



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.394 OF 2022

Joseph Anthony (since deceased)
through his legal heir-
1a. Mrs. Maizaben Anis Khan and
Anr.

...Applicants
(orig. Defendants)

V/s.

Rukmini Krishna Turbhekar

...Respondent
(orig. Plaintiff)

Ms. Minakshi Surve for Applicants.

Mr. R.M. Haridas for Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 30 August 2024.

ORAL JUDGMENT:

1) Revisionary jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908 is invoked to set up a challenge to the judgment and decree dated 26 February 2016 passed by the Court of Small Causes at Bombay in R.A.E. & R. Suit No.375/543 of 2003. The Small Causes Court has decreed the Suit on the ground of arrears of rent by rejecting the grounds of illegal sub-letting, erection of permanent structure and *bonafide* requirement. The Applicants/Defendants filed Appeal No.222 of 2016 before the Appellate Bench of the Court of Small Causes, which has been dismissed by judgment and order dated 5 May 2022, which is also subject matter of challenge in the present Revision Application.

2) Since all other grounds for eviction have been rejected and the Suit is decreed only on the ground of arrears of rent, it needs to be seen whether the Defendants were in arrears of rent as on the date of filing of the Suit by not complying with the notice under Section 15(2) of the Maharashtra Rent Control Act (**the MRC Act**) served by the Plaintiff-landlord and whether the Defendants failed to avail the second opportunity of depositing the rent, interest and costs within a period of 90 days from the date of service of suit summons under Section 15(3) of the MRC Act.

3) I have heard Ms. Surve, the learned counsel appearing for the Revision Applicants, who would submit that Revision Applicants have deposited the entire arrears of rent, costs and interest within a period of 90 days as provided under Section 15(3) of the MRC Act and therefore decree for eviction could not have been passed on the ground of arrears of rent. She would submit that the suit summons was served on Defendant No.1 on 2 April 2005 and on Defendant No.2 on 25 April 2003. That the application for deposit of rent, costs and interest was immediately filed on 3 May 2005. However, the Trial Court as well as the Appellate Bench have erroneously considered the date of filing of the said application as 10 October 2005 thereby rendering their decisions perverse. That in pursuance of application filed on 3 May 2005, the Small Causes Court directed payment of arrears of rent, interest and costs of the Suit on or before 15 November 2005. That the deposit of the said amount was made by Defendant on 16 November 2005. She would rely upon Section 11 of the Maharashtra General Clauses Act, 1904 in support of her contention that if an act which was required to be done on 15 November 2005 could not be done on account of holiday on 15 November 2005, and since the same has been done on 16 November 2005, the same is required to have been done on 15 November 2005 itself. She also relied upon judgment of Apex Court in

M/s. Natwarlal Shamaldas & Co. V/s. Siloo J. Khan¹ and Mohan Laxman Hede V/s. Noormohamed Adam Shaikh² in support of her contention that so long as rent is deposited with reasonable punctuality the decree for eviction cannot be passed.

4) The Revision Application is opposed by Mr. Haridas, the learned counsel appearing for the original Plaintiff. He would submit that what is mandated under provisions of Section 15(3) is 'deposit' of arrears of rent, interest and costs. That in the present case, it is an admitted position that such a deposit was not made within a period of 90 days. He would rely upon judgment of the Apex Court in ***Ganpat Ladha V/s. Sashikant Vishnu Shinde³***, in support of his contention that mandatory period prescribed by the statute cannot be extended by use of discretion of the Court. He would also rely upon judgment of the Apex Court in ***Yusufbhai Noormohammed Jodhpurwalal V/s. Mohammed Sabir Ibrahim Byavarwala⁴*** as well as judgement of this Court in ***Chandiram s/o. Dariyanumal Ahuja V/s. Akola Zilla Shram Wahatuk Sahakari Sanstha*** in support of the same contention. He would also rely upon judgment of this Court in ***Laxman S/o. Ghulji Upadhye Vs. Dr. Vijay Bhojraj Khachne⁵*** in support of his contention that if whole rent is not deposited within the time specified, then passing of decree on the ground of arrears of rent is imminent.

5) I have considered the submission advanced by the learned counsel appearing for the parties.

