



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 327 OF 2023

Abhay Dushyant Desai
Karta & Manager of D. N. Desai & others
(HUF) age about 65 years Occupation
Professional, Adult, Indian Inhabitant having
address at Flat No.18, 5th Floor, Mayfair Building,
Veer Nariman Road, Mumbai – 400 020.

....Petitioner
[Orig. Defendant No. 1(a)]

:Versus:

M/s. K. C. Chheda & Co., A firm registered
under the Indian Partnership Act and having its
Adm. Office at 39/40, Western Indian House,
Sir P. M. Road, Fort, Mumbai – 400 001.

....Respondent
[Orig. Plaintiff]

Mr. Vineet Naik, Senior Advocate with Mr. Abhijit Devkhile, Mr. Murari Madekar and Mr. Sachin Kudalkar i/b M/s. Madekar & Co., *for the Applicant.*

Mr. Girish Godbole, Senior Advocate with Ms. Jai Kanade and Mr. Dhawal M. Visawadia i/b Harakhchand & Co., *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Reserved On : 20 June 2024.

Pronounced On : 27 June 2024.

JUDGMENT :-

1) Revisionary jurisdiction of this Court under Section 115 of the Civil Procedure Code, 1908 (**Code**) is invoked challenging the judgment and order dated 24 April 2023 passed by the Appellate Bench of the Small Causes Court, Mumbai, dismissing Appeal No. 03 of 2013 filed by the Applicant and confirming the Judgment and Order dated 22 November 2012 passed by the learned Judge of the Small Causes Court at Mumbai in R.A.E. & R. Suit No.436 /816 of 2004. The learned Judge of the Small Causes Court has decreed the Suit filed by Plaintiff /Respondent and has directed the Applicant/Defendant to handover possession of the suit premises to the Plaintiff on the ground that Defendant was in arrears of rent and permitted increases.

2) Facts of the case, as pleaded by the Plaintiff in the Plaint, are that Flat No.18 situated on 5th floor of the building Mayfair, at 75-C, Veer Nariman Road, Mumbai 400 020 is the suit premises. Plaintiff claims to be the owner and landlord of the property known as 'Mayfair Building.' Original Defendant-Dushyant Nanubhai Desai was the Karta and Manager of D.N. Desai and others (**HUF**). The said HUF was inducted as tenant in respect of the suit premises on monthly rent of Rs.297.70/- inclusive of permitted increases. It is Plaintiff's case that original Defendant paid rent in respect of the suit premises till March-1974 exclusive of permitted increases. That the original Defendant did not pay permitted increases from April 1974 despite repeated demands. That the original Defendant also did not pay rent despite of the repeated demands made by the Plaintiff. A demand notice dated 12 August 2002 was sent by

Plaintiff calling upon Defendant to pay arrears of rent and permitted increases as per the statement annexed to the notice. That the notice was replied by the original Defendant on 28 August 2002 denying liability to pay the amounts demanded in Plaintiff's letter. That the original Defendant sent cheque dated 10 November 2003 for Rs.4200/- towards rent for the period from July 2003 to 30 June 2004 @ Rs.350/- per month. The said cheque was returned by the Plaintiff. Plaintiff accordingly instituted R.A.E. & R. Suit No.436/816 of 2004 in the Court of Small Causes, Mumbai against original Defendant for ejectment on the ground that original Defendant was in arrears of rent and permitted increases for more than 6 months and that he was not ready and willing to pay the rent and the permitted increases. Plaintiff accordingly sought directions against the original Defendant for handing over vacant and peaceful possession of the suit premises and also sought to recover amount of Rs.31,513.52/- towards arrears of rent for the period from 1 April 2001 to 30 March 2004. Plaintiff also prayed for decree of mesne profit by conduct of enquiry under Order XX Rule 12 of the Code.

3) Summons in the Suit was issued on 6 May 2004, which was served on the original Defendant on 3 July 2004. Original Defendant filed an Interim Notice No.3200 of 2004 seeking permission to deposit amount of Rs.41,289.70/- towards arrears of rent and permitted increases as well as cost and interest. The said amount included rent @ Rs.889.49/- per month as demanded in the Demand Notice for the period from 1 April 2001 to 31 March 2004 (total rent of Rs.31,519/-). Plaintiff further showed willingness to deposit interest @ 15% on arrears of amount of rent at Rs.1,575.98/- as well as costs of the suit. This is how Defendant sought

permission to deposit an amount of Rs.41,289.70/- in the Court under the provisions of Section 15(3) of the Maharashtra Rent Control Act, 1999 (**Rent Act**). The Interim Notice filed by the original Defendant was opposed by Plaintiff by filing reply. Plaintiff contended that original Defendant was required to deposit all arrears of rent and not just recoverable arrears. The Small Causes Court passed order dated 21 March 2005 and held that it was always open for tenant to pay or tender the arrears of rent, at his own risk. Accordingly, the Court permitted original Defendant to deposit amount of Rs.41,289.70/- alongwith simple interest @ 15% p.a. as well as permitted original Defendant to deposit rent @ Rs.889.49/- before 10th day of each month till final disposal of the Suit. Accordingly, the original Defendant deposited amount of Rs.41,289.70/- plus 15% simple interest of Rs.6,193.45/- as well as further rent for the period from 1 August 2004 to 31 March 2005 (Rs.7,115.92/-) and cost of the Suit of Rs.4,636.25/-, total amount of Rs.59,232.57/- on 1 April 2005. It is the case of the original Defendant that the rent in respect of the period from 1 April 2005 onwards was deposited by him from time to time during pendency of the Suit.

4) Plaintiff examined Jagdish Kumudchandra Chheda, Anil Balkrishna Sawant-Officer of BEST, Satish V. Jadhav-Municipal Officer, Prakash Purushottam Raut-Ward Inspector, Nandini Krishnakumar Dwivedi and Pankaj Agarwal-officer of Insurance Company as its witnesses. The Defendant examined original Defendant as witness. It appears that during pendency of the Suit, the original Defendant passed away and according the Applicant /Abhay Dushyant Desai was brought on record as his legal representative. After considering the evidence on

record, the learned Judge of the Small Causes Court passed Judgment and Decree dated 22 November 2012 decreeing Plaintiff's Suit partly and directed Defendant to quit, vacate and handover vacant and peaceful possession of the suit premises to Plaintiff within two months.

5) The Applicant/Defendant filed Appeal No.03 of 2013 before the Appellate Bench of the Small Causes Court challenging the Judgment and Decree dated 22 November 2012. The Applicant /Defendant filed application seeking stay of execution of the Decree dated 22 November 2012. By order dated 21 January 2013, the Appellate Bench granted stay, which came to be vacated by order dated 18 November 2021. The Applicant therefore filed Writ Petition No.8920 of 2021 in this Court. By order dated 14 December 2021, this Court directed executing Court not to proceed with the execution. The Applicant also filed application dated 31 January 2014 to carry out repairs in the suit premises, which was disposed of by order dated 24 April 2023. The Applicant also filed application dated 18 November 2014 under Order XLI Rule 27 of the Code for permission to lead additional evidence, which was rejected by order dated 24 April 2023.

