IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 163 OF 2023
WITH
INTERIM APPLICATION NO. 16438 OF 2023 (For Stay)
WITH
CIVIL REVISION APPLICATION NO. 164 OF 2023

1. Smt. Sugandha Bhaskar Barve
2. Mr. Vivek Bhaskar Barve
3. Mr. Rakesh Bhaskar Barve
4. Miss. Kalpana Bhaskar Barve
5. Smt. Sandhay Padmakar Pagare
6. Smt. Anita Ashok Nikshi } ....*Applicants*
(Org. Plaintiffs)

: Versus :

Mr. Firoze Fakruddin Samiwala }....*Respondent*
(Org. Defendant)

Dr. Abhinav Chandrachud *with Mr. Saurabh Utangale, Mr. Sarthak Utangale i/b Ms. Neeta Dholakia, for the Applicants.*

Mr. Rajesh Parab, *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Reserved On : 14 October 2024.

Pronounced On : 21 October 2024

JUDGMENT :

1) These Revision Applications are filed challenging the judgment and decree dated 8 September 2022 passed by the Appellate Bench of the Small Causes Court allowing (A1) Appeal No.107 of 2012 filed by the Respondent-Defendant and setting aside the eviction decree dated 30 July 2012 passed by the Small Causes Court in R.A.E. & R. Suit No.1146/1829 of 2003. The Small Causes Court had decreed the suit on the grounds of default in payment of rent and bonafide requirement, while rejecting the ground of erecting permanent structure without landlord's consent and unlawful subletting. In the Appeal filed by the tenant before the Appellate Bench, Plaintiff-landlord filed cross-objections. The Appellate Bench has allowed the tenant's Appeal and has set aside the eviction decree by answering the grounds of default in payment of rent and bonafide requirement in favour of the tenant. The cross-objections filed by the Plaintiff-landlord about rejection of grounds of putting up permanent structure and unlawful subletting are rejected. Aggrieved by the judgment and decree dated 8 September 2022 passed by the Appellate Bench allowing (A1) Appeal No. 107 of 2012, Civil Revision Application No.163 of 2023 is filed. Plaintiffs have also filed separate Civil Revision Application No.164 of 2023 to the extent of rejection of their cross-objections.

2) Original Plaintiff-Bhaskar Mukund Barve was the owner of the structure situated on plot of land bearing No.12A, Anand Nagar, Sion-Trombay Road, Chembur, Mumbai-71. Shop No.2 in the said structure admeasuring 150 sq.ft. is the **suit premises,** which was let out to Defendant's father-Fakruddin Ismailji alias Mulla Fakruddin Ismailjee by Tenancy Agreement dated 19 April 1976.

Under the Agreement, monthly rent was agreed at Rs.100/- and according to the Plaintiffs, additional amount of Rs.100/- was payable for use of furniture and fixtures. The tenant carried on business of Kirana Stores from the suit premises and after the death of the original tenant, his son-Defendant started business of making chokes used in tubelight fittings. Plaintiff served Notice dated 13 May 1997 to one 'Janubai' (Defendant's brother) alleging non-payment of rent since March 1996 and referring to Clause-11 of the Tenancy Agreement, Plaintiff terminated the tenancy and called upon the addressee to handover possession of the suit premises. Landlord however did not initiate any steps in pursuance of that notice. Since Plaintiff was not recognising Defendant as tenant, he filed R.A.D. Suit No. 120/1999 against Plaintiff seeking declaration of tenancy. In that suit, a Notice was taken out for deposit of rent in the Court. After hearing both the sides, the notice was made absolute by order dated 3 July 2000, under which Defendant deposited the rent in respect of the suit premises at the rate of Rs.100/- per month and continued to depositing the same.

3) Plaintiffs served notice dated 26 March 2003 to the Defendant alleging non-payment of rent from September 1996 and seeking recovery of possession of the suit premises on the grounds of non-payment of rent, bonafide requirement, unlawful subletting and unauthorised additions and alterations. The notice was replied by the Defendant on 5 April 2003 denying the allegations and contending that the rent was deposited in the Court till June 2003. In the above backdrop, Plaintiff filed R.A.E.& R. Suit No.1146/1829 of 2003 in the Court of Small Causes on 10 October 2003 seeking recovery of possession of the suit premises on the grounds of default in payment

of rent, unauthorised additions and alterations, bonafide requirement and unlawful subletting. After filing of R.A.E. & R. Suit No.1146/1829 of 2003, it appears that R.A.D. Suit No. 120/1999 came to be decreed on 10 June 2004 declaring the Defendant as the tenant in respect of the suit premises and allowing the Plaintiff to withdraw the deposited amount of rent. While decreeing the suit, the City Civil Court directed deposit of additional amount of Rs.100/- per month from 1 April 1996 onwards. Accordingly, the Defendant deposited rent at the rate of Rs. 200/- per month in the Small Causes Court till May 2004.

