the rate of Rs.1,000/- per month (total amount of Rs.7,000/-). The Defendant admittedly did not make good the default while responding to the notice on 4 April 2012. After receipt of the suit summons, Defendant filed application at Exhibit 11 seeking deposit of amount of Rs.19,168/- towards arrears of rent together with interest at the rate of 9%. The amount of Rs. 19,168/- comprised of Rs.17,000/- towards arrears of rent from 1 July 2011 to December 2012 and Rs.2,168/- towards interest at the

rate of 9% per annum. The arrears of rent from 1 July 2011 to December 2012 was actually Rs.18,000/- and not Rs.17,000/-. Thus, the entire arrears of rent upto December 2012 are admittedly not deposited. Furthermore, while provisions of Section 15(3) require deposit of interest at the rate of 15% per annum, Defendant deposited interest at the rate of 9% per annum. Thirdly Defendant did not deposit costs of the suit. Thus, there is no compliance with the provisions of Section 15(3) of the MRC Act. In *Laxman Vs. Dr. Vijay Bhojraj Khachane*¹, this Court has taken a view that what needs to be deposited is whole rent and failure to deposit interest would also entail passing of decree for eviction. This Court held thus:

17. Thus, in *Yusufbhai Noormohammed Jodhpurwala (supra)* the total arrears of rent at the rate of 70/- per month was Rs. 7,070/- and the amount of rent deposited in the court was Rs. 6,860/-. The deposited rent was short by Rs. 270/-. The Supreme Court has held that the High Court in that case erred in interpreting the provisions of Section 12 (3)(b) purposively on the basis of readiness and willingness on the part of the tenant to pay rent and such interpretation was erroneous. The Apex Court has held that the provisions of Section 12 (3)(b) are mandatory in nature and must be strictly complied with. Thus, from the judgment of the Apex Court in *Yusufbhai Noormohammed Jodhpurwala (supra)* it is clear that what is required under the provisions of Section 12 (3) of the Act is to deposit 'whole rent' and not part of it. Mere readiness and willingness on the part of the tenant to deposit rent by making part deposit would not satisfy the requirements of Section 12(3) of the act.

18. In *Balaji Pratapji Pandya (supra)* this Court was dealing with a situation where the provisions of Section 15 (3) of the Maharashtra Rent Act requires deposit of amount of arrears along with interest at the rate of 15%, whereas the tenant had deposited such arrears with interest at the rate of 9%. This Court held in para 17 of the judgment as under:

"17. In the present case also, the condition enumerated in section 15(3) of the Maharashtra Rent Act are not strictly complied with. The deposit of the amount of arrears of rent is not with per annum interest @ 15% so also it is not within 90 days from the service of suit summons. Provisions of section 15(3) of the Maharashtra Rent Act are mandatory. The protection under section 15(3) of the Maharashtra Rent Act is available to tenant only if the tenant scrupulously adheres to the provisions of section 15(3) of the Rent Act. The Court has no jurisdiction to extend the time prescribed in the said section. The tenant herein has failed to deposit the rent within 90 days from the date of service of notice so also has failed to deposit the said amount with interest @ 15% per annum. The amount deposited after lapse of 90 days from the date of service of summons is also not with interest

@ 15% per annum but is deposited only with interest @ 9% per annum. Both the ingredients of section 15(3) are not complied."

19. Thus, even failure to deposit amount of interest at the rate provided for in the Act can lead to a decree of eviction.

(emphasis added)