6) The Appellate Bench of the Small Causes Court heard the Appeal filed by the Applicant and by its judgment and order dated 24 April 2023, has dismissed the same. Aggrieved by the decree of the Appellate Bench dated 24 April 2023, the Applicant has filed the present Civil Revision Application.

7) Mr. Naik, the learned senior advocate appearing for the Revision Applicant would submit that the Small Causes Court and its Appellate Bench have erred in not appreciating that the Revision Applicant has paid rent in respect of the suit premises to the landlord from time to time. That additionally, after being served with the suit summons, the Revision Applicant has deposited the amount of rent as per the provisions of sub-section (3) of Section 15 of the Maharashtra Rent Control Act, 1999. Additionally, the Revision Applicant has paid the rent in respect of the suit premises regularly during pendency of the suit. That therefore no ground existed for passing a decree for eviction against the Revision Applicant.

8) Mr. Naik would further submit that the demand notice dated 12 August 2002 is required to be read in conjunction with the notice earlier served by the landlord on 2 November 1978. Taking me through the said notice dated 2 November 1978, Mr. Naik would submit that in the said notice, it was stated that the monthly rent of the suit premises was Rs.590.87/- and that the arrears, of rent, permitted increased and water charges was demanded of Rs.9,929.16/-. That the said notice dated 2 November 1978 was replied by the Revision Applicant disputing that the monthly rent was Rs.590.87/- and asserted that the same was Rs.274.87/- and that the landlord had raised bills at the rate of Rs.250/- per month from 1 July 1975 inclusive of permitted monthly taxes, educational cess, state government cess and government building repairs. That upto June 1974, the rent was Rs.274/-. That the Revision Applicant cleared the arrears of rent calculated at the rate of Rs. 350/- per month without prejudice to its right and forwarded the cheque of Rs.1,900/- to the

landlord alongwith reply dated 17 November 1978. That the Revision Applicant demanded inspection of the municipal bills about increases demanded by the landlord. According to Mr. Naik, after receipt of reply dated 17 November 1978, the landlord did not write to the Revision Applicant during the next 24 long years and for the first time, demand notice dated 12 August 2002 was sent raising demand for Rs.88,444.44/- towards permitted increases from 1 April 1974 to 31 July 2002. That additionally, demand was raised towards electricity charges, lift charges, security charges, lease rent etc. totaling Rs.1,99,720.48/- alongwith interest. That the demand notice indicates that total 10 cheques received by the landlord towards Rs.45,500/- plus Rs.467.59/- were returned to the Revision Applicant. That the demand notice was vague as it demanded additional amount of Rs.2,88,173.92/- towards permitted increases and other charges.

9) Mr. Naik would further submit that after receipt of the suit summons, Revision Applicant filed Interim Notice No. 3200 of 2004 by taking Rs.889.49/- as the rent payable as per demand notice and sought permission to pay rent in respect of the period from 1 April 2001 to 31 March 2004 totaling Rs.31,519.52/- and further amount of interest at the rate of Rs.1,575.98/-. This is how the Revision Applicant sought permission to deposit Rs.41,289.70/- towards arrears of rent and permitted increased alongwith 15% interest and costs. That the said application was allowed and Petitioner was permitted to deposit the said amount of Rs.41,289.70/- alongwith interest at the rate of 15% with further direction to deposit rent at the rate of Rs.889.45/- per month from 1 August 2004 onwards. Mr. Naik would take me through the

statement of deposit made by the Petitioner in the Small Causes Court from time to time. That except on five occasions, when there was some delay in making the deposit, Petitioner has deposited the rent regularly before the Small Causes Court. He would take me through the reasons for delay in deposit of rent on those five occasions. He would submit that the word ‘*regularly*’ appearing in Section 15(3) cannot be interpreted to mean that the rent must be deposited each month by mathematical precision. That consistent view has been taken that long as there is sufficient compliance with the requirement under Section 15(3) of the Maharashtra Rent Control Act, 1999, decree for eviction cannot be passed. That Petitioner has deposited the rent during the pendency of the suit with reasonable punctuality. In support of his contention, Mr. Naik would rely upon judgments of the Apex Court in *Mranalini B. Shah and Anr. V/s. Bapalal Mohanlal Shah*¹, *Mohan Laxman Hede V/s. Noormohamed Adam Shaikh*² and of Single Judge of this Court in *Vasant Mahadeo Gujar V/s. Baitulla Ismail Shaikh & Anr.*³.

10) Mr. Naik would then take me through the findings recorded by the Small Causes Court on deposit of rent and permitted increases made by the Petitioner and would submit that the Small Causes Court has erroneously held that there was delay on the part of the Petitioner to deposit the notice amount. Taking me through the findings recorded by the Appellate Bench, Mr. Naik would submit that the Appellate Bench has recorded a factually incorrect finding that the Petitioner was not regularly depositing the rent in the Court. He would submit that the

1 (1980) 4 SCC 251

2 (1988) 2 SCC 481

3 2015 SCC Online Bom 4470

findings recorded by the Small Causes Court, as well as its Appellate Bench on deposit of rent and permitted increases under Section 15(3) of the Maharashtra Rent Control Act are perverse and that therefore their orders are liable to be set aside. He would submit that both the Courts have not appreciated the fact that the landlord has returned the cheques towards rent given by the Petitioner, the fact that the landlord has improvised his case in the plaint by adding the arrears of rent, when infact the demand notice dated 12 August 2002 was only towards arrears of permitted increases. That both the Courts therefore ought to have dismissed the suit filed by the landlord.

11) *Per-contra*, Mr. Godbole, the learned senior advocate appearing for the Respondent would oppose the Revision Application and support the orders passed by the Small Causes Court and its Appellate Bench. He would submit that the concurrent findings of fact about default in payment of rent and permitted increases are recorded by the two Courts below and that therefore this Court, in exercise of revisionary jurisdiction under Section 115 of the Code, would be loathe in interfering in such concurrent findings. Taking me through the demand notice dated 12 August 2002, Mr. Godbole would submit that the landlord gave details of due amount of rent and permitted increased from the year 1974-75 by giving credits of the amounts paid by the Petitioner each year. That the detailed statement annexed with the Notice indicated that an amount of Rs.88,444.44/- was due and payable towards arrears of rent and permitted increases by Petitioner. That after receipt of the said notice, Petitioner failed to pay the said amount demanded in the notice. That if Plaintiff had any dispute about amount of rent and permitted

increases demanded in the notice, he ought to have filed an application for fixation of standard rent and permitted increases, which he failed to do. That in absence of an application for fixation of standard rent and permitted increases, the Defendant/Petitioner cannot dispute the amount demanded in the notice. That since no payment of amount demanded in the notice is proved, decree for eviction against the Petitioner was eminent. That therefore no interference is warranted in the impugned orders of the Small Causes Court and its Appellate Bench.

