



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

WRIT PETITION NO.5541/2017

Shri Satish s/o Ramchandra
Bahekar, Aged about – 47 yrs.,
Occ.- Photographer, R/o. C/o.
Bahekar Photo Studio, Digras,
Tq. Digras, Dist. Yavatmal

... PETITIONER

VERSUS

1. Shri Sanjay Madhukar Savane (Dead)
Legal Representatives of respondent
- 1-a) Madhavi wd/o Sanjay Savne,
Aged about 47 years,
Occu. Housewife,
- 1-b) Shashank s/o Sanjay Savne,
Aged about 23 years,
Occu. Student,
- 1-c) Kusumbai Madhukar Savne,
Aged about 80 years,
Occu. Housewife,
All R/o Harsul, Tah. Digras,
Dist. Yavatmal
Now R/o of Plot No.11B,
Kothari Vatika No.3, Malkapur Road, Akola
- 1-d) Sau. Sakshi Saurabh Ahiwar,
Aged about 29 years,
Occu. Housewife,
R/o. Backside of Ghanshyam Base 2,

Govind Garden Hotel, Pimple Saudagar,
Pune.
(amendment carried out as per
Court's order dt.05.01.2023)

... RESPONDENT

Shri N.R. Bhishikar, Advocate for petitioner
Shri V.N. Patre Advocate for respondent

CORAM : PRAVIN S. PATIL, J.

DATE OF RESERVATION OF JUDGMENT : 24.07.2026

DATE OF PRONOUNCEMENT OF JUDGMENT :04.08.2026

JUDGMENT

1. Heard.

2. In the present petition, the challenge is to the judgment and order passed by District Judge, Darwha, District Yavatmal in R.C.A. No. 25 of 2013, dated 06.03.2017 whereby the appeal filed by tenant against the order of eviction from the suit shop was dismissed.

3. The facts of the present case can be summarized as under:

The petitioner is the tenant and respondent is the landlord.

The respondent landlord has filed a suit for eviction and possession of the suit shop, stating that the suit shop was initially let out to petitioner by his father for running a photo studio on a monthly rent of Rs.500/-. In the year 2001, there was a family partition, and the suit shop came in the share of respondent. After the suit shop came into the share of respondent, the monthly rent was increased initially Rs.700/- and then Rs.1500/-. Petitioner has paid rent regularly till December 2008. But from 01.01.2009 to 31.05.2011, there was a consistent default in payment of regular rent. Respondent, therefore, issued the notice to the petitioner through his Counsel dated 21.05.2011. The said notice was refused to accept by the petitioner. In addition of same, respondent also states his bonafide need for recovery of possession. In this background, the suit was filed before the Trial Court for recovery of rent, possession of the suit premises, for bonafide requirement, and mesne profit.

4. The petitioner denied all the averment of

respondent-landlord by filing written statement. According to him, respondent is not true owner. He had regularly paid rent to brother of respondent namely Dr. Arun Sawane. So also denied bonafide need of respondent. The petitioner tenant, in addition to above, has raised a specific ground before the Trial Court that as per the mandate of Section 15 of the Maharashtra Rent Control Act, suit is not tenable as same was not filed after expiry of 90 days of the notice. Hence, by raising all possible ground contested the suit on merit before Trial Court.

5. In the background of above said pleading of both the parties, the Trial Court has decided the suit by impugned judgment dated 17.10.2013. The Trial Court has negated the submission of the petitioner in view of the evidence placed on record by the respondent. The Trial Court has specifically held that Dr. Arun Sawane, to whom the rent was alleged to be paid, has categorically denied of receipt of any amount towards the pagdi as well as the regular rent. So also, the petitioner failed to produce any documentary evidence, to demonstrate that

Rs.1,00,000/- was paid towards the pagdi and regular rent to the brother of respondent, namely Dr. Arun Sawane. As such, all contentions raised by the petitioner were rejected.

6. The learned Trial Court also, in respect of bonafide need, has held that the landlord is the best judge of his requirement, and it is for him to decide how and in what manner he should live, and if he desires to beneficially enjoy his own property, it is not for the Courts to dictate to him to continue to occupy such premises, and in such case, it is not necessary for the landlord to establish the dire necessity, it is enough to show that some need exists. In the present case, as the landlord desires to start his business for wife, the decree on bonafide need cannot be refused.

7. Learned Trial Court, in respect of finding about the tenability of the suit without compliance of Section 15 (2), has recorded the finding that as per Section 15(2), what is requirement is that landlord shall issue 90 days notice to the

tenant, but it does not mean the suit does not become untenable even if it is filed prior to 90 days. According to the Trial Court, what is important is that the suit should not be disposed of within the period of 90 days, so that tenant should get sufficient time to make payment of rent. Hence, according to the learned Trial Court, the submission of the petitioner tenant, is contrary to the settled position of law.

