IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 327 OF 2024

Miss. Gloria Lois Crasto } ***...Applicant (Orig. Respondent)***

:Versus :

1. Mrs. Piloo Fali Bomanjee
2. Farhad S/O. Fali Bomanjee
3. Mrs. Kermeen Bose D/o.Fali Bomanji
4. Ms. Pervin Rustom Tata } ***.... Respondents (Orig. Appellants/ Orig. Plaintiffs)***

Ms. Gloria Lois Crasto, *Applicant-in-person.*

Mr. Shardul Singh *with Ms. Janhvi Durve, for Respondent No.1.*

CORAM : SANDEEP V. MARNE, J.

Judgment Reserved on : 16 August 2024.

Judgment Pronounced on : 26 August 2024.

JUDGMENT

1) The Revision Applicant has invoked revisionary jurisdiction of this Court to set up a challenge to the judgment and decree dated 2 May 2024 passed by the Appellate Bench of Small Causes Court in Appeal No. 5/2021, by which the Appellate Court has allowed the Appeal by setting aside the decree dated 14 February 2020 passed by the learned Single Judge of the Small Causes Court in R.A.E. & R. Suit No. 743/1278 of

2008. The Appellate Bench has decreed the suit directing the Revision Applicants/Defendants to handover possession of the suit premises to the Plaintiffs.

2) Plaintiffs/Respondents are owners in respect of the building named 'Bharthania Building' situated at 3, Rutherfield Street, Fort, Mumbai-400 023. Tenancy Agreement/Articles of Agreement was executed between the Plaintiffs' predecessor-in-title and Defendant-Ms. Gloria Louis Crasto and her mother-Anna Magdaline Crasto on 18 June 1990 by which monthly tenancy was created in favour of Defendant and her mother in respect of the room premises bearing Room No.1 admeasuring 125 sq.ft of first floor of Barthania Building. Plaintiffs served Notice dated 26 August 2006 to Defendant claiming that she was in arrears of rent of Rs. 43,671/- comprising of taxes due from April 1971, property tax due from April 2001, repairs due from April 2001 and rent due from April 2004. The Notice dated 26 August 2006 was received by the Defendant. It is Plaintiff's case that on 12 December 2006, a reminder was sent for not depositing the arrears of rent as per the notice dated 26 August 2006. Defendant denies having received the said letter dated 12 December 2006. Plaintiffs served advocate's notice dated 1 April 2007 stating that the Defendant was in arrears of rent till March 2007 of Rs. 57,696/- and calling upon the Defendant to vacate the possession of the suit premises. Defendant denies that the advocate's notice dated 1 April 2007 was received by her. Plaintiff thereafter instituted R.A.E. Suit No. 743/1278/2008 before the Small Causes Court at Mumbai seeking Defendant's eviction of on the grounds of default of payment of rent and non-user of preemies continuously for a long time. Defendant resisted the

suit by filing Written Statement by raising various defences including the defence of non-service of valid notice before filing of suit for arrears of rent. Defendant also denied the allegation of non-use of the premises. Plaintiffs examined Plaintiff No.4-Mrs. Kermeen Bose (P.W.1), Mr. Praful Kharas (P.W.2), and Mr. Amardeep Patil (P.W.3). Defendant examined herself as D.W.1 and Rodney D'mello (D.W.2).

3) After considering the pleadings, documentary and oral evidence, the Trial Court dismissed the suit by judgment and order dated 14 February 2020 by rejecting both the grounds of arrears of rent and non-user. Aggrieved by the Trial Court's decree dated 14 February 2020, Plaintiffs filed Appeal No.5/2021 before the Appellate Bench of the Small Causes Court. The Appeal is allowed by the Appellate Bench by accepting both the grounds of default in payment of rent, as well as non-user of the premises. The decree of the Trial Court is set aside and the suit has been decreed directing the Defendant to vacate the possession of the suit premises. The Revision Applicant has filed the present Revision Application challenging the decree passed by the Appellate Bench on 2 May 2024.