12) Mr. Godbole would further submit that deposit of rent by the Petitioner in respect of the period from 1 April 2002 to 31 March 2004 does not satisfy the requirement of sub-section (3) of Section 15 of the Rent Act. That the said provisions mandate deposit of arrears of standard rent and permitted increases '*then due*'. That there is a difference between '*rent recoverable*' and '*rent payable*'. That though the amount of rent recoverable may be restricted on account of application of period of limitation, what is mandated to be deposited under Section 15(3) is not the '*rent recoverable*' but what must be deposited is the '*rent due*'. That this position has been expounded in various judgments. He would place reliance on the judgment of the Apex Court in ***Khadi Gram Udyog Trust V/s. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur***⁴ and of this Court in ***Srinivas Babulal V/s. Ramakant s/o Shivnarayan Jaiswal***⁵ and in ***Prabhakar Venkobaji Manekar V/s. Surendra Dinanath Sharma***⁶. He would also rely upon judgment of Full Bench of this Court in ***Babulal s/o Fakirchand Agrawal V/s. Suresh Kedarnath Malpani and Others***⁷, in

4 (1978) 1 SCC 44

5 2011 (2) Mh.L.J. 156

6 2015 (4) Mh.L.J. 351

7 2017 (4) Mh.L.J. 406

support of his contention that in order to claim relief against forfeiture, the tenant must satisfy all conditions in respect of payment of rent or tender in the court all arrears then due.

13) Mr. Godbole would submit that the Petitioner was clearly put to notice while opposing the Interim Notice No. 3200 of 2004 that what was being deposited by him was not the entire arrears of rent and permissible increases (then due) under the provisions of Section 15(3) of the Rent Act. That while permitting deposit of the amount, the Small Causes Court observed that the deposit was being made by the Petitioner at his own risk. That therefore the order dated 21 March 2005 cannot be read to mean that the Small Causes Court condoned the requirement of payment of arrears of rent and permitted increases since the year 1974-75.

14) Without prejudice to the contention that Petitioner failed to deposit the entire amount of arrears of rent and permitted increases due as on the date of filing of the suit, Mr. Godbole would submit that Petitioner also defaulted in paying the rent regularly during pendency of the suit. That there several defaults when there was considerable delay in deposit of rent before the Court. He would submit that the Small Causes Court and its Appellate Bench have duly applied their mind to the conduct of the Petitioner in not depositing the entire arrears of rent and permitted increases and also in failure to deposit the same regularly during pendency of the suit. That the impugned orders do not warrant any interference in exercise of revisionary jurisdiction by this Court. He would pray for dismissal of the Revision Application.

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

16) Plaintiff's suit for recovery of possession of the suit premises from the Defendant was premised only on arrears of rent and permitted increases for more than six months. In para-7 of the plaint, the Plaintiff set out the grounds of ejectment as follows :

7. The Grounds of enjectments are as follows :

- a) That the Defendants is in arrears of rent and permitted increases for more than six months.
- b) That the Defendants is not ready and willing to pay the rent and the permitted increases.

17) Plaintiff averred in its terse plaint that the original Defendant did not pay permitted increased from April 1974 despite repeated demands. It was further averred in the plaint that by demand notice dated 12 August 2002, original Defendant was called upon to pay the rent and permitted increases as per statements annexed to the said notice. It was further pleaded that the Defendant disputed the demand by his letter dated 28 August 2002 and the Plaintiff once again called upon the Defendant by letter dated 5 September 2002 to take inspection of the documents at Plaintiff's office to satisfy himself about the demand for permitted increases. That Defendant did not take such inspection, despite being offered. Plaintiff further averred that the Defendant sent cheque dated 10 November 2003 for Rs.4,200/- for the rent for the period from July 2003 to 30 June 2004 at the rate of Rs.350/- per month by letter dated 10 November 2003. That the said cheque was returned by Plaintiff

by letter dated 15 December 2002. On these broad pleadings, Plaintiff sought ejectment of the Defendant on the ground that he was in arrears of rent and permitted increases for more than six months and that he was not ready and willing to pay the rent and permitted increases. Plaintiff also sought recovery of amount of Rs.31,513.52/- being arrears of rent and permitted increases for the period from 1 April 2001 to 31 March 2004.

18) Upon receipt of the suit summons, the Defendant/Petitioner made appearance in the suit and filed Interim Notice No. 3200 of 2004 on/or about 28 July 2002 seeking leave to deposit an amount of Rs.41,289.70/- with following break up :

Arrears of rent and permitted increases for three years from 1.04.2001 to 31.03.2004	Rs.31519.52/-
Cost of the suit	Rs. 4636.25/-
Rent at the rate of Rs.889.49 from 1.04.2004 to 31.07.2004	Rs.3557.96/-
Interest @ 15% p.a. on Rs.31,519.92/- from the date of the suit i.e. from 01.04.2004	Rs.1575.98/-
TOTAL	Rs.41289.70/-

19) The interim notice filed by the Petitioner/Defendant was opposed by the Plaintiff by filing reply dated 9 August 2004, *inter-alia*, contending that though the rent and permitted increases sought to be recovered in the suit was offered to be deposited, the Defendant was in

arrears of rent from 1 April 1974 and that the entire amount ought to have been deposited with interest. The Court allowed the Interim Notice No.3200 of 2004 by its order dated 21 March 2005 by recording following findings :

3. The ld counsel for the plaintiff submitted that if the defendant tenant wants to avail of the protection under section 15(3) of the Maharashtra Rent Control Act he has to deposit all the arrears of rent that may be beyond limitation period. However, the defendant tenant has offered to deposit the arrears of rent as claimed by the plaintiff in the suit and also offered to deposit future rent as per the rate of rent claimed by the plaintiff in the suit. Admittedly, before filing the suit the demand notice was given by the plaintiff and asked the defendant to pay the arrears of rent of difference of amount from 1974, and by giving reply the defendant has denied that he was in arrears of rent. At the time of argument also several rent receipts are showed on behalf of defendant to show that right from 1974 the plaintiff company had accepted rent from the defendant and issued a rent receipts. Thus, in the present suit the defendant is not accepting the contention of the plaintiff landlord that the defendant is in arrears since 1974. It is established principle of law that if the landlord files the suit for recovery of arrears of rent then he can claim arrears of rent which are legally enforceable in law. However, if the tenant wants to get protection of the Rent Act as provided as per section 15(3) of the New Maharashtra Rent Control Act to save from eviction he has to deposit all the arrears of rent then due even though those arrears may be beyond the legally enforceable arrears. As per section 15(3) of the Rent Control Act it is for the tenant to pay or tender all the arrears of rent then due togetherwith interest at the rate of 15% pa within 90 days from the service of summons. If the defendant is not paying or offering to deposit the alleged arrears of rent from 1974 and if subsequently the plaintiff succeeds to prove that the defendant tenant was in arrears of rent since 1974 then certainly the plaintiff will be entitled for decree of eviction. Therefore, always it is for the tenant to pay or tender at his own risk the arrears of rent. As of right the landlord cannot argue to issue direction to the defendant tenant nor the court can insist the defendant tenant to deposit arrears of rent which are not legally enforceable. Therefore, there is no other way for the court but to accept the request of the defendant to allow him to deposit the arrears of rent alongwith interest and cost of the suit as claimed by him in the notice, Hence, taking into consideration the above discussion I pass the following order.

20) The Small Causes Court passed following order on 21 March 2005 :

ORDER

The notice in terms of prayer A & B is made absolute.

Without prejudice to the rights and contentions of the parties the defendant shall deposit the arrears of rent amount Rs. 41,289.70 with simple interest at the rate of 15% p.a within four weeks from the date of this order.