4) The summons in R.A.E. & R. Suit No.1146/1829 of 2003 was served on the Defendant on 19 December 2003. He filed written statement in January 2004. Thereafter, the Defendant took out Interim Notice No.1994/2005 on 11 July 2005 seeking permission to deposit rent from June 2004 at the rate of Rs.200/- per month. The said interim notice was allowed by order dated 13 June 2006 permitting the Defendant to deposit the rent at the rate of Rs.200/- per month from June 2004 onwards till July 2006 with further direction to deposit the rent each month on/or before fifteenth day. The Plaintiff was granted liberty to withdraw the deposited amount.

5) Both the sides led evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, the Small Causes Court proceeded to decree the suit by accepting the grounds of default in payment of rent and bonafide requirement. The ground of unauthorised additions and alterations and unlawful subletting were however rejected. The Trial Court accordingly directed Defendants to handover possession of the premises to Plaintiff with further directions to pay the arrears of rent

to the tune of Rs. 42,000/- at the rate of Rs.500/- per month from September 1996 onwards. The Small Causes Court also directed an enquiry into mesne profits under Order 20 Rule 12 of the Code.

6) Aggrieved by the eviction decree, the Defendant-tenant filed (A1) Appeal No.107 of 2012 before the Appellate Bench of the Small Causes Court. In the Appeal, the Plaintiff-landlord filed Cross-Objection No.10/2014 challenging the findings of the Small Causes Court in respect of the grounds of unauthorised additions and alterations and unlawful subletting. By its judgment and decree dated 8 September 2022, the Appellate Bench has allowed the Appeal of the Defendant-tenant and has set aside the eviction decree dated 30 July 2012 by rejecting the ground of default in payment of rent and bonafide requirement. Cross-objection No.10/2014 filed by the Plaintiffs-landlords are also dismissed. Aggrieved by the decree of the Appellate Bench dated 8 September 2022, the Plaintiffs-landlords have filed the present Revision Applications to the extent of allowing the Appeal of the Defendant and rejection of their cross-objections.

7) Dr. Chandrachud, the learned counsel appearing for the Revision Applicants-Plaintiffs would submit that the Appellate Bench has erred in reversing the eviction decree. That the findings of the Appellate Bench that Notices dated 13 May 1997 and 26 March 2003 do not constitute demand of rent within the meaning of Section 15(2) of the Maharashtra Rent Control Act, 1999 **(MRC Act)** is wholly erroneous in that the period of default as well as the amount of rent was clearly indicated in the notices. He would submit that intimation of arrears of rent is sufficient for maintaining a suit for eviction under Section 15 of the MRC Act and that it is not necessary that a specific

demand for recovery of rent must made in the notice. In support, he would rely upon judgment of the Apex Court in ***Rakesh Kumar and Another Versus. Hindustan Everest Tool Ltd.***[1] in which the Apex Court has approved the view taken by the Single Judge of the Delhi High Court in ***Ram Sarup Versus. Sultan Singh***[2]. He would also rely upon judgment of this Court in ***Kantilal Ravji Mehta and another Versus. Sayarabai Chhaganlal Kering***[3]. He would also rely upon judgment of the Allahabad High Court in ***Khatoon Begum and others Versus. Addl. District Judge, Court No.7, Agra and others***[4]. Relying on the four judgments, Dr. Chandrachud would contend that the notice of demand can be express or implied and that the period of arrears and amount of rent is indicated, the notice of demand is required to be inferred for the purpose of maintaining the suit under Section 15 of the MRC Act. Dr. Chandrachud would further submit that the Appellate Court has erred in not appreciating the fact that the Defendant was not regular in payment of rent during pendency of the suit, which is a requirement under Section 15(3) of the MRC Act. That even if the case of the Defendant is accepted, the last deposit of rent made by him was in May 2002 and he was in arrears of rent since June 2004. Despite service of summons on 19 December 2003, he did not deposit the arrears of rent, interest and costs of the suit within 90 days of service of summons as mandated under Section 15(3) of the MRC Act. That the application for deposit of rent was made on 11 July 2005 i.e. after expiry of period of 90 days from date of service of summons and the deposit was made after the said application was allowed in July 2006. That clear case of default under Section 15(3) of the MRC Act is thus made out in the present case.

1 (1988) 2 SCC 165
2 MANU/DE/0259/1977
3 2003 (3) Mh.L.J. 52
4 2010 SCC OnLine All 1018

Dr. Chandrachud would further submit that in any case, the rent demanded in the suit was at the rate of Rs.500/- per month and in the absence of contest about quantum of rent, deposit of amount of Rs.200/- towards rent was otherwise not sufficient. He would rely upon judgment of this Court in ***Abhay Dushyant Desai Versus. K.C. Chheda & Co.***[5] in support of this contention that non-deposit of rent regularly would entail decree for eviction. He would also rely upon judgment of this Court in ***Shila Ramchandra Sachdeva Versus. Vinod Harchamal Santani***[6] in support of his contention that failure to deposit interest as mandated under Section 15(3) of the MRC Act would attract decree for eviction.