4) Ms. Gloria Castro, the Revision Applicant in person submits that the suit filed on the ground of default in payment of rent under the provisions of Section 15(2) of the Maharashtra Rent Control Act was defective on account of non-service of notice on the Defendant-tenant. Inviting my attention to the notice dated 1 April 2007, she would submit that the same was dispatched at wrong address mentioning '*C-Block*' when infact the suit premises are located in '*D-Block*'. Even the Under

Certificate of Posting (**UCP**) shows that notice was addressed to '*C-Block*'. She would submit that she has not received the notice dated 1 April 2007 and since statutory notice under Section 15(2) is not served, the suit filed on the ground of arrears of rent itself was not maintainable. She also submits that Plaintiffs were well aware about her residential address but deliberately did not dispatch the demand notice to the residential address. In support of her contention that the suit is not maintainable in absence of valid service of notice, Ms. Crasto would rely upon judgments of this Court in:

(i) ***Sitaram Narayan Shinde & Ors. Versus. Ibrahim Rais & Ors.***[1]

(ii)***Ramavtar Ramsahaya Khatod Versus. Baban Garunath Pattani***[2]

(iii)Vinayak Narayan Deshpande & Ors. Versus. Deelip Pralhad Shisode[3]

5) Ms. Castro would further submit that the Trial Court had framed specific issue and that the said issue was answered in the negative by the Trial Court. She would submit that the Appellate Bench scuttled the said issue. That in absence of answering the issue relating to valid service of demand notice, the Appellate Bench has erred in reversing well-reasoned judgment of the Trial Court. She would submit that the notice dated 1 April 2007 terminated tenancy in respect of different premises in C-Block and therefore for this reason also the notice is *ex-facie* illegal.

1 2005(1) ALL MR 74
2 2005 (2) ALL MR 745
3 2010 (2) ALL MR 747

6) Ms. Crasto would further submit that the notice dated 1 April 2007 was otherwise faulty as the same raised demand towards rent and taxes since April 1971 when in fact the tenancy was created w.e.f. 18 June 1990. That since demand notice itself was faulty and raised demands in respect of the period when tenancy did not exist, the Appellate Bench could not have decreed the suit on the ground of arrears of rent. That in respect of letter dated 26 August 2006, Ms. Castro would submit that though the said letter was received by her, the same was addressed by Mr. Farhad Fali Bomanji who had no authority to address the said letter as only Plaintiff No.1 was the owner in respect of the suit premises at the relevant time.

7) Ms. Crasto would further submit that Plaintiffs' claim in respect of arrears since April 1971 was totally fallacious and has been found to be so even by the Appellate Bench which has recorded a categorical finding in para-15 of its judgment that no document was produced by Plaintiff that Defendant had become tenant of the suit premises since the year 1971. Again, there was a specific admission on the part of the P.W.1 that the suit was based on arrears since 1991. That the suit premises have been let out for operation of advocate's office by the Defendant whose date of enrollment as Advocate is 29 September 1975 and therefore it is incomprehensible that there could be tenancy since April 1971. Relying on Section 10 of the M.R.C. Act, Ms. Castro would submit that demand of rent in excess of standard rent and permitted increases being illegal, the letter dated 26 August 2006 as well as demand notice dated 1 April 2007 demanding rent since the year 1971, was clearly contrary to the provisions of Section 10. She would submit that P.W. 2

has admitted that the Defendant was prepared to pay rent as per old rate and new increases after the accounts were shown to her. Ms. Crasto would invite my attention to the details of payment of rent from time to time.

8) So far as the ground of non-user is concerned, Ms. Castro would submit that the Trial Court had rightly rejected the said ground on account of absence of pleadings in the plaint as required under the provision of Section 16(1)(m) of the M.R.C. Act. That Plaintiff neither pleading nor proved non-use of the suit premises for continuous period of six months prior to filing of the suit without reasonable cause. That no evidence was led to prove such non-user. That the Appellate Bench has clearly erred in accepting the ground of non-user in absence of pleadings and evidence. She would therefore pray for setting aside the judgment and decree passed by the Appellate Bench.