8. The learned Trial Court, in support of this finding, has relied upon the judgment of this Court in the case of *Fehameeda Begum w/o Mahamood Khan Pathan vs. Abdul Hafiz s/o Sheikh Anwar*, reported in (2013) 2 MH.L.J. 524, wherein, according to the Trial Court, it is held that if the tenant failed to deposit the rent within 90 days from the receipt of suit summons, the landlord is entitled to possession under Section 15 of the Act. Trial Court also relied upon the judgment of *Chandiram Dhariyanumal Ahuja vs. Akola Zilla Shram Wahtuk Sahakari Sanstha, Akola*, reported in 2013 Volume 1 MH.L.J. 28, wherein according to the learned Trial Court, it is held that if the tenant

wants to enjoy protection under Section 15 (1) of the Maharashtra Rent Control Act, he has to prove that he has been paying rent regularly during the pendency of the suit. Hence, by relying upon these two judgments, which according to the Trial Court, are squarely applicable to the respondent's case, allowed the suit and thereby directed the petitioner to deposit the arrears of rent from period 01.01.2009 to 31.02.2011 at the rate of Rs.1500/- per month along with interest at the rate of 15% per annum, and future interest 6% per annum from the date of decree till its realization.

9. The petitioner tenant challenged the said judgment and decree before the learned District Judge vide R.C.A. No. 25 of 2013. In the appeal preferred by the petitioner, learned Lower Appellate Court rejected the findings recorded by the Trial Court in respect of a *bonafide* need which, according to the Trial Court, was proved by the respondent. The learned District Judge, by recording the finding that the respondent is having an agriculture land and serving at Akola in Health Department, as such, he is

not in a *bonafide* need of the shop for the business of his wife. So also, it is further recorded that respondent failed to examine his wife to show that she is having some experience of cloth business or having financial capacity to start such a business. As a result, the petitioner could not get the opportunity to cross-examine the wife of the respondent on this material point. Therefore, it is held that the issue of *bonafide* requirement which is considered by the Trial Court is perverse, and thereby held that respondent failed to prove the *bonafide* need of the premises in the matter.

10. In respect of tenability of the suit for not filing the suit after expiry of period of 90 days after issuance of notice under Section 106 of Transfer of Property Act, the learned District Judge has recorded the finding, as per Section 15 (3) of the Maharashtra Rent Control Act, respondent is entitled for decree for ejectment and possession. According to the District Judge, as petitioner failed to deposit the arrears of rent nor he has regularly deposited the rent of the suit premises even after 90 days of the receipt of suit summons, the respondent is entitled for

the decree for ejectment and possession of the suit premises. For this proposition, the learned District Judge has relied upon the judgment of Division Bench of this Court in the case of ***Chandiram Daryanumal Ahuja vs. Akola Zilla Shram Wahtuk Sahakari Sanstha***, reported in ***2013 (1) Mh.L.J. 28***.

11. In this background, the petitioner approached before this Court to challenge the order of the District Judge, whereby the appeal was dismissed filed by the petitioner tenant on the ground that petitioner failed to deposit the rent as per Section 15(3) of the Maharashtra Rent Control Act.

12. In the present matter, the petitioner has raised the only prime ground that as per Section 15 (2) of the Maharashtra Rent Control Act, the suit for recovery of possession is not tenable until the expiration of 90 days next after in writing of the demand of notice. According to him, in the present matter, the notice was issued on 21.05.2011. The period of 90 days would have been expired on 21.08.2011. However, before expiry of 90 days, he has filed a suit on 25.07.2011, and therefore, same is hit

by Section 15 (2) of the Maharashtra Rent Control Act, and therefore, both the Courts have committed an error by allowing the suit filed by the respondent landlord.

13. In the present matter, it would be first necessary to consider Section 15 of the Maharashtra Rent Control Act, which reads as under:

“Section 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 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 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 percent 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 the costs 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.”

14. In the present matter, the petitioner has relied upon the judgment of Co-ordinate Bench in the case of *Jitendra s/o Vasantrao Nagarkar vs. Mohanlal s/o Maluramji Agrawal reported in 2016 (6) Mh.L.J. 797*, and in case of *Vinayak Narayan Deshpande and ors. vs. Deelip Pralhad Shisode passed in Civil Revision Application No. 184 of 2008*.