8) So far as the ground of bonafide requirement of Plaintiffs is concerned, he would submit that the Trial Court had rightly accepted the said ground by appreciating the evidence on record and that the Appellate Court has erred in reversing the said finding.

9) So far as Civil Revision Application No.164 of 2023 is concerned Dr. Chandrachud fairly submits that in view of concurrent findings on the grounds of unauthorised additions and alterations and unlawful subletting, the Revision Applicants shall not press Civil Revision Application No.164 of 2023 since the decree for eviction can be secured on the grounds of default in payment of rent and bonafide requirement.

10) The Revision Applications are opposed by Mr. Parab, the learned counsel appearing for the Respondent-Defendant. He would submit that the suit filed on the ground of default in payment of rent

5 2024 SCC OnLine Bom 1934
6 2017 (6) Mh.L.J. 396

was not maintainable in absence of a demand notice mandated under Section 15 of the MRC Act. That both the notices dated 13 May 1997 and 26 March 2003 addressed on behalf of Plaintiffs did not contain any demand for rent. He would rely upon judgment of this Court in ***Sitaram Narayan Shinde & Ors. Versus. Ibrahim Ismail Rais and Ors.***[7] in support of his contention that in absence of a clear notice containing demand for payment of rent, the suit for recovery of possession on the ground of default in payment of rent cannot be maintained. He would submit that in the judgments relied on by Dr. Chandrachud, demand of rent in some form was made, whereas in the present case there is absolutely no demand in either of the notices. That the first notice dated 13 May 1997 was addressed in the name of wrong person (not tenant), which is not even received by the tenant and that therefore the said notice is inconsequential. That in the second notice dated 26 March 2003, there is neither any indication of quantum of rent nor any specific demand of any amount towards rent is made. That the notice is otherwise illegal as Defendant was depositing rent in the Court at the time of addressing of notice dated 26 March 2003. He would therefore submit that the Appellate Court has rightly reversed the erroneous eviction decree passed by the Trial Court. So far as the ground of bonafide requirement is concerned, he would submit that the findings recorded by the Appellate Bench do not warrant interference in exercise of revisionary jurisdiction of this Court. Since Dr. Chandrachud has not pressed the grounds of unauthorised additions and alterations and unlawful subletting, Mr. Parab has not made any submissions on those grounds. He would pray for dismissal of both the Revision Applications.

7 2005 (1) Mh.L.J. 35

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

12) As observed above, the grounds of unlawful subletting and unauthorised additions and alterations have been concurrently rejected by the Trial Court and the Appellate Court and Dr. Chandrachud has not fairly pressed the said grounds. Though the ground of bonafide requirement was initially accepted by the Trial Court while decreeing the suit, the said ground is now rejected by the Appellate Court. The main thrust of Dr. Chandrachud is on the ground of default in payment of rent for securing the decree of eviction against the Defendant. Therefore, one of the main points that arises for consideration in the present Revision Applications is whether the Defendant has committed willful default in payment of rent as envisaged under Section 15 of the MRC Act for passing decree of eviction against him. It would be apposite to reproduce provisions of Section 15 of the MRC Act 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."

13) Thus, under the provisions of Section 15 of the MRC Act, it is mandatory for the landlord to first issue a notice demanding standard rent and permitted increases. Thus, under the provisions of Section 15 of the MRC Act, the landlord cannot file suit for recovery of possession on the ground of non-payment of standard rent or permitted increases until expiration of 90 days next after notice in writing of the demand of standard rent or permitted increases is served on the tenant. Thus, twin requirements are required to be fulfilled viz. (i) notice in writing of demand of rent is served and (ii) period of 90 days has expired after service of such notice. The intention of the Legislature is to give an opportunity to the tenant to make good the default within a period of 90 days of receipt of notice so as to obviate the ground of default in payment of rent. The Appellate Bench has held that both the notices dated 13 May 1997 and 26 March 2003 did not contain any demand for payment of rent and that the said notices cannot be construed as the one issued under Section 15(2) of the MRC Act. It would therefore be apposite to consider contents of both the notices.

14) Notice dated 13 May 1997 was addressed by the Plaintiff to Defendant's brother and the same reads thus :

