

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2606/2013

Baburao s/o Narayanrao Terkar

.....Appellant

Versus

Pokhardas s/o Bhanumal Khatnani
died through L.Rs. and others

....Respondents

J U D G M E N T

A.M. KHANWILKAR, J.

The application for early hearing is allowed.

2. Appeal is taken up for hearing forthwith, by consent.

3. This appeal challenges the judgment of the High Court of Judicature at Bombay, Bench at Aurangabad, in Civil Revision No.59 of 2007 dated 6th September, 2011. The High Court dismissed the revision application preferred by the appellant and thereby confirmed the decision of the District Court dismissing the eviction application preferred by the appellant.

4. Briefly stated, the appellant, claiming to be landlord in respect of suit premises being shop admeasuring east-west 12ft. and south-north 16ft. situated at Municipal house No.23/124/A, corresponding to City Survey No.9572 in Cloth Lane, Latur, instituted an eviction application

against the respondent-tenant on the ground of arrears of rent and default within the meaning of Section 15 of the Hyderabad Houses (Rent, Eviction, and Lease) Control Act, 1954. It was the case of the appellant that the respondent-tenant had failed and neglected to pay rent between October, 1987 till March, 1988. In fact, the appellant had issued a notice to the respondent-tenant on 20th January, 1988 calling upon him to pay rent in respect of the suit premises. That notice was replied by the respondent-tenant on 22nd February, 1988, raising a dispute of ownership of the suit premises. The appellant then issued demand notice to the respondent-tenant on 17th March, 1988 calling upon him to pay the arrears of rent. No reply was received from the respondent-tenant. As a result, an eviction application was filed by the appellant. The Rent Controller held that the respondent-tenant had committed default and was liable to be evicted. Accordingly, an eviction order was passed by the Rent Controller on 11th April, 2005. Against that decision, the respondent-tenant preferred a statutory appeal before the District Judge at Latur being Rent Appeal No.5 of 2005. The District Court reversed the finding of fact recorded by the Rent Controller. The Appellate Court found that the respondent-tenant upon receipt of notice from the appellant immediately approached the Rent Controller and deposited the amount towards rent as prescribed by the Rent Controller. Further, the appellant admitted in his evidence of having withdrawn the amount

deposited in Court by the respondent-tenant till Diwali 2003. On the factum of willful default by the respondent-tenant, the Appellate Court reversed the finding of the Rent Controller. As regards the factum of denial of title by the respondent-tenant, the Appellate Court held that the circumstances in which that plea was taken by the respondent-tenant was bonafide - considering the fact that the appellant landlord himself had admitted that the dispute regarding ownership of suit shop was the subject matter of the RCS No.1033 of 1983 filed by him before the Civil Court. Besides the appellant, one Vishwanath Tandale also claimed his ownership over the suit shop. He had filed an affidavit in the proceedings before the Rent Controller to which the appellant was a party. The District Court, accordingly, allowed the appeal preferred by the respondent-tenant and reversed the order passed by the Rent Controller. Consequently, the eviction application filed by the appellant was dismissed.

5. Against this decision, the appellant preferred a revision application before the High Court. The High Court after considering the relevant material on record held that the finding of fact recorded by the District Court was flawless on both counts, namely, the factum of tenant not being a willful defaulter and also on the issue of justness of his plea to question the ownership in respect of the suit shop. The High Court, accordingly, affirmed the view taken by the District Court and dismissed

the revision application. Against this decision, present appeal has been filed by the landlord.

6. According to the appellant, in the fact situation of the present case, the decree of eviction passed by the Rent Controller should be restored. Inasmuch as, admittedly, the tenant failed to give reply to the demand notice served on him nor offered the outstanding rent within the statutory period. Thus, Section 15 (2) (i) was attracted. Further, the tenant failed to regularly pay the amount towards rent during the pendency of eviction proceedings. As a matter of fact, contends the counsel for the appellant, the tenant having denied the title of the appellant was not entitled to occupy the suit shop. Further, the original eviction application was filed by the appellant as back as in the year 1988 and by passage of time the appellant has already become 84 years of age. He has three sons who are yet to settle down. It is contended that the appellant requires the suit shop for his personal and bonafide need for which reason also order of eviction passed by the Rent Controller should be restored. The respondent-tenant, on the other hand, contends that the latter contention raised by the appellant cannot be taken note of. In that, the present appeal arises from the eviction proceedings instituted by the appellant limited to the ground of arrears of rent and willful default committed by the tenant. The ground on which eviction of the respondent-tenant was prayed has been thoroughly examined by the

District Court and the finding of fact recorded by the District Court has found favour with the High Court, which needs no interference in the present appeal. The learned counsel for the respondent submitted that the plea of personal and bonafide requirement is untenable. As per her instructions, two sons of the appellant have since expired. The third son is gainfully employed and doing business in another commercial premises in possession of the appellant. Moreover, the appellant has sufficient accommodation in his possession. It is submitted that the appeal is devoid of merit and be dismissed.