15. The petitioner, by relying on the above two judgments, has pointed out that the suit filed by the landlord before expiry of 90 days, which is a statutory obligation as stated in Section 15 (2), the suit is not tenable. According to him,

Section 15(3) would not come in picture unless the test of Section 15(2) is cleared by landlord. Therefore, considering this legal position, he prayed to quash and set aside the order passed by the Court below.

16. The Counsel for the respondent, in support of his submission, has relied upon the judgment in the case of *Fehameeda Begaum w/o Mahammod Khan Pathan (supra)*, *Chandiram Dariyanumal Ahuja vs. Akola Zilla Shram Wehtuk Sahakari Sanstha* passed by Single Bench of this Court in Writ Petition No. 1101 of 2007; *Vithalbhai (P) Ltd. vs. Union Bank of India reported in (2005) 4 SCC 315*; and *Babulal vs. Suresh 2017 (4) ALL MR 356 (FB)* of this Court.

17. The respondent, by relying upon the above-said judgments, has come with a submission that before expiry of 90 days, the suit is maintainable. According to him, what is required is that after filing the suit, within a period of 90 days of receipt of summons, the tenant should make compliance of Section 15 (3)

of the Act. If the said compliance is done, then decree for eviction cannot be passed. But if he fails to comply Section 15 (3) of the Act, then the suit is tenable and decree for eviction can be passed in the matter.

18. In light of the submission of the parties and the judgment of both the Courts below, I have perused the entire record and heard both the parties at length. At the outset, it would be necessary to mention that the Trial Court has committed a manifest error by relying upon the judgment of *Fehameeda Begaum w/o Mahammod Khan Pathan (supra)*, to hold that if the tenant failed to deposit the rent within 90 days from the receipt of the suit summons, the landlord is entitled for possession under Section 15 of the Act. The perusal of the judgment of this Court is altogether on different issue. The issue which arises for determination before this Court in the said petition was, "Whether a notice under Section 15 of the Maharashtra Rent Control Act, 1999, demanding a higher rent than the rent agreed between the landlord and the tenant is bad

in law, or whether the notice would be valid and the tenant would be required to pay the arrears of admitted rent within a period of 90 days from the receipt of the notice and/or within a period of 90 days from the receipt of suit summons?" The said issue was answered by this Court by holding that such notice was not bad in law and it was open for the respondent tenant to deposit the admitted arrears of rent. The tenant, having failed to deposit the admitted rent, was liable to hand over the possession of the property to the landlady under Section 15 of the Maharashtra Rent Control Act. As such, *prima facie* the learned Trial Court has misinterpreted the judgment of this Court while deciding the suit.

19. It is further pertinent to note that the Trial Court has recorded various interesting findings while interpreting Section 15 (2) of the Act. According to the Trial Court, what is important under Section 15 (2) of the Act is that landlord can issue the notice to the tenant, but what is important that suit should not be disposed of within a period of 90 days and, therefore, by

recording this finding, decreed the suit. So also, the Appellate Court has recorded the finding that once the suit is filed, the same is tenable in view of Section 15 (3) of the Maharashtra Rent Control Act and what is required is that the tenant should comply the conditions stipulated under Section 3 of the Act. However, as petitioner tenant failed to comply the Section 15 (3) of the Act, the decree of eviction issued by the Trial Court is confirmed.

20. In light of this finding and the submission of the petitioner, it would be necessary to refer the judgment of Full Bench of this Court in the case of ***Babulal*** (*supra*) wherein the issue which was referred and considered is as under:

“If the tenant complies the notice issued by the landlord demanding arrears of rent and pays the entire amount as demanded within the time stipulated under Section 15 Sub-clause (2) of the Maharashtra Rent Control Act, then whether the landlord can still file a suit for eviction on the ground of arrears of rent and whether the eviction can be ordered by invoking the provisions of Section 15 (3) of the Maharashtra Rent Control Act?”

21. The Hon'ble Full Bench while deciding the said issue has confirmed the view expressed in the case of ***Chandiram s/o Dariyanumal Ahuja*** (supra), wherein the Single Bench as well as the Division Bench has held that Section 15 (1), (2), (3) are independent in nature and they are to be considered in light of the statutory mandate provided under the statute.