9) The Revision Applicant is opposed by Mr. Shardul Singh, the learned counsel appearing for Respondent/Plaintiffs. He would submit that receipt of notice dated 26 August 2006 is not disputed by Defendant. That in the Written Statement, Defendant did not dispute authority of the person who sent the said notice and that the dispute now sought to be created about his authority, is clearly an afterthought. So far as demand from April 1971 is concerned, he would submit that even if the demands in respect of the period prior to creation of tenancy are to be ignored, the Notice would still remain valid in respect of the period from April 2004, when there is admittedly default in payment of rent. That the tenant could have refused payment of taxes and rent in respect of the disputed

period and ought to have paid the rent in respect of the period for which the same was due. That it is an admitted position that after April 2004 till filing of the suit, Defendant had not paid any rent to the Plaintiffs. That there are concurrent findings on this aspect by the Trial Court, as well as by the Appellate Bench. He would also take me through the relevant evidence to demonstrate clear admissions on the part of the Defendant about non-payment of rent. That even after receipt of suit summons, the Defendant failed to deposit the arrears of rent together with costs and interest within 90 days as required under Section 15(3) of the M.R.C. Act. That therefore the Appellate Bench has correctly decreed the suit on the ground of arrears of rent. Mr. Singh would invite my attention to the pleadings in para-1(b) of the Written Statement to demonstrate that the Defendant was aware about arrears of rent. Mr. Singh would rely upon the following three judgments in support of his contentions:

> (i) ***Sriniwas Babulal Versus. Ramakant s/o. Shivnarayan Jaiswal***[4]
> (ii) ***Fehameeda Begum w/o. Mahamood Khan Pathan Versus. Abdul Hafiz s/o. Sheikh Anwar.***[5]
> (iii)***Municipal Corporation of Greater Mumbai Versus. Green Gold Trading and Investment Pvt. Ltd.***[6]

10) Mr. Singh would therefore submit that since there are concurrent findings recorded by the Trial Court and the Appellate Bench about arrears of rent, the decree passed by the Appellate Bench does not warrant interference in exercise of revisionary jurisdiction under Section 115 of the Code. He would pray for dismissal of the Revision Application.

4 2011(2) Mh.L.J. 156
5 2013(2) Mh.L.J. 524
6 2024 SCC Online 2518

11) Rival contentions of the parties now fall for my consideration.

12) The Appellate Bench has reversed the judgment and decree passed by the Trial Court by accepting both the grounds of arrears of rent and non-user of the suit premises, which were earlier rejected by the learned Single Judge of the Small Causes Court.

13) So far as the ground of non-user of the suit premises is concerned, the Trial Court had held that there is no pleading in the plaint about non-use of the suit premises continuously for a period of 6 months immediately preceding the date of the suit as required under Section 16(1)(n) of the M.R.C. Act. In this regard, the relevant pleading in the plaint read thus:

> 9. The Plaintiff states that the suit premises are not being used by the Defendant for the purpose for which they have been let for office for a continuous period of over six months **prior to the date of the notice**. It is found that the said premises are mostly locked for continuous long periods at a stretch. The Plaintiffs state that there is electric connection for metering the consumption of the electricity supplied to the said premises in the name of the Defendant. The Plaintiffs have secured a copy of the statement of the consumption of the electricity to the suit premises for about three years and it would be found that the consumption is negligible. Thus it is abundantly clear that the premises are not being used for a continuously long time. Hereto annexed is a copy of the said statement from the Electric Company which is marked as Exhibit-E.
>
> *(emphasis added)*

14) Thus what the Plaintiff pleaded in para-9 of the plaint was about non-use of the premises for a period of six months prior to '*the date of the notice*'. What is required under the provisions of section 16(1)(n) is

no use of the premises for a continuous period of six months '*immediately preceding the date of the suit*'. In the present case, the Notice is dated 1 April 2007 whereas the suit appears to have been instituted on 16 June 2008. There is thus long gap of over one year between the date of dispatch of the notice and the date of filing of the suit. In that sense, alleged non-use continuously for a period of six months prior to 1 April 2007 would not suffice the statutory requirement under Section 16(1)(n) of the Act which requires non-use for a period of six months immediately preceding the date of the suit. There is a purpose why the word '*immediately*' is used in Section 16(1)(n) of the Act and use of the said word makes it clear that the non-use must be immediately before filing of the suit. The Appellate Bench has committed a gross error in not appreciating this aspect and has erroneously upheld the ground of non-user in absence of a foundational pleading in the plaint. In absence of a foundational pleading, no amount of evidence would cure the defect as it is well settled law that evidence in absence of pleading cannot be taken into consideration. The Appellate Bench has erroneously relied upon vague pleadings that '*premises are not being used for a continuously long time*' in absence of requirement of a specific pleading of non-use continuously for a period of six months immediately prior to the date of filing of the suit.