> Janubai,
> Plot No. 12-A,
> Anand Nagar, S.T. Road,
> Chembur, Bombay-400 071.
>
> Sir,
>
> Ref.: Termination of the Tenancy Agreement dated 19th April, 1976.
>
> Under instructions from my client Shri Bhaskar Mukund Barve, residing at Plot No.12-A, Anand Nagar, S.T. Road, Chembur, Bombay-400 071, I have to address you as under :-
>
> 1. My clients father Shri Mukund Bhikaji Barve had entered one Tenancy Agreement to your Father Shri Fakhruddin Ismailji Samiwalla on 19th April, 1976, subject to rent out one Shop which is situated on Plot No.12-A, Anand Nagar, S.T. Road, Chembur, Bombay-400 071, **at the rate of Rs.100/- per month.**
>
> **2. My clients father and your father had already expired and you are not paying the rent of the shop for last March, 1996 upto today.**
>
> 3. Now, I am referring the conditions No.11 of your Tenancy Agreement that "If the Tenants commit any default in payment of rent and commit any breach of any terms and conditions of Tenancy or is guilty of any conduct which is a source or annoyance to the adjoining or neighbouring occupier or sublets or part with possession of the premises the owner shall entitled to terminate the tenancy.
>
> 4. Upon the termination of the tenancy, the Tenant shall remove themselves their agents and servants and their goods from the premises and hand over the vacant possession of the premises to the owner.
>
> Therefore, I insist you to take necessary action to hand over the shop to my client within 15 days failing which I have to take action against you along with damages at your entire risks and consequences, which please note.
>
> *(emphasis added)*

15) Thus, in the notice dated 13 May 1997 the amount of rent indicated was Rs.100/- and an averment was made that the rent was not being paid since March 1996. The tenancy was accordingly

terminated referring to Clause-11 of the Tenancy Agreement and recovery of possession was sought.

16) So far as the second notice dated 26 March 2003 is concerned, the same reads thus:

Date: 26th March 2003.

To,
Firoze Fakhruddin Samiwalla,
Shop No.2, Plot No.12/A,
Anand Nagar,
Sion-Trombay Road,
(S.T. Road), Chembur,
Mumbai-400 071.

Sir,

On behalf of and under the instructions from my Client Shri Bhaskar Mukund Barve, residing at Plot No.12-A, Anand Nagar, Sion-Tromboy Road, Chembur, Mumbai-400 071, I have to address you as under :-

1. By Agreement dated 19th April, 1976 my client's father let out to one Shri Fakhruddin Ismailji alias Fakhruddin Ismailji Samiwala alias Mulla Fakhruddin Ismailji (since deceased), Shop No.2 on Plot No.12-A, Anand Nagar, Sion-Trombay Road, Chembur, Mumbai-400 071, initially at the rent mentioned in the said agreement along with furniture and fittings for which, the said deceased were to pay separate charges every month as agreed upon. You alleged to be the son of the said deceased.

2. The Shop premises let out to the said deceased were admeasuring 150 Sq.ft. and initially business of Kirana Stores was carried out there from. However, after the death of the deceased, you started the business of making cholks used in tube light fitting.

3. As per the terms and conditions of the agreement the deceased was not to carry out any alteration in the shop premises without consent of my client or his father. However, you have carried out the illegal additions and alterations of permanent nature in the said shop and increased the area of the said shop to about 300 Sq.ft.

4. You are fully aware that you have been continuously committing the breaches of the terms and conditions of the said Agreement, **you have stopped paying rent since September, 1996 as a result of which my client was constrained to send the notice dated 13.05.1997 through his Advocate. However, the said notice was not replied by you and you continued to commit breaches of the terms and conditions of the agreement. Further, you have on malafide grounds approached the Hon'ble Court of Small Causes and filed suit against my client.**

5. My client further states that his son Mr. Rajesh Barve is unemployed and wants to start his business. My client and his son are not in a position

> to secure other business premises and require the same for their personal use. It is further pertinent to note that you have another shop situated at Waman Wadi Chawl, V.N. Purav Marg, Chembur, Mumbai-400 071, and you are carrying on the said business there from and you have unauthorisedly and without the knowledge and consent of my client let out the shop premises to one Mr.Devraj Jain, for monthly compensation for Rs.3,000/- per month. My client states that you are making unlawful gains by letting out the said shop.
>
> 6. You are aware that you have committed the breaches of the terms and conditions of the tendency as set out hereinabove, thereby causing the utmost damage and injury to my client. My client has, therefore, instructed me to terminate your Tenancy in respect of the said shop and call upon you to quit, vacate and deliver to my client quite, vacant and peaceful possession of the said shop. On your failure to comply with the said requisition suitable legal proceeding will be adopted against you for recovery thereof and the same will be at your entire risks, cost and consequences which please note.
>
> *(emphasis added)*

17) There is no dispute about the fact that notice dated 26 March 2003 is received by the Defendant since he has replied the same. There is no specific demand of rent in the notice dated 26 March 2003. However, the said notice makes a specific reference to the earlier notice dated 13 May 1997 with a further statement that the Defendant did not pay rent to the Plaintiff since September 1996.

18) There is debate between parties as to whether the notices dated 13 May 1997 and 26 March 20023 can be construed as demand notices within the meaning of Section 15(2) of the MRC Act. Mr. Parab has relied upon judgment of Single Judge of this Court (*D. G. Karnik J.*) in ***Sitaram Narayan Shinde*** (supra) in which as held in para-8 as under:

> 8. 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 *V. 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 *V. 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.