22. From the judgment of Hon'ble Single Bench in the case of ***Chandiram s/o Dariyanumal Ahuja*** (supra), it is seen that the Coordinate Bench has accepted the legal position that there is a distinction between the provisions of Section 15 (2) and (3) of the Maharashtra Rent Control Act. According to this Court, Sub-section (2) creates a statutory obligation upon the tenant to comply with the conditions specified therein, this Section does not permit institution of a suit without compliance of the requirement therein. However, Sub-section (3) is interpreted by holding that a decree for eviction is not permitted to be passed against the tenant if the conditions specified therein are fulfilled by the tenant. As such, the bar under Sub-section (2) operates for

an institution of the suit, whereas the bar under Sub-section (3) operates for passing a decree. From the perusal of these judgments, it is clear that the issue of non-compliance of Section 15 (2) of the Act was not in question, the issue which was raised and dealt with by this Court is of non-compliance of Section 15 (3) of the Maharashtra Rent Control Act. The same view is confirmed by Hon'ble Full Bench of this Court. Therefore, this judgment which is relied by the Courts below is clearly under the misconception of facts and law. Both the Courts below failed to consider the law laid down by the Hon'ble Full Bench, whereby it is clear that provisions of Section 15(1), (2), and (3) are independent. Hence, finding of both the Courts below is contrary to settled principles of law.

23. In light of the above legal position, it is the submission of the petitioner that the law laid down by the Coordinate Bench of this Court in the case of ***Jitendra s/o Vasantrao Nagarkar*** (*supra*) is relevant in the present matter. According to him, in the said proceeding also, on the count of

default in payment of regular rent and *bonafide* need, the suit was filed. However, this Court has held that as there is a non-compliance of Section 15 (2), the suit being filed before expiry of 90 days was held to be not tenable. The relevant findings of the of the Coordinate Bench in the said judgment in paragraph Nos. 6 and 8 reads as under:

“6. I have given due consideration to the respective submissions. The facts on record indicate that the respondent who is the landlord had issued a notice to the tenant on 11-2-2008 demanding arrears of rent. This notice was served on the tenant on 19-2-2008 but the same was not complied. The suit was filed on 1-3-2008. In this factual background, the aspect whether the petitioner can be permitted to raise the plea that the suit as filed was before expiry of the statutory period of ninety days from service of the demand notice deserves to be considered.

The provisions of section 15(2) of the said Act read thus:

Section 15(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.

What has been prohibited is the institution of a suit for recovery of possession against the tenant on the ground of non-payment of standard rent or permitted increases. Unless the period of ninety days has expired after service of the notice of demand on the tenant, such suit cannot be instituted. Hence there would be no jurisdiction with the Court to entertain a suit that has been instituted prior to the expiry of the statutory period of ninety days. In Vitthalbhai (P) Ltd. (supra) the Honourable Supreme Court considered the fate of a premature suit. In paragraph 22 thereof it was observed thus:

However, the court shall not exercise its discretion in favour of decreeing a premature suit in the following cases (i) when there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event: (ii) when the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose; (iii) if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the court's jurisdiction; and (iv) where the lis is not confined to parties alone and affects and involves persons other than those arrayed as parties, such as in an election petition which affects and involves the entire constituency."

The case in hand pertains to contingency no.(i) as contemplated by the Honourable Supreme Court. The said defect of premature institution also renders the presentation of the suit void thereby affecting the court's jurisdiction.

8. In view of aforesaid, the only conclusion that can be drawn from the aforesaid facts is that the suit for eviction was filed in a manner contrary to provisions of section 15(2) of the said Act. The trial Court had no jurisdiction to entertain such a prematurely instituted suit. The Appellate Court by dismissing the appeal also exercised jurisdiction thereby confirming the decree passed in the suit of which the trial Court could not have taken cognizance. The only inevitable result is that the decree passed by the trial Court as maintained by the Appellate Court is without jurisdiction.”

24. Petitioner has also relied upon the judgment in CRA No. 184 of 2008, **Vinayak Narayan Deshpande and ors.** (*supra*), wherein this Court has also recorded specific finding in paragraph Nos. 16 and 17 which reads as under:

“16. The Appellate Court, in my opinion, has rightly considered the factual position in this case as well as the provisions of Section 15 of the Maharashtra Rent Control Act. It has been held that the money order coupons which were on record indicated that the rent was paid to the erstwhile landlord upto August, 2000 for each month. The Appellate Court held that the tenant was not in arrears of rent at the time when the notice of demand was issued as he had already paid the rent to the erstwhile landlord. The Appellate Court further held that undoubtedly there was a failure on the tenant's part to deposit the rent into the Court as required under Section 15(3) of the Maharashtra Rent Control Act. However, since there was no compliance of the requirements of Section 15(2) of the Maharashtra

Rent Control Act, the Appellate Court held that the tenant could not be labeled as a defaulter.