6) Section 15(3) of MRC Act requires the tenant to deposit the rent regularly during pendency of the suit. After making first deposit on 21 January 2013 of Rs.19,168/-, the Defendant did not deposit the rent for the month of January 2013. She deposited amount of Rs.12,000/- representing rent from January 2013 till December 2013 at one go on 21 November 2013. Thus, the rent for the month of January 2013 was deposited after delay of 11 months in November 2013. The same story continued in respect of subsequent months, where the Defendant went on making lumpsum deposits at intervals of six or twelve months. If the deposit receipt of 15 February 2021 is perused, it appears that the rent in respect of 15 months from March 2020 to May 2021 was deposited at one go on 15 February 2021. The Apex Court has held in *Mranalini B. Shah and Anr. V/s. Bapalal Mohanlal Shah* (1980) 4 SCC 251, *Mohan Laxman Hede V/s. Noormohamed Adam Shaikh* (1988) 2 SCC 481 that the word 'regularly' appearing in provisions of Section 15(3) of the MRC Act does not mean deposit of rent by mathematical precision. However, this is not a case, which involves stray default on the part of the Defendant. All throughout the pendency of the suit, the Defendant was irregular in depositing the rent. The Legislative intent behind provisions of Section 15(3) is to ensure that the tenant makes good the default in payment of rent upon receipt of suit summons and thereafter continues to deposit the rent regularly during pendency of suit. Ultimately, the amount of rent represents return on investment for the landlord. On account of statutory freezing of rent, the same no longer comes remotely close to the real return on investment. However, if the tenant does not even pay that paltry sum towards rent regularly, the least that the tenant must suffer is a decree for eviction. The rent in the present case is meagre sum of Rs. 1000, but that sum of Rs.1000/- payable in March 2020 is actually deposited by the Defendant-tenant after 15 months on 15 February 2021. The pretext of delay in deposit on account of COVID-19 pandemic cannot be accepted in the present case, as the Defendant was otherwise irregular in making deposit since 2013. There is a purpose for use of the word 'regularly' in sub-section (3) of Section 15 of the MRC Act. The provision is aimed at ensuring that the tenant who had defaulted in payment of rent in the past, atleast deposits/pays the rent regularly during pendency of the proceedings. Section 15 actually provides for protection against eviction, but mandates that the tenant must pay the rent and observe terms and conditions of tenancy. With a view to further protect tenants from unscrupulous landlords, who create artificial ground of default in payment of rent, the Legislature has provided twin opportunities to the tenant to avoid decree for eviction on the ground of default viz. (i) by paying the demanded amount in the Notice served under Section 15(2) and (ii) by depositing in the Court amount of arrears in Court within 90 days of service of suit summons together with interest @ 15% and costs of the suit. If either of the two opportunities are availed by the tenant,

landlord's action for eviction can be frustrated. However, during adjudication of landlord's action for eviction, the tenant must ensure that the rent is also paid/deposited every month during pendency of proceedings. Any default in making regular payment/deposit of rent during pendency of proceedings can also entail decree for eviction.

7) Thus, there is clear failure on the part of the Defendant to comply with provisions of Section 15(3) of the MRC Act. Mr. Gharte would attempt to urge that the Defendant is an illiterate lady and has made deposits as per the advice given to her by her advocate. In my view, Section 15 requires strict compliance. Under Section 15(3), the tenant who has defaulted in payment of rent is granted second opportunity of making good the default in payment of rent for avoiding decree for eviction. In the present case, after receipt of the notice dated 28 February 2012 demanding arrears of rent of Rs.7,000/- Defendant failed to avail the first opportunity by paying the amount of Rs.7000/-to the landlord and invited filing of a suit. After the suit was filed, she failed to avail the second opportunity by not making deposit of entire amount of rent then due, together with 15 % interest and costs of the suit as provided for under Section 15(3) of the Act. She was also not regular in deposit of rent throughout pendency of the suit. In my view, therefore, regardless of the reason for default on the part of the Defendant-Tenant, the Court is not invested with any discretion for refusing to pass eviction decree while considering circumstances under which the Defendant-Tenant fails to deposit the rent regularly. The Trial and Appellate Courts have rightly accepted the ground of default in payment of rent.

8) So far as the ground of bonafide requirement of the Plaintiff is concerned, he came up with a case that he was residing in a flat admeasuring 410 sq.ft. comprising of 1BHK and that the said space was insufficient and inconvenient for family of 7 persons. True it is that the Trial Court, at some places, have erroneously assumed that the Plaintiff was residing in a tenanted place by ignoring a specific admission on the part of the Plaintiff that the flat in which he resides is owned by him. However, Plaintiff never contented in the plaint that he was residing in tenanted house. What he pleaded was about insufficiency and inconvenience for family of 7 persons to accommodate themselves in one BHK flat admeasuring only 410 sq.ft. It is not the case of the Defendant that in addition to the said flat, Plaintiff has any other place for his residence. In my view, therefore, bonafide requirement of the Plaintiff is clearly established in the present case.

9) So far as the issue of comparative hardship is concerned, it is borne out from evidence that the mother of the Defendant no longer resides with her and that her son also resides at Pune. The Appellate Court has recorded a finding of fact that the Defendant is residing alone in the suit premises. Thus, the issue of comparative hardship clearly goes in favour of Plaintiff and against the Defendant.

10) In my view, therefore, there is no palpable error in accepting the ground of bonafide requirement by the Trial and the Appellate Courts.

11) The conspectus of the above discussion is that no interference is warranted in the concurrent findings of the fact recorded by the Trial and Appellate Courts in exercise of revisionary jurisdiction by this Court under provisions of Section 115 of the Code. Civil Revision Application is devoid of merits and the same is accordingly dismissed with no order as to costs.

12) Considering the facts and circumstances of the present case, Defendant shall have time up 31 March 2025 to vacate the possession of the suit premises, subject to the condition of payment of rent and non-creation of any third-party rights in the suit premises.