19) However, it appears that the attention of *Justice Karnik* was not brought the previous judgment of this Court in ***Kantilal Ravji Mehta,*** judgment of the Apex Court in ***Rakesh Kumar*** as well as judgment of Delhi High Court in ***Ram Sarup***. In ***Rakesh Kumar***, the landlord served notice dated 19 April 1982 alleging non-payment of rent for the months of February, March and April 1982 and made a statement that sum of Rs.7,800/- was due from the tenant in respect of Shop-FF2 and Rs.12,214.50/- in respect of Shop-FF1. The landlord did not demand the rent but called upon the tenant to vacate the suit premises. In the light of this factual position, the issue before the Apex Court was whether such notice could be construed as notice for demand of rent. The Apex Court held in paras-10 and 11 as under:

> **10.** On reading the notice along with the letter dated June 1, 1982 it appears that the respondent was in arrears of rent for the months mentioned hereinbefore and was intimated that in default of payment of rent the eviction would follow in accordance with law. This is the proper way of reading the notice and in our view the appropriate logical way in which notices of such type should be read. These notices must be read in commonsense point of view bearing in mind how such notices are understood by ordinary people. That is how the appellant, it appears from the reply and the background of the previous letter to be mentioned hereinafter understood the notice.
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> **11.** More or less, a similar notice was considered by the Delhi High Court in *Ram Sarup* v. *Sultan Singh* [(1977) 2 RCJ 552] where Mr Justice V.S. Deshpande, as the learned Chief Justice then was, held that the notice of the landlord stating therein about the arrears of rent and threatening to file a petition for eviction against the tenant was sufficient and the learned Judge held that the notice of demand could be expressed or implied and the conduct of the landlord showed that the demand was implied. We are in respectful agreement with the approach to such type of notices taken by the High Court in that case.

20) In ***Rakesh Kumar***, the Apex Court has approved the view taken by the Single Judge of Delhi High Court (*Chief Justice V.H. Deshpande*) in ***Ram Sarup*** wherein it is held that notice of landlord mentioning arrears of rent and threatening to file petition for eviction was sufficient and that notice of demand can be expressed or implied and that the conduct of the landlord showed that the demand was implied. The Delhi High Court held in ***Ram Sarup*** as under:

> II. The next argument is that the notice do not expressly demand do not expressly demand the payment of rent from the tenant. The demand can be express or implied. The conduct of the landlord shows that the demand is implied. He has already filed a suit for recovery of the rent arrears and he has threatened to file a petition for eviction the law governing which also provides that the tenant would had to pay the arrears of rent to the landlord. Interpreting in this light the notice amounts to a notice of demand which is implied if not expressed.

21) A Single Judge of this Court (*A. M. Khanwilkar, J. as he then was*) in ***Kantilal Ravji Mehta*** has also taken same view by referring to the judgment of the Apex Court in ***Rakesh Kumar*** and has held in para-6 as under:

> **6.** Be that as it may, on close scrutiny of the suit notice dated 15-10-1980 and on reading the same as a whole, it is incomprehensible as to how that notice cannot stand the requirements of a valid demand notice for the purposes of section 12(2) of the Act. In this notice, monthly rent agreed upon between the parties has been stated. It is also expressly stated that the tenant has not paid any rent for the period from 14-12-1972 to 30-10-1980. Notice also clearly calls upon the tenant to vacate the suit flat and hand over possession thereof as well as to forthwith pay the entire outstanding amount referred to therein. In that sense the notice is clearly a demand notice in writing. The argument advanced on behalf of the tenant however, proceeds on the premise that the notice does not mention that the tenant should pay the amount within the statutory period of one month and, therefore, he contends that, no opportunity has been offered by the landlady to the tenant to save himself from the consequence of default in paying the arrears. In this context reliance is placed on the decision of the Allahabad High Court in the case of *Ram Krishana Prasad* v. *Mohd. Yahia* reported in AIR 1960 Allahabad 482. To my mind, this decision is on the facts of that case. The same will have no application to the present case where we are examining the suit notice in the context of the provisions of section 12(2) of the Bombay Rent Act. What is required under the provisions of our Act is only a notice in writing of the demand of the standard rent or permitted increases to be served upon the tenant under section 106 of the Transfer of Property Act and, on expiration of one month after the said notice is served upon the tenant, the landlord gets a right to institute suit for possession on the ground of default. The learned counsel for the landlady has rightly relied on the decision reported in (1977) 2 SCC 646 : AIR 1977 SC 1120 in *Bhagabandas Agarwalla's case* to contend that it is well settled that demand notice must be construed not with a desire to find faults in it, which would render it defective, but it must be construed but *resmagis valeat quam pereat.* It is held that a notice must be one which in clear terms terminates the tenancy and calls upon the tenant to vacate the suit premises on expiration of the statutory period. The learned counsel for the landlady has also rightly relied on another decision of the Apex Court in *Rakesh Kumar* v. *Hindustan Everest Tool Ltd.* reported in (1988) 2 SCC 165 : AIR 1988 SC 976. Even in this decision the Apex Court has observed that the proper way of reading the notice and the appropriate logical way in which notices of such type should be read is that it must be read in common sense—Point of view