The defendant shall also deposit the rent amount at the rate of Rs. 8,89.49p.m from 1.8.2004 till March 2005 within four weeks from the date of this order.

Further, the defendant shall deposit the future rent at the rate of Rs. 8,89.49 p.m on or before 10th day of each month till final disposal of the suit.

If the defendants fails to comply with the said direction he shall note that further consequences as provided under chapter 15(3) of CPC will follow. The plaintiff shall be entitled to withdraw the amount of rent deposited by the defendant in the court as an when.

21) It is Mr. Godbole's contention that what needs to be deposited under the provisions of sub-section (3) of section 15 of the Rent Act is the entire amount of arrears of rent and permitted increases and not merely the amounts sought to be recovered in the suit and that deposit of arrears of rent from 1 April 2001 by the Defendant did not satisfy the requirement of Section 15(3). Section 15 provides for protection from ejectment, if the tenant pays or his ready and willing to pay the standard rent and permitted increases and provide 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.

22) The dispute in the present case is about satisfaction of conditions of sub-section (3) of Section 15 by the Petitioner/tenant about deposit of the standard rent and permitted increases due so as to save passing of decree of eviction in the suit filed for recovery of possession on the ground of arrears of standard rent and permitted increases. The debate here is whether the condition under Section 15(3) gets satisfied if the tenant pays the amount of rent sought to be recovered in the suit or whether it is incumbent for the tenant to deposit even that rent which falls beyond the period of limitation, but is alleged to be due and payable. Mr. Godbole has relied upon various judgments in support of his contention that what is required to be deposited under Section 15(3) is

not the rent '*recoverable*' but the rent '*then due*'. It would be necessary to refer to the judgments relied upon by Mr. Godbole. In *Khadi Gram Udyog Trust* (supra) the Apex Court has held as under:

3. The only contention raised in this appeal is that the appellant having complied with the requirement of Section 20(4) of the Act and deposited the entire amount of rent due, the Court ought to have passed an order relieving the tenant against his liability for eviction on that ground. Chapter IV of the U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act XIII of 1972 prescribed the procedure for eviction of a tenant. While Section 20(1) bars institution of suit for eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner, sub-section (2) enables the landlord to file a suit on any one or more of the grounds mentioned in sub-section (2). We are concerned with sub-clause (a) of sub-section (2) which provides that a suit for eviction of a tenant from a building may be instituted on the ground that the tenant is in arrears of rent for not less than four months and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand. It is not disputed that several notices were served on the appellant and that he failed to pay the rent within one month from the date of the service of the notice of demand on him. Another opportunity for payment of rent is provided to the tenant under Section 20(4) which provides that "In any suit for eviction on the ground mentioned in clause (a) of sub-section (2), if at the first hearing of the suit the tenant unconditionally pays or tenders to the landlord or deposits in Court the entire amount of rent and damages for use and occupation of the building due from him together with interest thereon at the rate of 9 per cent per annum and the landlord's costs of the suit in respect thereof, after deducting any amount already deposited by the tenant under sub-section (1) of Section 30, the court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on the ground. Under this sub-section, therefore, though the tenant has not complied with the requirement of sub-section (2) of Section 20, if he pays it the first hearing of the suit unconditionally the entire amount of rent the court may pass an order relieving the tenant against this liability for eviction. In this case the appellant deposited on 13-2-1975 a sum of Rs. 5972.43 being the amount of rent and damages for the period 1.5.1973 to 28.2.1975 together with interest etc. The contention of that is recoverable and would not include the rent, the recovery for which is barred by time. According to the appellant the payment of entire amount of rent due would not include the rent for the period

1.1.1960 to 31.12.1970 as the claim is barred by time. The District Judge who tried the suit was of the view that the tenant ought to have deposited the time-barred arrears of rent also in order to claim benefit under Section 20(4). The trial Court proceeded with the trial of the suit and found that the landlord had proved that tenant was in arrears of rent for not less than 4 months and had failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand and as such satisfied the requirement of sub-section (2) of Section 20 and is entitled for order of eviction. In the revision the High Court affirmed the view taken by the trial Court and dismissed the appeal.

4. It will be seen that under Section 20(2) of the Act, the landlord gets a cause of action for evicting the tenant when the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand. If the tenant pays the entire arrears of rent due at the first hearing of the suit the court may relieve the tenant against eviction even though he had not complied with Section 20(2). The tenant can take advantage of the benefit conferred by Section 20(4) only when he pays the entire amount of rent due as required under Section 20(4). The question that arises for consideration in this appeal is whether the entire amount of rent due would include even rent which cannot be recovered as having been time-barred. There is ample authority for the proposition that though a debt is time-barred, it will be a debt due though not recoverable, the relief being barred by limitation. In Halsbury's Laws of England (Third Ed.) Vol. 24 at p. 205, Article 369, it is stated "except in the cases previously mentioned, the Limitation Act, 1939 only takes away the remedies by action or by set off; it leaves the right otherwise untouched and if a creditor whose debt is statute-barred has any means of enforcing his claim other than by-action or set-off, the Act does not prevent him from recovering by those means. The Court of Appeal in *Curwen v. Milburn*, Cotton, L. J. said :

Statute-barred debts are dues, though payment of them cannot be enforced by action.

The same view was expressed by the Supreme Court in *Bombay Dyeing and Manufacturing Co.Ltd v. The State of Bombay* where it held that the statute of limitation only bars the remedy but does not extinguish the debt, except in cases provided for by Section 28 of the Limitation Act, which does not apply to a debt. Under Section 25(3) of the Contract Act a barred debt is good consideration for a fresh promise to pay the amount. Section 60 of the Contract Act provides that when a debtor makes a payment without any direction as to how it is to be appropriated, the creditor has the right to appropriate it towards a barred debt. In a full Bench decision of the Patna High Court – *Ram Nandan Sharma v. Mi. Maya Devi, Untwalia*, C. J. as he then was, has

stated "There is a catena of decisions in support of what has been said by Tek Chand, J. in First National Bank v. Sant Lal that the Limitation Act with regard to personal actions, bars the remedy without extinguishing the right." The law is well-settled that though the remedy is barred the debt is not extinguished. On consideration of the scheme of the Act, it is clear that the statute has conferred a benefit on the tenant to 'avoid a decree for eviction by complying with the requirement of Section 20(4). If he fails to avail himself of the opportunity and has not paid the rent for not less than four months and within one month from the date of service upon him of a notice of demand, the landlord under Section 20(2) would be entitled to an order of eviction. Still the tenant can avail himself of the protection by complying with the requirements of Section 20(4). As he has not deposited the entire amount due the protection is no more available. We agree with the view taken by the trial court and the High Court of Allahabad that the words "entire amount of rent due" would include rent which has become time-barred.