15) Apart from absence of pleadings, the Appellate Bench has accepted the ground of non-use only by relying on the electricity consumption in respect of the suit premises. It is not that the Appellate Bench encountered zero consumption of electricity at the suit premises. The Appellate Bench has not disclosed the exact units of electricity consumption in its order and has recorded a vague finding that

"*consumption of electricity was very minimum for the period of six months before filing of the suit*" Thus, both on the ground of absence of foundational pleading, as well as lack of any concrete evidence for inferring non-user, the findings recorded by the Appellate Bench for accepting the ground of non-user are totally perverse and are liable to be set aside.

16) So far as the ground of arrears of rent is concerned, the Revision Applicant has contended that no notice was served on her as required under the provisions of Section 15(2) of the M.R.C. Act, apart from the fact that the dispatched Notice was faulty. Under the provisions of Section 15 of the M.R.C. Act, a landlord is not entitled to seek recovery of possession of the suit premises so long as the tenant pays or is ready and willing to pay the amount of standard rent and permitted increases. Sub-section (2) of Section 15 provides that no suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of standard rent or permitted increases until expiration of 90 days next after a notice in writing of the demand of the standard rent or permitted increases has been served on the tenant. Section 15 of the M.R.C. Act provides thus:

> **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.
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> (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.
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> (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.

17) Thus unless a clear notice of 90 days demanding arrears of standard rent and permitted increases is served on the tenant, suit for ejectment cannot be filed under the provisions of Section 15(2) of the M.R.C. Act on the ground of arrears of rent. This Court has repeatedly held that valid service of notice under the provisions of Section 15(2) of the Act on the tenant is a *sine qua non* for maintenance of the suit on the ground of arrears of rent. In ***Sitaram Narayan Shinde*** this Court held in para-6 as under:

> 6. Sub-section (2) expressly contemplates that before filing of a suit for possession on the ground of default in payment of a rent, a notice in writing demanded the standard rent must be issued and suit for possession can be filed only on expiration of one month after the notice in writing. It was thus necessary for the trial Court to record a finding as to whether a proper notice of demand was issued by the landlord before filing of the suit for possession. According to the respondent Nos. 1 and 3, they had issued a notice dated 13th November 1973 prior to the filing of the suit. In paragraph No. 5 of the

notice, it is stated that the tenants were in arrears of rent for 8 years from the year 1966 till December 1973. However, neither in paragraph No. 5 nor anywhere else in the notice a demand was made on the tenants to pay the rent. Paragraph No. 5 was only a statement of fact that the tenants were in arrears. It did not contain a demand. The notice was not a notice of demand at all but purported to be a notice of termination of tenancy as the previous suit was dismissed on the ground that tenancy was not properly terminated and the law that the notice of termination of tenancy was not necessary was not then settled by the decision in the case of Dhanpal Chettiyar (Supra) In the absence of a demand in writing being made prior to the institution of the suit, a decree for possession could not be passed on the ground of default in payment of the rent. In Dhanpal Chettiyar's case, the Supreme Court has only laid down that notice of termination of tenancy is not necessary in cases covered by Rent Restriction Acts. However, where a Rent Restriction Act provides for a notice of demand before filing of a suit, it is necessary to issue such a notice before filing the suit on the ground of default. The trial Court as well as appellate Court have not considered this aspect at all.

18) In ***Ramavtar Sahay*** (supra) this Court held in paras-7 and 8 as under:

7. The notice of demand dated 13th September, 1978 was posted on 15th September, 1978 as can be seen from the postal stamp on the postal money receipt. The panch witness has stated that the notice was affixed to the outer door of the suit premises on 28th September, 1978. No explanation is offered as to why the plaintiff felt the necessity of serving the notice by pasting on 28th September, 1978 i.e. 13 days after the notice was despatched by registered post. The respondent had not even made an enquiry with the post office as to whether the notice was delivered to the addressee before resorting to service by pasting. The respondent has not stated anything as to why he felt the need of service of notice by pasting. The panch witness who was examined to prove the pasting of notice has stated in the examination-in-chief that he knew both the plaintiff and the defendant. He has further stated that at the time of pasting he himself, the plaintiff and the defendant and one witness were present. If the petitioner-defendant was personally present, when the notice was pasted to the outer door as alleged, the notice could very well have been tendered and personally delivered to the addressee (the petitioner) which one of the modes of service prescribed under Section 106 of the Transfer of Property Act, 1882, him. Nobody has stated that the notice was tendered to the petitioner and was not accepted by him and therefore it was pasted. Therefore, case of the respondent that the notice was pasted to the outer door in presence of the petitioner-defendant is totally unbelievable. Even the appellate Court has not held that service of notice by pasting was proved. Thus, the respondent has not proved the service of notice either by pasting or by registered post A.D.