bearing in mind how such notice was to be understood by ordinary people. Applying the above principles and on reading the notice as a whole, I have no hesitation in taking the view that the suit notice is a proper demand notice giving particulars of the arrears of rent for more than 6 months but it also specifies the amount to be paid. Besides, this notice also determines the tenancy by calling upon the tenant to hand over vacant and peaceful possession of the demised premises before the expiration of 30th December, 1980 which is after about more than one month from the date of the notice. In that sense no fault can be found with this notice. Whereas, on giving liberal construction this is clearly a demand notice as required for the purposes of section 12(2) of the Act. As rightly contended by the counsel for the landlady that the tenant obviously fully understood the nature of notice and the same was replied through his Advocate on 12th November, 1980. The tenant chose only to dispute the factum regarding non payment of rent as alleged in the suit notice and nothing more. Even before the first court as well as before the Appellate Court this was the only plea pressed into service on behalf of the tenant, that the tenant was not in arrears as contended. No contention regarding the validity of notice as is pressed now was advisedly taken before the courts below.

22) The Allahabad High Court in ***Khatoon Begum*** (supra) has held in paras-13 and 14 as under:

13. A copy of the notice is on record, it states that immediately after the sale-deed, the petitioner was informed about the transfer of right and a demand for payment of rent was also raised. When the tenant did not pay the rent, a demand notice dated 22.8.1978 was sent and received by the petitioner. It was categorically stated in the notice that even after intimation about the sale-deed and demand, no rent was paid from 1.12.1977 till the date of notice and since the petitioner was a bad pay master, the landlord did not wish to keep him further.

14. The Revisional Court after considering the argument of the parties and after relying upon a decision of this Court rendered in the case *Gussainram* v. *Mohammad Siddiqui*, held that the notice was valid. In the case of *Mangat Ram* (supra), the Supreme Court has deciphered the twin requirements under section 20(2) of the Act. It held that firstly the tenant should be in arrears of rent for not less than four months, and secondly, determination of the tenancy if he failed to pay the sum to the landlord within one month of the notice of demand. These are the two necessary pre-requisites for a valid notice under the Act. There can be no dispute with the said pronouncement but the question is whether in the present case, the

twin requirements are met in the notice at hand. The Apex Court was considering a somewhat identical provision under the Delhi Rent Act in *Rakesh Kumar* v. *Hindustan Everest Tool Ltd*. where a somewhat identical notice was served on the tenant, it held that the notice must be read in a common sense point of view, keeping in mind how such a notice is understood by ordinary people. In fact, the Supreme Court went on to uphold a decision of Delhi High Court rendered in the case of *Ram Swarup* v. *Sultan Singh* that a notice of demand could be expressed or implied and the conduct of the landlord could prove it. In the present case, *vide* notice dated 22.8.1978 the tenant was cautioned that despite demand, he has not paid the rent from 21.11.1977 and if he does not pay the rent, he would be liable for eviction. In the present notice, both the requirements have been satisfied and therefore the argument cannot be accepted.

23) The conspectus of discussion on various judgments discussed above is that it is sufficient for the landlord to specify the amount of arrears of rent in the notice and demand possession. Even if there is no specific demand for payment of arrears of rent, such demand is implied if there is specification of amount of arrears coupled with demand for possession.

24) In my view, the ratio of the above judgments relied upon by Dr. Chandrachud would not apply to the facts of the present case. The common thread that binds all the four judgments relied upon by Dr. Chandrachud is that the amount of rent due was specified in the notices in all the four cases. In the present case, the exact amount due towards arrears of rent is not indicated either in the notice dated 13 May 1997 or in the notice dated 29 March 2003. Dr. Chandrachud has attempted to salvage the situation by contending that the notice dated 13 May 1997 reflected the amount of rent @ Rs.100/- per month and further indicated the factum of non-payment of rent in respect of the suit from March 1996. He has accordingly submitted that the exact amount of rent due could therefore be easily

ascertained by multiplying the rent amount by months of non-payment and that therefore notice dated 13 May 1997 is a valid demand notice within the meaning of Section 15(2) of the MRC Act. However what Dr. Chandrachud misses is the point that the notice dated 13 May 1997 was not addressed to the Defendant-tenant, but was addressed to his brother. The typed copy of the notice dated 13 May 1997 placed on record at pages-46 and 47 of the paper-book shows that the same was addressed in the name of 'Janubai'. However, the written statement filed by the Defendant indicates the name of his brother as 'Zainuddin Fakaruddin Samiwala'. Even if it is assumed that there is any typographical error in the typed copy of the notice produced at pages-46 and 47 of the paper-book, admittedly the said notice is not addressed to the Defendant-tenant. Why it was addressed to his brother is not known. The Plaint did not aver that the notice dated 13 May 1997 was addressed to Defendant's brother and the averment is:

> *'The plaintiff states that by advocate's letter dated 13 May 1997* ***addressed to the Defendant****, calling upon him to rectify the breach committed by him.'*
>
> *(emphasis added)*

Thus, the suit is filed on an assertion that the notice dated 13 May 1997 was addressed to the Defendant and that assertion is ultimately found to be incorrect. Therefore, whether the notice addressed on 13 May 1997 in the name of a wrong person can be considered as 'demand notice' issued to the tenant within the meaning of Section 15(2) of the MRC Act ? The answer to my mind appears to be in the negative. Section 15(2) of the MRC Act envisages service of notice on the tenant before filing of the suit. In the present case, the notice was never addressed to the Defendant-tenant and therefore the notice

dated 13 May 1997 cannot be treated as a valid notice under Section 15(2) of the MRC Act.

25) Dr. Chandrachud suggested that the Defendant secured knowledge of notice dated 13 May 1997 since there is an averment in para-6 of the written statement about pasting of the notice. However, the notice was addressed to Defendant's brother who was not expected to clear the arrears of rent. The legislative object behind incorporation of Section 15 in the MRC Act is to ensure that the tenant gets an opportunity of making good the default in payment of rent, before the eviction action is brought in. If the tenant is not served with any communication intimating arrears of rent, it is difficult to accept that he was given an opportunity of clearing the arrears of rent as envisaged under Section 15(2) of the MRC Act.

26) There is another angle from which Plaintiff's act of addressing the Notice dated 13 May 1997 to tenant's brother needs to be considered. Plaintiff possibly did not recognize Defendant as the tenant, which was the reason why Defendant was required to file RAD Suit No. 120/1999 for declaration of his tenancy rights, which came to be declared in 2004 holding Defendant to be the tenant. Thus, Notice dated 13 May 1997 was addressed to Defendant's brother by not recognizing that the Defendant is the tenant. Thus, Plaintiff himself did not believe in 1997 that Defendant was the tenant and raised allegation of non-payment of rent against his brother. This is yet another factor why notice dated 13 May 1997 cannot be treated as a valid notice of demand issued to the tenant under Section 15(2) of the MRC Act.

27) Even if it is assumed momentarily that the Defendant had acquired knowledge about notice dated 13 May 1997 (which was addressed in the name of his brother), it is difficult to treat the said notice as a demand notice within the meaning of Section 15(2) of the MRC Act. The notice dated 13 May 1997 stated that the premises were let out on 19 April 1976 at monthly rent of Rs.100/-. However, when the suit was filed by the Plaintiff, he demanded rent at the rate of Rs.500/- per month from September 1996. Thus, the demand of rent in the plaint at the rate of Rs.500/- per month does not match the alleged demand of rent at the rate of Rs.100/- per month in the notice dated 13 May 1997. This is yet another reason why I am unable to accept the contention that the first notice dated 13 May 1997 can be considered as valid notice of demand under the provisions of Section 15(2) of the MRC Act for maintenance of R.A.E. & R. Suit No.1146/1829 of 2003.

28) Coming to the second notice dated 26 March 2003, the same did not mention either the monthly rent or total amount of rent due from the Defendant. Therefore, the law enunciated in the judgments relied upon by Dr. Chandrachud would not make the notice dated 26 March 2003 as a valid demand notice. The said notice merely contains a vague statement that the Defendant stopped paying rent since September 1996. The notice did not state any particular amount which the Defendant was in arrears towards rent. Therefore, far from making any demand for payment of rent, Plaintiffs did not even indicate the exact amount they were expecting to be recovered from the Defendant-tenant.

29) What makes the case of the Plaintiff worse in respect of the notice dated 26 March 2003 is the fact that the said notice

intentionally suppresses the fact that the Defendant was depositing rent at the rate of Rs.100/- per month in R.A.D. Suit No.120/1999 in pursuance of order dated 3 July 2000 passed by the Small Causes Court. While Plaintiff conveniently referred to filing of the said suit, he suppressed the position about deposit of rent by the Defendant in the Small Causes Court. Thus, as on the date of service of notice dated 26 March 2003, Defendant had cleared the entire alleged arrears of rent by depositing the same in the Small Causes Court. It is not the case of the Plaintiff in the notice dated 26 March 2003 that the said deposit at the rate of Rs.100/- per month was insufficient or that the rent was Rs.500/- and that the Defendant was liable to pay the difference at the rate of Rs.400/- per month. The notice dated 26 March 2003 is completely silent about the exactly alleged liability of the Defendant to pay rent to the Plaintiff. It must also be observed that both the notices dated 13 May 1997 and 26 March 2003 do not even suggest, even by implication, that the Defendant was liable to pay rent at the rate of Rs.500/- per month from September 1996 which was ultimately claimed by the Plaintiff in prayer clause (b) of the plaint. In this regard, the averments in para-12 and prayer clause (b) of the suit reads thus :

> 12. The Plaintiff submits that the Defendant is liable to pay to the Plaintiff an arrears of rent a sum of Rs. 500/- per month till the filing of the suit and thereafter mesne profits as such rate as this Hon'ble Court may deem fit and proper.
>
> **Prayers**
>
> (a) ..
>
> (b) That the Defendant be ordered and decreed to pay Rs. 42,000/- being the arrears of rent from September, 1996 to 30.09.2003 at the rate of Rs. 500/- and further means profit for wrongful use and occupation of the suit premises and arrears of rent @ Rs. 500/- per month.