23) In *Khadi Gram Udyog Trust*, the Apex Court has considered *pari materia* provisions of Section 20 of the U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972. Sub-section (4) of Section 20 of the said Act, provides an opportunity to the tenant to pay or tender to the landlord or deposit in the Court '*the entire amount of rent and damages*' together with interest thereon at the rate of 9% p.a. and landlord's costs of the suit, upon deposit of which, the Court can relieve the tenant against the liability for eviction. In the case before the Apex Court, the Appellant therein deposited sum of Rs.5,972.43/- towards rent and damages for the period from 1 May 1973 to 28 February 1974 together with interest. The contention of the Appellant-tenant was that '*entire amount of rent due*' would be rent that is recoverable and would not include the rent, recovery for which is barred by time. In the light of the above statutory provisions and the factual position, the Apex Court held

that ‘*entire amount of rent and damages*’ would include even rent which has become time barred.

24) The Single Judge of this Court (*B.P. Dharmadhikari, J.*) in *Srinivas Babulal* (supra) has held in paras-10, 11 and 13 as under :

10. In *Sri Bhimseri Gupta vs. Sri Bishwanath Prasad Gupta* (supra), Hon'ble Apex Court considers Section 11(1)(d) of the Bihar Buildings (Lease, Rent and Eviction) Control Act (4 of 1983) and Article 52 of the Limitation Act (36 of 1963). It finds that said section 11 deals with eviction of tenants. It begins with non obstante clause and states that notwithstanding anything contained in any contract or law to the contrary no tenant shall be liable to be evicted except in execution of a decree passed by the Court on one or more of the grounds mentioned in Section 11(1)(a)(f). Section 11(1)(d) states that where the amount of two months' rent, lawfully payable by the tenant and due from him is in arrears by reason of nonpayment within the time fixed by the contract or in the absence of such contract by the last day of the month next following that for which rent is payable, then such default would constitute ground for eviction. Hon'ble Apex Court notes that the expression used in Section 11(1)(d) is "lawfully payable" and not "lawfully recoverable" and, therefore holds that Section 11(1)(d) has nothing to do with recovery of arrears of rent. On the contrary Section 11(1)(d) provides a ground for eviction of the tenant in the eviction suit. It states a well settled law that limitation bars the remedy of the claimant to recover the rent for the period beyond three years prior to the institution of the suit, but that cannot be a ground for defeating the claim of the landlord for decree of eviction on satisfaction of the ingredients of Section 11(1)(d) of the said Act of 1982. Therefore eviction suit filed by landlord on ground of default in payment of rent by tenant for period more than three years prior to institution of suit is declared maintainable by it. In facts before me as the Suit is expressly with grievance about rent payable for 3 years prior to its institution, the difference between “lawfully payable” and “lawfully recoverable” is not very relevant. Nothing prevented Tenant from paying lawfully recoverable rent either before or after the institution of Suit if he wanted to avail of the protection granted by Section 15 above.

11. *Vasant Raghoseth Tambe vs. Bholadasji Mandir* (supra) is the case covered by Section 12(3)(b) of Bombay Act, as it stood prior to the amendment. It is held that the tenant can avoid decree of eviction if,

on the first date of hearing of the suit or on or before such other date as the Court may fix tenant pays or tenders in the Court standard rent and permitted increases, which is due and thereafter continues to pay or tender in the Court regularly such rent or permitted increases till the suit is finally decided. If any one of these condition was not fulfilled, the tenant can not get the protection of not passing the decree of eviction. In *Hari Bhuraji Mahajan vs. Rajendra Shankar Dawknor* (supra), also under Bombay Act, default in above obligation to continue to pay even during pendency of Appeal is held sufficient to deny the protection to tenant and appellate court is found competent to take cognizance of such subsequent default. In *Lalji Ramnath Pande vs. Smt. Hawabi Abdulla Shaikh* (supra), also under Bombay Act, the appellate court was held justified in ordering eviction in view of conduct of tenant in depositing rent irregularly.

13. I, therefore, find that the legislature has extended a further opportunity to tenant in arrears or habitually in default to clear the same and to avoid action of eviction by making payment of the admitted dues at admitted rate within 90 days of service upon him of statutory notice under Section 15(2) of the Rent Act. One more opportunity is given to him to clear all such arrears similarly within 90 days of receipt of suit summons by him. But then at that stage, he has to clear said amount not as per claim in notice but till date of deposit with 15% interest and thereafter continue to pay or tender in Court regularly such admitted sum till the suit is finally decided and also pay cost of the suit as directed by the Court. In case of any dispute about quantum of rent or period of arrears, he has to deposit admitted amounts and the dispute can then be resolved as per law. If he raises a frivolous dispute only to harass the landlord, he also takes with it the risk of consequences. Here, there is no effort to pay the admitted amount and arrears as adjudicated upon concurrently are not in dispute. Rent for over 30 years was not paid. From 1/5/1973 till 1/3/2006 amount paid is only Rs. 725/. Arrears within limitation and claimed in Suit for period of three years prior to its institution i.e. from 1/9/2000 to 31/8/2003 are Rs. 885.96. So this amount due and recoverable on date of institution of Suit also is not cleared. Definitely intention to condone even such lapses can be drawn from express language and scheme of Section 15. If payment made by tenant as per his sweet will as and when he made is to be accepted as enough to deny such landlord a decree for eviction, it is nothing but rewriting the said provisions. Section 15 giving concessions to Tenant can not be construed as a penal provision or more liberally to confer upon him some benefit not envisaged by the legislature. Precedents above rightly construe it strictly and I, do not find anything in present facts to enable me to relax its rigour. Law of limitation does not prohibit tenant from making payment of even timebarred rent. Demand thereof in notice under Section 15 by Landlord is not

wrong and in any case, it is not fatal. The Petitioner Tenant could have ignored that part of demand and shown his bonafides by depositing rent due as per his calculations. I do not find said notice illegal and decree of eviction based upon it is perfectly legal and valid.

25) Mr. Naik has highlighted the observation of this Court in para-10 of the judgment in ***Srinivas Babulal*** wherein it has held that '*Nothing prevented Tenant from paying lawfully recoverable rent either before or after the institution of Suit if he wanted to avail of the protection granted by section 15 above*'. According to Mr. Naik, this observation would make it clear that deposit of '*recoverable rent*' would meet the requirements under Section 15(3) of the Rent Act. On the contrary, it is Mr. Godbole's contention that the tenant takes the risk of consequence by not depositing the entire amount of rent due. The observations in para-13 of the judgment in ***Srinivas Babulal*** would indicate that the Tenant therein did not make effort to pay even the admitted amount and arrears. He had not paid rent for over 30 years. The arrears within limitation and claimed in the suit for a period of three years prior to its institution from 1 September 2000 to 31 August 2003 were Rs.885.96/- and even this amount of Rs.885.96/- was not deposited by the tenant. It is Mr. Naik's contention that in ***Srinivas Babulal***, this Court held that even if deposit of recoverable rent for three years is made, the tenant is entitled for protection from eviction under Section 15(3) of the Rent Act.

26) Mr. Godbole, has relied upon another judgment of Single Judge of this Court in ***Prabhakar Venkobaji Manekar*** (supra) in which this Court has held in paras-11 and 12 as under :

11. Under provisions of Section 15(1) of the said Act as long as tenant pays, or is ready and willing to pay amount of standard rent and

permitted increases, the landlord would not be entitled to recover possession of the premises on the ground of arrears of rent. It is well settled that under Rent Control legislation if the tenant wishes to take advantage of the beneficial provisions of the statute then he must strictly comply with requirement of said statute. In *Atmaram Vs. Shakuntala Rani* (2005) 7 Supreme Court Cases 211 in para 19 it was observed as under:

“19. It will thus appear that this Court has consistently taken the view that in the Rent Control legislations if the tenant wishes to take advantage of the beneficial provisions of the Act, he must strictly comply with the requirements of the Act. If any condition precedent is to be fulfilled before the benefit can be claimed, he must strictly comply with that condition. If he fails to do so he cannot take advantage of the benefit conferred by such a provision.”