¹ Spl.C.A. No.1565/72 decided on 4/2/1976

². 1988 2 SCC 481

³. AIR 78 SC 955

⁴. (2015) 6 SCC 526

⁵. 2022 0 Supreme (Bom) 1587

6) Since the suit is decreed only on the ground of default in payment of rent, provisions of Section 15 of the MRC Act would be relevant, which 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.

(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.

7) It is seen that the Defendant apparently did not pay rent to the Plaintiff-landlord after receipt of default notice under Section 15(2) of the MRC Act. Thus, the first opportunity available to Defendant - Tenant was not availed. Sub Section (3) of Section 15 afforded second opportunity to the Defendants to make good the default by depositing in the Court the entire arrears of rent alongwith 15% interest as well as costs of the Suit within 90 days on receipt of suit summons.

8) In the present case, the suit summons has been served on 2 April 2005. Thus, Defendants had period of 90 days, computed from 2 April 2005 to deposit arrears of rent with interest and costs of Suit. However, it is not that the Defendant can unilaterally approach the

Registry and make deposit of arrears of rent with the treasury. There is no dispute to the position that without securing specific permission from the Court, no deposit can be made by a tenant in the court's treasury. In accordance with the procedure prescribed with Small Causes Court, the Defendants were required to make an application to the learned Judge seeking permission for deposit of amount towards arrears of rent. Accordingly, such application was filed on 3 May 2005. For some unknown reason, the Trial Court and the Appellate Bench have considered that the said application was filed on 10 October 2005. The Interim Notice No.2271 of 2005 seeking permission for deposit of arrears of rent is placed on record at Exhibit-E to the Revision Application and the said Notice clearly shows that the same was filed on 3 May 2005. Thus, the findings recorded by the Small Causes Court and its Appellate Bench that such Notice was taken out on 10 October 2005 appears to be clearly perverse. To salvage this situation, Mr. Haridas would contend that date of '10 October 2005' is attributable to the act of 'movement' of the application before the learned Judge. He has submitted that mere lodging of application is not sufficient and that the application must be 'moved' before the Court. That the application/notice was moved by Defendants on 10 October 2005. However, I am unable to accept Mr. Haridas's submissions. The learned Judge has clearly used the words 'taken out the said notice' while indicating the date of 10 October 2005. The expression 'taking out' in relation to a Notice would obviously refer to the act of 'filing' and not to the act of 'movement' of already filed Notice before the Judge. Thus, the learned Judge has thus committed a factual error in assuming that Interim Notice No.2271 of 2005 was taken out on 10 October 2005, when in fact the same was taken out on 3 May 2005.

9) Thus, the application for deposit of arrears of rent with interest @ 15% and costs of the Suit was undoubtedly filed by the

Defendants within a period of 90 days of service of suit summons. If the application was to be decided immediately, the deposit would also have been made within a period of 90 days. However, it appears that there was slight delay on the part of the learned Judge of the Small Causes Court in deciding the said Notice, which came to be made absolute on 26 October 2005 permitting the Defendants to deposit the arrears of rent @ 15 % interest and costs of the Suit on or before 15 November 2005. It is well settled principle that act of Court shall not cause any prejudice to any party and therefore, delay on the part of the learned Judge in deciding the application filed on 3 May 2005 cannot prejudice the Defendants. Therefore, no inference can be drawn that the Defendants were not ready or willing to deposit arrears of rent alongwith interest and costs within 90 days.

10) Having held that the Defendants filed the application for deposit of arrears of rent within the permissible period of 90 days and that the delay on the part of the learned Judge in allowing said application cannot cause any prejudice to the Defendants, the next submission made by Mr. Haridas is that even the permissible period for deposit (15 November 2005) was violated by Defendants. It appears that the deposit has been made by the Defendants on 16 November 2005. In this connection, Ms Surve is right in relying upon provisions of Section 11 of the Maharashtra General Clauses Act, 1904 which provides that if an act is required to be done by a statute within a prescribed period but could not be done within that period because of the last date of that period falls on a holiday then if the act is done on the following day it will be deemed to have been done or it shall be considered to have been done within the prescribed time. Section 11 of the Maharashtra General Clauses Act provides thus:

11. Computation of Time

Where, by any Bombay Act or Maharashtra Act made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open :

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies,

11) The above provision is dealt with by the judgment of the learned Single Judge of this Court in ***M/s. Natwarlal Shamaldas*** (supra) In which this Court held as under:

‘... that the principle underlying section 11 of the Bombay General Clauses Act is that if an act which is required to be done by a statute within a prescribed period cannot be done within that period because the last day of that period falls on a holiday, then if the act is done on the following day, it will be deemed to have been done or it shall be considered to have been done within the prescribed time. Payment by a cheque was treated as valid tender of the rent in the past. The cheque had been sent to the lawyer well before the expiry of the period of one month prescribed under section 12(3) (a) of the Rent Act. The tenant was entitled to invoke the general principle underlying section 11 of the Bombay General Clauses Act and if the cheque for the rent could not be delivered to the landlord within the period of one month because of the closure of the post office on Sunday and if it was delivered on the next day, there was no neglect as contemplated by section 12(3)(a) and the tenant must be deemed to have paid rent within the period of one month from the date of receipt of the notice.’

12) In the present case, it appears that on 15 November 2005 the Courts were closed on account of holiday for Guru Nanak Jayanti. Therefore, deposit of arrears of rent by Defendants on 16 November 2005 will have to be construed as having been made on 15 November 2005.

13) The next submission of Mr. Haridas is that the prayer in the Interim Notice No.2271 of 2005 was for deposit of arrears of rent in two equal instalments. Though the prayer was made for two equal installments, ultimately the learned Judge directed deposit of the entire amount of arrears of rent on or before 15 November 2005 and it is undisputed position that entire amount has been deposited on 16 November 2005. In fact, the Defendant /tenants had sufficient time

when the Interim Notice was moved on 3 May 2005 to make the deposit within two installments. Since the suit summons was served on 2 April 2005, they had time upto 3 July 2005, which possibly appears to be the reason why prayer for deposit in two equal installments was sought in the Notice. Be that as it may. There is no dispute to the position that entire arrears of rent, interest and costs of the Suit are deposited in one go on 16 November 2005. In my view therefore, Defendants/tenants in the present case have met the requirement under Section 15(3) of the MRC Act and therefore decree for eviction could not have been passed.

14) What remains now is to deal with judgment cited by Mr. Haridas:

- (i) In ***Ganpat Ladha*** (supra), the Apex Court has held that the Court cannot extend the time prescribed under Section 12(3) (b) of the Bombay Rent Act by use of judicial discretion. In the present case, there is no extension of period by the Court as can be seen from the observations made above. Therefore, the judgment would have no application to the facts of the present case.
- (ii) Judgment of the Apex Court in ***Yusufbhai Noormohammed Jodhpurwalal*** (supra) has relied upon the judgment in ***Ganpat Ladha*** for holding that the period specified in 12(3) (b) is mandatory and must be strictly complied with. In the present case it is found that there is strict compliance with the period specified under Section 15(3) of the MRC Act.

(iii) In ***Chandiram s/o. Dariyanumal Ahuja*** (supra) the case involved altogether different fact situation. In that case, the Defendant had made an appearance in the Suit after 90 days from the date of service of suit summons and therefore there was no question of making an application for deposit of arrears within 90 days. Furthermore, it was found that tenant was not regularly depositing the amount of rent during pendency of the suit. Judgment would have therefore no application to the facts of the present case.

(iv) ***Laxman S/o. Ghulji Upadhye*** (supra) deals with requirement of deposit of 'whole rent', interest and costs and it is held that deposit of partial amount of rent would not meet the requirement under Section 12(3)(b) of the Bombay Rent Act. In the present case there is no dispute to the position that the entire amount of arrears of rent along with @ 15% interest and costs has been deposited by the Defendant. Hence, the judgment does not have any application to the facts and circumstances of the present case.

15) After having considered the overall conspectus of the case, I am of the view that the findings recorded by the learned Single Judge of the Small Causes Court as well as by its Appellate Bench suffer from vice of perversity. The eviction decree is thus indefensible and liable to be set aside.

16) The Civil Revision Application accordingly succeeds. The judgment and decree dated 26 February 2016 passed by the Small Causes Court in R.A.E. & R. Suit No.375/543 of 2003 as well as judgment and decree dated 3 May 2022 passed by the Appellate Bench

in Appeal No. 222/2016 are set aside. R.A.E. & R. Suit No.375/543 of 2003 is dismissed.

17) With the above directions the Civil Revision Application is allowed. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]