30) Both the notices dated 13 May 1997 and 26 March 2003 do not even remotely suggest that the rent in respect of the suit premises was Rs.500/- per month. In fact, the first notice dated 13 May 1997 reflected monthly rent at the rate of Rs.100/-. Therefore, even if Dr. Chandrachud's contention about reflection of amount of rent in notice dated 13 May 1997 is to be momentarily accepted, the said alleged demand in the notice dated 13 May 1997 does not ultimately match the amount demanded in the suit. Therefore, the notice dated 13 May 1997 cannot be interlinked with R.A.E. & R. Suit No.1146/1829 of 2003.

31) Thus, there are variety of reasons why notices dated 13 May 1997 and 26 March 2003 cannot be treated as valid demand notices within the meaning of Section 15(2) of the MRC Act. The Appellate Bench has rightly appreciated this position while allowing the Appeal filed by the Defendant-tenant. I therefore do not find any perversity in the findings recorded by the Appellate Bench of the Small Causes Court while allowing the Appeal. The ground of default in payment of rent has then been correctly rejected by the Appellate Bench of the Small Causes Court. The Trial Court had erred in accepting the ground of default in payment of rent without appreciating the position that there is no valid demand notice as envisaged under Section 15(2) of the MRC Act making the suit for recovery of possession on the ground of default in payment of rent not maintainable.

32) Dr. Chandrachud has highlighted the aspect of non-deposit of regular rent during pendency of suit as envisaged under sub-section (3) of Section 15 of the MRC Act. In my view, since the suit itself is bad for failure to serve valid demand notice under Section

15(2) of the MRC Act, the provisions of sub-section (3) of Section 15 would not kick in. The mandate for regular deposit of rent or for deposit of arrears of rent alongwith interests and costs applies to a suit instituted after valid service of demand notice under Section 15(2) of the MRC Act. In the present case, since there is no valid demand notice, the Defendant-tenant was not under obligation to deposit either arrears of rent, interests or costs of the suit nor he was under any obligation to regularly deposit the rent during pendency of the suit. It is another matter that the Defendant had deposited the rent at the rate of Rs.100/- per month in pursuance of the order dated 3 July 2000 passed in RAD Suit No.120/1999 and in pursuance of final decree dated 10 June 2004 passed in the said suit, he deposited further amount of Rs.100/- per month within the stipulated time limit. In RAD Suit No.120/1999, the Small Causes Court had not only recognised tenancy rights of the Defendant but had also decided the rent at Rs. 200/- per month and the said rent was deposited by the Defendant till May 2004. After R.A.E. & R. Suit No.1146/1829 of 2003 was filed, Defendant took out interim notice No.1994/2005 and secured order dated 13 July 2006 for deposit of arrears of rent at the rate of Rs.200/- per month from June 2004 onwards. Considering this position, it cannot be contended that the Defendant committed willful default in payment of rent.

33) The Trial Court grossly erred in accepting the claim of the Plaintiff for recovery of rent at the rate of Rs.500/- per month in absence of any evidence to that effect by the Plaintiff. There is absolutely no discussion in the judgment of the Trial Court as to why it had accepted the claim of the Plaintiff for recovery of arrears of rent of Rs.42,000/- at the rate of Rs.500/- per month from September 1996 till 30 September 2003.

34) In my view, therefore the decree for eviction of the Defendant could not have been passed on the ground of arrears of rent.

35) So far as the ground of bonafide requirement is concerned, the same was initially accepted by the Trial Court and its finding has been reversed by the Appellate Bench. Apart from making bald statement in the pleadings that Rajesh Barve required the premises, no evidence is led as to the exact nature of the business that Rajesh Barve was intending to conduct in the suit premises. In absence of any pleadings or evidence, the Appellate Bench has rightly rejected the ground of bonafide requirement of Plaintiff's son-Rajesh. No serious attempt is made on behalf of the Revision Applicants to point out any perversity in the findings of the Appellate Bench on the issue of bonafide requirement.

36) After considering the overall conspectus of the case, I am of the view that the findings recorded by the Appellate Bench do not suffer from any jurisdictional error or material irregularity so as to warrant exercise of revisionary jurisdiction by this Court under Section 115 of the Code of Civil Procedure. Revision Applications, being devoid of merits, are accordingly **dismissed.**

37) With the disposal of Civil Revision Application No. 163 of 2024, nothing would survive in Interim Application No. 16438 of 2023 and the same also accordingly stands disposed of.

[SANDEEP V. MARNE, J.]