Accordingly to learned counsel for the petitioner the tenant having paid the amount of arrears that were lawfully payable, it could not be said that he was in arrears of rent after such payment. According to him if the arrears prior to period of three years were not legally recoverable then tenant could not be evicted on the ground that he had not paid arrears for such period. As recovery for said period was barred by the law of limitation, same would not give a cause of action to the landlord to seek eviction on that count.

It is to be noted that the expression used in Section 15(3) of the said Act is arrears “then due”. In the decision relied upon by the learned counsel for the petitioner in Bhimsen Gupta (supra), the expression “lawfully payable” as used in Section 11(1)(d) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1983 was considered. Similarly in Kamala Bakshi (supra) the expression “arrears of rent legally recoverable, as appearing in Section 14(1) of the Delhi Rent Control Act, 1958 were under consideration.

12. The expression “then due” was used in the provisions of Section 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which stood repealed as a result of said Act coming into force. Considering similar arguments as advanced that if the amounts that were claimed to be due could not be recovered on account of bar of limitation, then the tenant could not be evicted for being in arrears of such dues, learned Single Judge in *Karamchand Deoji Sanghavi Vs. Tulshiram Kalu Kumawat* 1992 Mh.L.J 560, held that if the tenant intended to seek protection from eviction then the entire amount of arrears even if time barred were required to be paid. It was held that the provisions of Section 12 of the Bombay Rent Act did not alter the entitlement of the landlord in the light of law of limitation.

In *Srinivas Babulal* (supra) relied upon by the learned counsel for the respondent it was held that the demand of time barred rent in a notice issued under Section 15 of the said Act was not fatal and it was

incumbent on the tenant to pay even time barred arrears. It is, therefore, clear that the expression “then due” will have to be construed to include amount of arrears that were due and payable disregarding the fact that part thereof had become time barred. In *Khadi Gram Udyog Trust Vs. Ram Chandraji Virajman Mandir Sarasiya Ghat, Kanpur (1978) 1 SCC 44*, it was held by the Supreme Court that even if the remedy was barred, the debt was not extinguished and if the tenant wanted to seek benefit of the statute then for avoiding the decree of eviction, the amounts due were required to be paid. Hence, the expression “then due” in Section 15(3) of the said Act would include the amount of arrears even prior to three years of such notice.

27) Thus, in *Prabhakar Venkobaji Manekar* it is held that the expression ‘*then due*’ will have to be construed to include the amount of arrears that were due and payable disregarding the fact that part thereof had become time barred. This Court has held that the expression ‘*then due*’ in Section 15(3) of the Rent Act would include the amount of arrears even prior to three years of notice.

28) Mr. Godbole has relied upon judgment of Full Bench of this Court in *Babulal Fakirchand Agrawal* (supra) in which the issue was slightly different. The Reference made to the Full Bench was about maintainability of the suit for eviction and passing of decree of eviction if tenant pays the entire amount demanded within the time stipulated under Section 15(2) of the Rent Act, but fails to regularly pay the rent within the meaning of Section 15(3). In my view, therefore the judgment of Full Bench in *Babulal Fakirchand Agrawal* may not be directly relevant to the issue at hand.

29) Thus one of the main issues that was required to be decided by the Small Causes Court and its Appellate Bench was whether the

deposit of rent and permitted increases only for the period from 1 April 2001 to 31 July 2004 by the tenant was sufficient requirement under Section 15(3) of the Rent Act or whether it was necessary for the tenant to deposit the entire amount of Rs.88,444.44/- representing the deficit amount of rent and permitted increases from 1974-75 till the date of filing of the suit with a view to claim protection under Section 15(3) of the Rent Act. Perusal of the judgment of the learned Single Judge of the Small Causes Court would indicate that this issue has not at all been decided. It is also questionable as to whether this issue was at all raised by the landlord before the Single Judge of the Small Causes Court. However, one thing is certain, that there is absolutely no discussion about this aspect by the Small Causes Court in the impugned judgment and order dated 22 November 2012. When it comes to the judgment of the Appellate Bench, it appears that this issue was specifically argued by the landlord as is clear from para-40 of the judgment. It appears that the judgments in *Srinivas Babulal, Khadi Gram Udyog Trust* and *Prabhakar Venkobaji Manekar* were also relied upon before the Appellate Bench by the landlord. Though the arguments are recorded, the Appellate Bench has failed to decide this issue. In my view, therefore one of the most vital aspects that was required to be decided by the Small Causes Court and its Appellate Bench has been completely glossed over in both the impugned judgments. It is the contention of the Applicant-tenant that the amount of rent and permitted increases sought to be recovered in the suit together with interest and costs are deposited and therefore there is compliance of Section 15(3). On the other hand, it is the contention of the Respondent-landlord that what is deposited is not sufficient and the entire amount of rent due from 1974-75 ought to have been deposited to

claim benefit under Section 15(3) when there was specific contest between the parties on this issue. In my view, the Small Causes Court and its Appellate Bench ought to have decided this issue and apparently there is no decision by both the Courts on this vital aspect.

30) The next issue to be decided was about the Applicant-tenant '*regularly*' paying or tendering in Court, the rent and permitted increases till final decision of the suit. The word used in Section 15(3) is '*regularly*'. Perusal of the impugned judgment dated 22 November 2012 would indicate that there is no decision on this issue of '*regular*' payment of rent and permitted increases during pendency of the suit. The learned Single Judge of the Small Causes Court has held in para-48 of the judgment as under :

48. It is pertinent to note that since 1978 to 1990 for about 12 years the defendant neither paid any rent nor sent rent by way of cheque. No explanation has been given by the defendant about inaction in payment of rent and permitted increases. I reiterate here that after considering the entire evidence of both parties and ratio laid down by the Hon'ble Apex Court and various High Courts of country, any stretch of imagination, it cannot be said that the defendant was and is ready and willing to pay rent and permitted increases claimed by the plaintiff. Furthermore, after filing of present suit or issuing of demand notice, the defendant ought to have deposited entire arrears of rent within 90 days from the date of receipt of suit summons but the defendant made again delay in depositing the notice amount. Therefore, the defendant is not entitled to get any protection envisaged in the Maharashtra Rent Control Act, 1999. Even there is no evidence adduced by the defendant on record to show that during pendency of the suit, he paid/deposited the rent amount/ permitted increases regularly in the court till conclusion of trial, therefore, it can be said that the defendant did not comply the mandatory provisions of the Maharashtra Rent Control Act, 1999. Consequently, I come to the conclusion that plaintiff has proved that the defendant was in arrears of rent from 1976 till filing of the suit. Though plaintiff demanded the rent as well as permitted increases but defendant failed to pay or deposit the rent and permitted increases as claimed by the plaintiff. I

have also held that defendant failed to prove that he was always ready and willing to pay the rent and permitted increases to the plaintiff. Therefore, I have answered ***issue no.1 in the affirmative, issue no.2 in the negative.***