> 8. Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 requires a notice of demand to be issued before filing of the suit for possession on the ground of non payment of rent. A suit can be filed only after the expiry of 30 days of the notice of demand in writing. In the present case, the service of notice of demand is not proved. Therefore, the respondent was not entitled to file a suit for possession on the ground of default and no decree for possession could be passed on that ground.

19) Thus, in absence of valid service of notice on the tenant, suit for ejectment under Section 15(2) on the ground of arrears of rent is not maintainable. In the present case, the notice relied upon by the Plaintiff is dated 1 April 2007 which was addressed to the Defendant on the following address:

> 1st Floor, Bharthania Building,
> **'C' Block**, 3, Rutherfield Street,
> Kalaghoda, Fort, Bombay-400 001.

20) Defendant denies receipt of the notice dated 1 April 2007. It appears that the envelope containing notice dated 1 April 2007, when dispatched through Registered Post A.D. was returned with the remark '*not claimed. Hence returned*'. Even on the envelope, the same address as reflected in the notice dated 1 April 2007 was mentioned. The suit premises are located in 'B-Block' of Barthania Building, whereas, the notice dated 1 April 2007 was dispatched on an erroneous address in '*C-Block*'. It appears that the notice was also dispatched through UCP which again was at wrong address at '*C-Block*'. Since the notice was addressed at wrong address, the same has apparently been returned by the postal authorities with a remark '*not claimed*'.

21) The Trial Court framed a specific Issue no.2 as under:

> "Do the Plaintiffs prove that the demand notice is legal and valid and duly served on the Defendants?"

22) The Trial Court answered Issue No.2 in the negative. It however appears that the Appellate Bench did not formulate the point about validity of demand notice and its valid service. However, while answering Point No.1 relating to arrears of rent, the Appellate Bench appears to have dealt with the issue of service of notice in para-20 of its judgment in which it held as under:

> "20. Considering the rival submissions, only question which remains for consideration whether defendant was served with demand notice. The perusal of envelope of notice vide Exhibit-31 goes to show that it has been returned with endorsement 'Not Claimed'. Here it is pertinent to note that the main purpose to send notice is to notify defendant who is defaulter to pay arrears of rent. Since inception plaintiffs have come with the case that initially they had addressed a letter to defendant on 26/08/2006 and had demanded the arrears as per statement annexed to it. The said letter was received by defendant but failed to pay arrears. Again on 12/12/2006 another letter was addressed by the plaintiffs wherein demand was made to the defendant to pay arrears of rent. Lastly, again on 01/04/2007 plaintiffs have sent notice to the defendant which is disputed by the defendant. Here, it is pertinent to note that despite of due service of letter dated 26/08/2006 defendant did not pay the amount of arrears to the plaintiffs. For the same no explanation has been given by the defendant. Moreover, as per sub-section (3) no protection can be granted to the defendant, if within 90 days from the date of service of summons of the suit, if the tenant failed to pay or tender rent in the Court then due together with simple interest on the amount of arrears at 15% per annum.

23) Thus, instead of formulating and deciding the issue about valid service of notice dated 1 April 2007, the Appellate Bench appears to have skirted the said issue. Instead, the Appellate Bench held that since

the main purpose of serving notice is to notify the tenant about default in payment of rent, it considered letter dated 26 August 2006 as sufficient requirement under Section 15(2) of the Act. Thus, the Appellate Bench has not at all considered and decided the issue about valid service of notice under Section 15(2) of the M.R.C. Act. The letter dated 26 August 2006, sent almost a year before the alleged notice dated 1 April 2007 and two years before filing of the suit, cannot be treated as a sufficient requirement under Section 15(2) of the M.R.C. Act.