7. Having considered the rival submissions, we are in agreement with the view taken by the High Court that the evidence on record leaves no manner of doubt that after receipt of notice from the appellant, the respondent-tenant immediately rushed to the Rent Controller and took permission to deposit the amount towards rent of the suit shop. Further, in terms of the liberty given by the Rent Controller the respondent-tenant deposited the amount towards rent of the suit shop before the Rent Controller. That option was resorted to by the respondent-tenant because of dispute relating to ownership of the suit shop. The High Court justly adverted to the dictum in the case of **Kannan vs. Tamil Tahlir Kalvi Kazhagam**¹ - where, in similar situation, the tenant deposited the rent in Court which was considered as a valid deposit. The fact remains that the

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amount towards arrears of rent was deposited by the respondent-tenant in the Court of Rent Controller on 15th April, 1988 and 25th April, 1988 before institution of the eviction application; and intimation in that behalf was given to the landlord. The respondent-tenant continued to periodically deposit the rent amount in Court thereafter. Further, the appellant in his evidence has admitted of having withdrawn the rent amount till Diwali 2003. This finding of fact recorded by the District Court and affirmed by the High Court, being concurrent finding of fact, need no interference. As a necessary corollary, it must follow that the respondent-tenant was not a defaulter muchless willful defaulter. Thus, the ground of default on which eviction of the respondent-tenant was prayed is untenable.

8. Even the other ground, about denial of title by the tenant, the District Court has found that this plea was necessitated because of the civil suit pending between the appellant and one Vishwanath Tandale, filed by the appellant himself before the Civil Court bearing RCS No.1044 of 1983. That suit was pending at the relevant time. The fact that the respondent-tenant rushed to the Rent Controller immediately after receipt of notice from the appellant, is indicative of a bonafide plea taken by the respondent-tenant regarding dispute of ownership of the suit shop; and a plea legitimately available to the respondent-tenant. This

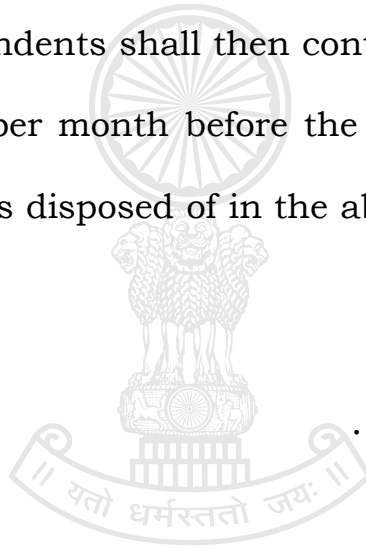
finding of the District Court found favour with the High Court. Even in respect of this finding no interference is called for, being flawless.

9. That leaves us with the contention of the appellant, raised for the first time, that the appellant requires the suit shop for his personal and bonafide need. The factual position stated by the appellant in support of this plea has been stoutly countered by the respondent-tenant. It is, however, not necessary for us to burden this judgment with the said issue. Firstly, because the original eviction application was limited to the ground of arrears of rent and willful default. Secondly, the ground of personal and bonafide requirement is an independent ground on which the appellant must pursue his remedy before the Rent Controller in the first instance and also succeed in substantiating the relevant material facts in that behalf.

10. While parting, we may take notice of the stand taken by the respondent-tenant that the appellant is not genuinely interested in using the premises for his personal use; but more interested in getting higher rent from the new tenant. The respondent-tenant, therefore, volunteers through counsel that considering the fact that the suit shop is commercial premises and in his occupation for quite some time, he would be willing to pay some additional amount to the landlord towards monthly rent of the suit shop. As per the agreement, the rate of rent is Rs.400/- per month, which, the respondent is now willing to increase up

to Rs.10,000/- per month. We place this offer given by the respondent on record and would dispose off the appeal on that basis.

11. Accordingly, even though we dismiss the appeal, we direct the respondents to pay a monthly rent in respect of the suit shop to the landlord at the rate of Rs.10,000/- per month w.e.f. 1st January, 2016. The additional rent amount for the period between 1st January, 2016 till 31st July 2016 be paid to the landlord within one month from the date of this order; and the respondents shall then continue to pay future rent at the rate of Rs.10,000/- per month before the fifth day of every English calendar month. Appeal is disposed of in the above terms. No order as to costs.



.....CJI
(T.S.Thakur)

.....J.
(A.M. Khanwilkar)

JUDGMENT

.....J.
(Dr. D.Y. Chandrachud)

New Delhi,
August 16, 2016