31) On the other hand, the Appellate Bench appears to have decided the issue of 'regular' payment of rent and permitted increases and has held in para-56 of its judgment as under :

56. Defendant taken out Interim Notice No. 3200 of 2004 for permission to deposit all the arrears of rent and permitted increases as claimed by the plaintiff in the suit from 01.04.2001 to 31.03.2004 and future rent and permitted increases from 01.04.2004 to 31.07.2004 along with interest @ 15% p.a. Said Interim Notice No. 3200 of 2004 was allowed on 21.03.2006 without prejudice to the rights and contentions of the parties and defendant was directed to deposit arrears of rent with simple interest of 15% p.a. from the date of order and he was further directed to deposit future rent on or before 10th day of each month till final disposal of the suit. It was made clear that if the defendant fails to comply with said directions, he shall note that further consequences as provided under section 15(3) of the MRC Act. As per section 15(3) of the MRC Act, tenant is liable for eviction if the tenant fails to pay or tenders in the court regularly such standard rent and permitted increases till the suit is finally decided. Thus it is mandatory for the tenant to deposit regularly standard rent and permitted increases as directed by the court till disposal of the suit. **From the perusal of record more particularly receipts issued by the court, it appears that after passing order under section 15(3) of the MRC Act, the defendant was depositing the rent but he was not regularly depositing the rent in the court.**

(emphasis supplied)

32) Thus, Appellate Bench has recorded a finding on perusal of record and receipts issued by the Court that the Defendant was depositing the rent, but he was not regularly depositing the rent in the Court. By recording this finding, the Appellate Bench appears to have denied the benefit of Section 15(3) of the Act to the Applicant-tenant. Mr. Naik has taken me through the statement placed on record at

Exhibit-N to the petition showing deposits made in the Court from time to time during pendency of the suit. After going through the said statement, it appears that during the long period between 2005 to 2023, when suit and Appeal remained pending, Applicant-Tenant was almost regular in depositing the amount of rent. There have been only five occasions during the long period of 18 years, where there was some delay on the part of the Applicant-tenant in depositing the rent. The said five occasions are as under:

Sr.No.	Date	Delay
i.	19.03.2008	2 months 23 days
ii.	02.02.2011	22 days
iii.	05.03.2012	1 month 25 days
iv.	04.08.2016	26 days
v.	04.12.2020	5 months Covid-19 SOP

33) Thus during 18 long years from 2005 to 2023, only on five occasions, there was some delay in deposit of rent and each of the said five occasions are explained by Mr. Naik. To illustrate, for the first period of delay of 2 months and 23 days for making deposit on 19 March 2008, the reason of ill-health of the then '*Karta*' of the Applicant-Tenant and demise of his Clerk has been cited. It is further pointed out that the Small Causes Court allowed the application for condonation of delay in depositing the rent. The second period of delay of 22 days for making deposit on 2 February 2011 is attributable to the change in system of acceptance of rent in the Small Causes Court and the Applicant-tenant is

not responsible for the same. The third occasion of delay of one month and 25 days in making deposit on 5 March 2012 is again explained as old age and ill-health of *Karta* of the Applicant and application for condonation of delay being condoned by the Small Causes Court. On the fourth occasion, the delay in deposit is only by 26 days. The fifth occasion of delay of five months in making deposit on 4 December 2020 has occurred on account of Covid-19 pandemic and restrictions in approaching the Court for making deposit of rent. In my view, the delay on all five occasions, apart from not being too gross, has sufficiently been explained by the Applicant-tenant. Mr. Naik, has relied upon three judgments in support of his contention that the word '*regularly*' under Section 15(3) of the Rent Act, cannot be interpreted to mean mathematical precision.

34) In *Mranalini Shah* (supra), the Apex Court has held in para-13 of the judgment as under :

13. The above enunciation, clarifies beyond doubt that the provisions of Clause (b) of Section 12(3) are mandatory, and must be strictly complied with by the tenant during the pendency of the suit or appeal if the landlord's claim for eviction on the ground of default in payment of rent is to be defeated. The word "regularly" in Clause (b) of Section 12(3) has a significance of its own. It enjoins a payment or tender characterised by reasonable punctuality, that is to say, one made at regular times or intervals. The regularity contemplated may not be a punctuality, of clocklike precision and exactitude, but it must reasonably conform with substantial proximity to the sequence of times or intervals at which the rent falls due. Thus, where the rent is payable by the month, the tenant must, if he wants to avail of the benefit of the latter part of Clause (b), tender or pay it every month as it falls due, or at his discretion in advance. If he persistently default during the pendency of the suit or appeal in paying the rent, such as where he pays it at irregular intervals of 2 or 3 or 4 months as is the case before us the Court has no discretion to treat what were manifestly irregular payments, as substantial compliance with the

mandate of this Clause irrespective of the fact that by the time the Judgment was pronounced all the arrears had been cleared by the tenant.

35) In *Mohan Laxman Hede* (supra), the Apex Court in para-7 as held as under :

7. If we examine the chart of deposits made by the Appellant in the court set out earlier, it shows that during the period 29-1-1981 to 17-12-85 the Appellant has been depositing the rents in court for two or three months at a time. In respect of some months, there are undoubtedly a few defaults in the sense that the deposits have been made a few days later than directed. In this connection, it must be noticed that Trial Court directed that in respect of accruing rent after the order for deposit of arrears was passed, the monthly rent must be deposited on the fifth day of each month which, it is undisputed, must mean the fifth day of each succeeding month. On this basis there are undoubtedly a few defaults committed by the Appellant in the sense that in respect of the first month to which the deposit relates, there is some delay amounting to from two or three days upto a maximum of 23 days. But, on the other hand, the rent for most of the months has been deposited in advance. In these circumstances, applying the principle laid down in the aforesaid decision referred to, we are of the view that the rent has been deposited by the Appellant with reasonable punctuality and hence the Appellant/tenant can be regarded as having deposited the rent 'regularly' as contemplated in clause (b) of sub-section (3) of Section 12 of the Bombay Rent Act. We are of the view that the courts below were in error in taking the view that exact or mathematical punctuality was required in the deposit of rent by a tenant to take advantage of the provisions of Section 12(3)(b) of the Bombay Rent Act.

36) In *Vasant Mahadeo Gujar* (supra), the Single Judge of this Court has held in paras-36, 37 and 38 of the judgment as under :

36. The Appeal Court has made a decree of eviction by merely recording that the applicants failed to comply with the provisions of Section 15(3), in as much as arrears of rent, permitted increases together with interest, were not deposited in the Court within ninety days from the date of service of summons in the suit. There is no

consideration whatsoever of the tenants' plea that the tenants had paid or in any case were ready and willing to pay rents and permitted increases to the landlords, but it was the landlords who had refused to accept the same.

