

**(1979) 10 BOM CK 0015**

**Bombay High Court**

**Case No:** Special Civil Application No. 1923 of 1975

Nandkuwarbai M. Patil

APPELLANT

Vs

P.N. Shahane and Others

RESPONDENT

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**Date of Decision:** Oct. 3, 1979

**Hon'ble Judges:** P.S. Shah, J

**Bench:** Single Bench

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### **Judgement**

P.S. Shah, J.

This petition under Article 227 of the Constitution of India arises out of an application filed by petitioner landlord to the Rent Controller under sub-section (2) of section 15 of Hyderabad House (Rent, Eviction & Lease) Control Act, 1954. This application was filed for possession of the suit premises in possession of the respondents situate on the first floor of the petitioner's house bearing Municipal No. 2-8-78 at Aurangabad, Aurangabad, as tenants of the petitioner. The possession was asked for on three grounds viz., that the respondents had wilfully committed defaults in payment of rent, that the petitioner needs the premises for her bona fide personal use and occupation and lastly that the premises were in a dilapidated condition and could not be reconstructed, without the respondents vacating the same. It was the case of the petitioner that the respondents had not paid rent for the period from March 1969 till the date of the filing of the application before the Rent Controller on January 27, 1971. It is not in dispute that the agreed rent of the premises is Rs. 10/- per month. The Rent Controller held that the respondents were wilful defaulters. However, as far as the two other grounds are concerned, he held that the landlord had not proved her case for bona fide personal requirement and also that the premises were in a dilapidated condition and could not be re-constructed without the respondents vacating the same. Thus, on the ground of wilfull default said to have been committed by the respondents in payment of the rent, the application of the petitioner was granted by Rent Controller by his order dated 23 May, 1973.

2. Some of the respondents challenged this order of eviction by filing an appeal in the District Court. By judgment and order dated March 27, 1975, the learned District Judge held that the petitioner had failed to establish any of the grounds for eviction alleged by the petitioner. In this view of the matter, he set aside the order of eviction passed by the Rent Controller and dismissed the petitioner's application.

3. Being aggrieved by this decision, the petitioner has filed this petition under Article 227 of the Constitution of India.

4. Mr. Naik, the learned Counsel appearing for the petitioner, raised the contention of the petitioner's claim for possession only on the ground that the respondents had committed wilful default in payment of rent. He submitted that in the past the petitioner had to file two suits for recovery of rent. He also submitted that the respondents did not pay the rent regularly which also showed that they had no desire to make the payments of the rent on due dates and that they were contemnors defaulters. I see no substance in any of these contentions. The learned District Judge has carefully considered the evidence on record and has recorded the finding of the facts that it was the petitioner who refused to accept the money orders regularly sent by the tenants and the Rent Controller was in error in holding that the tenants were wilful defaulter. It appears clear from the record of this case that the respondents were regularly sending the rent by money orders which were not accepted by the petitioner. According to the petitioner he did not accept the money order because the post office prevented him from making an endorsement on the money order from that he was receiving the amount as compensation for use and occupation of the premises. That may be a valid reason for the petitioner for not accepting the Money Orders, but that cannot be a reason for holding the tenants to be wilful defaulters. The petitioner never informed the respondents that she was refusing the money order for the particular reason mentioned by her. It is clear that the petitioner was not justified in refusing to accept the money order. At the most she could have informed the respondents that the amount was being accepted as compensation, in view of the fact that the tenancy was terminated by a notice. Instead, she chosen to merely refuse to accept the money orders. Having regard to these facts, it is impossible to hold that the respondents were defaulters much less could it be said that they were wilfull defaulters. It is true that the petitioner had filed the suit for recovery of rent prior to the filing of the application to the Rent Controller. However, both these suits were withdrawn as the respondents paid all the arrears. In view of the fact that thereafter the respondents regularly sent the rent by the Money Orders, no importance could be attached to the non payment of the rent in the past, in respect of which suits were filed and on payment of the rent were withdrawn by the petitioners. The learned District Judge was, therefore, right in rejecting the petitioner's claim for possession on this ground.

5. The petition, therefore, fails. Rule discharged with no order as to costs.