24) Coming to the issue of validity of demand raised in the letter dated 26 August 2006 and 1 April 2007, I find the demand of arrears of rent in both the communications to be totally unwarranted and excessive. Though the tenancy was created in June 1990, Plaintiff demanded various taxes from the Defendant from April 1971. There is absolutely no explanation as to why Plaintiffs were demanding any amounts from the Defendant in respect of the period prior to creation of tenancy. The advocate's notice dated 1 April 2007 is not proved to have been served on the Defendant. The letter dated 26 August 2006, which is admittedly received by the Defendant-Tenant, contains unwarranted and excessive demands in respect of the period from April 1971. By that letter, Plaintiff No.2 demanded huge amount of Rs.43,671/- out of which the actual rent payable was only Rs.1635/-. It has come in evidence that Defendant was willing to pay the rent, as well as permitted increases if she was shown accounts. There is an admission to this effect by P.W. 2 in his evidence. In view of this circumstance, the demand of excessive and unwarranted amounts from April 1971 by Plaintiff by letter dated 26 August 2006 cannot be termed as a valid notice under the provisions of Section 15(2) of

the M.R.C. Act. In this connection, reliance of Ms. Castor on judgment of this Court in ***Vinayak Narayan Deshpande*** appears to be apposite. It is held that if a demand is made in respect of untenable amount, suit for eviction is not maintainable. This Court held in para-17 as under:

> 17. It is now well settled that the provisions of Section 15 of the Maharashtra Rent Control Act which are pari 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) I am therefore of the view that Plaintiffs did not serve any valid notice on the Defendant-tenant in respect of alleged arrears of rent under Section 15(2) of the MR.C. Act and therefore the suit filed for ejectment on the ground of arrears of rent was clearly not maintainable.

26) Since the suit itself is held to be not maintainable, it not really necessary to go into the aspect of deposit of rent, interest at the rate of 15% and costs of the suit under the provisions of Section 15(3) of the M.R.C. Act. However, Ms. Crasto has taken me through the certified copies of the relevant records of the Small Causes Court, which shows deposit of rent by her from time to time. I am therefore of the view that the Appellate Bench has erred in accepting the ground of arrears of rent and in decreeing the suit.

27) Mr. Singh has relying upon judgment of this Court in ***Sriniwas Babulal*** (supra) in support of his contention that the law of

limitation does not prohibit tenant from making payment of even time barred rent. In my view, the judgment would have no application in the present case, which does not relate to recovery of time barred claim of rent. The judgment cannot be used to justify the irresponsible act on the part of Plaintiffs in demanding taxes and rent for the period prior to creation of tenancy. Mr. Singh has also relied upon judgment of this Court in ***Fehameeda Begum Khan Pathan*** (supra) in support of his contention that the notice does not become bad in law merely because it demands higher rent than the rent agreed between the landlord and the tenant. In the present case, however the demand was not for 'higher amount of rent' than the one agreed between the parties. The case involves absolutely irresponsible and arbitrary demand by landlords for payment of rent and taxes from April 1971 when the tenancy got created in favour of Applicant/tenant in June 1990. The judgment would therefore have no application to the facts and circumstances of the present case.

28) Mr. Singh, has also relied upon judgment of this Court in ***M.C.G.M. V/s. Green Gold Trading Investment Pvt. Ltd.*** (supra) in support of his contention that the Applicant-Defendant took risk of not depositing the arrears of rent, interests and costs of the suit within a period of 90 days from the date of service of the suit summons. In the present case, however the suit itself was not maintainable on account of failure to serve valid notice under Section 15(2) of the M.R.C. Act and therefore the obligation on the tenant to deposit in the Court arrears of rent, interests and costs under Section 15(2) would not arise. The judgment therefore would have no application to the present case.

29) The Civil Revision Application is accordingly allowed, and I proceed to pass the following order:

(i) The Judgment and Order dated 2 May 2024 passed by the Appellate Bench of the Small Causes Court in Appeal No.5/2021 is set aside and the Appeal stands dismissed with costs.

(ii) R.A.E. & R. Suit No.743/1278 of 2008 filed by Plaintiffs stands dismissed with costs by confirming the decree dated 14 February 2020.

NEETA SHAILESH SAWANT

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Date: 2024.08.28 19:23:45 +0530

[SANDEEP V. MARNE, J.]