37. From the scheme of Section 15 of the Rent Act, it is clear that benefit under Section 15(3) of the Rent Act can be availed of by a tenant, even if such tenant is admittedly, in default. From the tenor of Section 15(3) of the Rent Act, it does appear that no Court can make a decree of eviction on the grounds of default, where such tenant deposits within ninety days, arrears of rent, permitted increases and complies with other prescribed requirements. This, however, does not mean and imply that resort to benefit under Section 15(3) of the Rent Act is only mode available to a tenant to avoid a decree of eviction on the ground of default. The tenant, can always establish that he has paid or was always ready and willing to pay the rent and the permitted increases to the landlord and on such basis avoid a decree of eviction. In fact, Section 15(1) of the Rent Act, in terms provides that a landlord shall not be entitled to a decree of eviction so long as the tenant pays or is ready and willing to pay the standard rent, permitted increases and observes other terms and conditions of the tenancy, so far as they may consistent with the provisions of the Rent Act.

38. The reasoning of the Appeal Court, in fact, constitutes an error of law apparent on face of record. The Appeal Court does not appear to have reversed the findings of the fact in the context of payment or dispatch of money orders by the tenants and their refusal by the landlords. The Appeal Court, however, makes decree of eviction on the ground of noncompliance with the provisions contained in Section 15(3) of the Rent Act. There is no consideration whatsoever to the pleas of the tenants that rents were indeed tendered regularly and punctually to the landlords, by means of money orders and the same were refused by the landlords. The Appeal Court has held that 'all three clauses of Section 15 are parallel to each other'. This is an error of law apparent on face of record. Even where, there is no compliance with the provisions contained in Section 15(3) of the Rent Act, it is always open to a tenant to establish the factum of payment or the factum of readiness and willingness of payment of rent. If such factum is indeed established, the landlords cannot secure a decree of eviction on the ground of default in payment of rents. This proposition which emerges upon the plain reading of the provisions in Section 15 of the Rent Act, as also from the authorities on the subject, has been ignored by the Appeal Court. The finding on this aspect is therefore, vitiated by error of law apparent on face of record.

37) In my view, considering the law expounded in the above judgments, the word '*regularly*' used in sub-section (3) of Section 15 cannot be interpreted to mean that the legislature has intended mathematical punctuality in the matter of deposit of rent on a particular date for extending the benefit of protection from eviction under Section 15(3) of the Rent Act. So long as it is satisfied that the tenant showed reasonable punctuality in the matter of deposit of rent, protection under Section 15(3) will have to be necessarily extended to the tenant. On perusal of the entire statement showing deposit of rent for over 18 years between 2005 to 2023, I am of the view that the Applicant-tenant has deposited the rent during pendency of the suit and the Appeal with reasonable punctuality. The finding recorded by the Appellate Bench of the Small Causes Court that Applicant-tenant was not regular in deposit of rent and permitted increases, is thus unsustainable and liable to be set aside.

38) After considering the entire conspectus of the case, I am of the view that on second aspect of regular deposit of rent and permitted increases, the Applicant-tenant has succeeded in demonstrating that the rent has been deposited with reasonable punctuality during pendency of the suit and Appeal.

39) So far as earlier point of Section 15(3) with regard to deposit of rent and permitted increases '*then due*' is concerned, the issue is not decided by the Small Causes Court and the Appellate Bench. Here, there are two aspects. Firstly, it needs to be decided whether it was incumbent

for the Applicant-tenant to deposit the entire amount of rent of Rs.88,444.44/- due from 1974-75 till the date of filing of the suit or whether the deposit of rent for the period from 1 April 2001 to 31 July 2004 together with interest and costs was sufficient requirement for grant of protection under Section 15(3) in the facts and circumstances of the present case. The second aspect is about the exact liability for the tenant with regard to the rent from the year 1974-75 onwards. This is not a case of admitted liability by the Applicant-tenant in respect of the rent payable from 1974-75 onwards. It is not the case that Applicant-tenant has not paid any rent from 1974-75 onwards. There are factual disputes between the parties about the various payments tendered by the Applicant-tenant and returned by the landlord. There is correspondence between the parties on earlier occasion in the year 1978, which also needs to be taken into consideration while deciding the liability to pay rent from 1974-75 as per demand notice dated 12 August 2002. It is not that no rent at all is paid by the Applicant-tenant from the year 1974-75. Rent appears to have been paid from time to time and the said amount is given credit every year in the statement appended to the Demand Notice dated 12 August 2002. What is demanded in the Demand Notice was merely alleged deficit amount of rent and permitted increases each year. To illustrate, from the year 1976-77 onwards, the annual rent and permitted increases demanded is Rs.4897/- and what is paid is Rs.4,200/-. The deficit amount claimed is Rs.697.7/-. This difference appears to have continued each year upto 1982-83, whereafter the deficit amount is shown to increased gradually with passing of each year. Mr. Naik has contended that after the correspondence that took place in the year 1978, the landlord never demanded any deficit amount

of rent from the Applicant-tenant for over 24 long years and for the first time, the deficit amount was shown from the year 1974-75 in the Demand Notice of 22 August 2002. It therefore needs to be decided as to whether the tenant can be treated to be in arrears of rent or permitted increases, if the tenant regularly pays the rent but the landlord, after 28 years, demands higher amount and claims that there was deficit for over 28 long years in payment. Therefore, whether the deficit claimed after 28 years would be covered by the expression '*then due*' needs to be decided. All these aspects need to be taken into consideration while deciding the issue as to whether the Applicant-tenant is entitled to protection under Section 15(3) of the Rent Act. In my view, therefore the suit needs to be remanded for fresh decision on the basis of evidence adduced by the parties for deciding the issue as to whether the deposit made by the Applicant-tenant in pursuance of order dated 21 March 2005 was sufficient in the facts and circumstances of the present case, so as to offer protection from eviction under Section 15(3) of the Rent Act. The remand is necessary as the Small Causes Court and its Appellate Bench have failed to decide this vital issue in the impugned judgments. Therefore, instead of this Court deciding the said issue for the first time, it is appropriate that the Trial Court applies its mind and decides the said issue. By doing so the unsuccessful party shall have right of appeal against the findings of the Trial Court. If this Court directly proceeds to determine the said issues, right of appeal of the parties would be lost. I therefore deem it appropriate to remand the suit for fresh determination of the aspects discussed above.

40) I accordingly proceed to pass the following order:

- (I)** Judgment and Order dated 22 November 2012 passed by the Small Causes Court in R.A.E. & R. Suit No. 436/816 of 2004, as well as the Judgment and Order dated 24 April 2023 passed by the Appellate Bench of the Small Causes Court in Appeal No. 3 of 2013 are set aside.
- (II)** R.A.E. & R. Suit No. 436/816 of 2004 is restored on the file of the Small Causes Court, Mumbai to be decided afresh in the light of observations made in the judgment. The Small Causes Court shall decide the suit afresh without being influenced by any of the observations made by this Court, except on the issue of regular deposit of rent and permitted increases till decision of the Appeal.
- (III)** The Applicant-tenant shall continue to deposit the amount of rent and permitted increases in the Small Causes Court during pendency of the suit. If there is any time gap in such deposit on account of dismissal of the Appeal on 24 April 2023, the rent and permitted increases in respect of the said gap period shall be deposited within 8 weeks from today.

41) With the above directions, this Civil Revision Application is partly allowed and disposed of.

SANDEEP V. MARNE, J.

NEETA
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