17. It is now well settled that the provisions of Section 15 of the Maharashtra Rent Control Act which are para materia with Section 12 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act must be strictly construed. Therefore, in the circumstances, once it has been found, in my opinion rightly, that the notice of demand itself was not issued in accordance with law because it was for an untenable amount, the Suit seeking a decree for recovery of possession on the ground of non payment of rent was not maintainable. Therefore, the question of tenant depositing the rent after institution of such a Suit does not arise.”

25. The learned Counsel for the respondent has relied upon the judgment of Hon’ble Supreme Court of India in the case of *Vithalbhai (P) Ltd.* (*supra*) and raised a proposition that once the proceeding has been filed and same is found to be premature, the Court is not precluded from entertaining the suit and passing a decree therein. He has relied upon paragraph No. 22 of the finding recorded by the Hon’ble Supreme Court in the writ petition, which reads as under:

“22. We may now briefly sum up the correct position of law which is as follows:

A suit of a civil nature disclosing a cause of action even if filed before the date on which the plaintiff became

actually entitled to sue and claim the relief founded on such cause of action is not to be necessarily dismissed for such reason. The question of suit being premature does not go to the root of jurisdiction of the court; the court entertaining such a suit and passing decree therein is not acting without jurisdiction but it is in the judicial discretion of the court to grant decree or not. The court would examine whether any irreparable prejudice was caused to the defendant on account of the suit having been filed a little before the date on which the plaintiff's entitlement to relief became due and whether by granting the relief in such suit a manifest injustice would be caused to the defendant. Taking into consideration the explanation offered by the plaintiff for filing the suit before the date of maturity of cause of action, the court may deny the plaintiff his costs or may make such other order adjusting equities and satisfying the ends of justice as it may deem fit in its discretion. The conduct of the parties and unmerited advantage to the plaintiff or disadvantage amounting to prejudice to the defendant, if any, would be relevant factors. A plea as to non-maintainability of the suit on the ground of its being premature should be promptly raised by the defendant and pressed for decision. It will equally be the responsibility of the court to examine and promptly dispose of such a plea. The plea may not be permitted to be raised at a belated stage of the suit. However, the court shall not exercise its discretion in favour of decreeing a premature suit in the following cases: (i) when there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event; (ii) when the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose; (iii) if such premature institution

renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the court's jurisdiction; and (iv) where the lis is not confined to parties, alone and affects and involves persons other than those arrayed as parties, such as in an election petition which affects and involves the entire constituency. (See Samar Singh v. Kedar Nath 13.) One more category of suits or some which may be added to the above, is: where leave of the court or some authority is mandatorily required to be obtained before the institution of the suit and was not so obtained.”

26. In this regard, as already pointed out, the Coordinate Bench in the case of ***Jitendra s/o Vasantrao Nagarkar*** (*supra*), has considered the judgment of ***Vithalbhai (P) Ltd.*** (*supra*), as reproduced above, and held that the Hon’ble Supreme Court has also considered the exercise of discretion on factual basis as well as legal basis by stating contingencies under which the matter is to be held tenable. It is held that when there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or on the occurrence of a particular event, the said suit cannot be entertained. The case in hand of the respondent falls in that category, and therefore, the judgment of the Hon’ble Supreme Court in the case of ***Vithalbhai (P) Ltd.*** (*supra*), is not applicable

in the matter.

27. In light of the above said factual as well as legal position, there remain no doubt in the present case that the suit being filed before expiry of 90 days of the notice, Section 15(2), which creates a statutory bar for filing the suit itself, in my opinion, both the Courts below have committed a manifest error by entertaining the suit.

28. In light of the above said legal position, the Trial Court had no jurisdiction to entertain the prematurely instituted suit, and hence, the judgment and decree passed by both the Courts below needs to be quashed and set aside in the matter.

29. In the present case, in view of mandate of Section 15(2), this Court allowed the petition. However, fact cannot be denied that petitioner is enjoying the possession of suit shop since long without payment of regular rent. Therefore, to maintain equity, the facts demand that as per mandate of Section 15(1) of the Maharashtra Rent Control Act, the petitioner must

deposit arrears of rent to respondent till date as per their decided rent or the rent which was lastly paid by petitioner to respondent. Accordingly, the following order is passed:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The judgment and order passed by learned District Judge-1, Darwaha, District Yavatmal in R.C.A. No. 25 of 2013 dated 06.03.2017, is hereby quashed and set aside.
- (iii) The petitioner tenant is however directed to deposit the entire arrears of rent till date to the respondent landlord within a period of three months.
- (iv) The respondent landlord is at liberty to file a fresh proceeding after compliance of the provisions of Section 15 of the Maharashtra Rent Control Act.

30. The Writ Petition stands disposed of accordingly. No order as to the costs.

(PRAVIN S. PATIL J.)

R.S. Sahare