IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.753 OF 2023

Dilip Jasaramji Mali
Age 45 years, Occ. Business
residing at Flat No.2B, 2nd Floor,
Saxena House, 13, Jai Prakash Nagar,
Road No.2, Goregaon (East),
Mumbai – 400 063. **....Applicant**

V/S

Ramesh Ganesh Saxena
Ag 69 years,
Occ. Retd. Govt. Servant,
residing at Saxena House,
13, Jai Prakash Nagar,
Road No.2, Goregaon (East),
Mumbai – 400 063. **....Respondent**

Mr. Aseem Naphade with Ms. Deepanjali Mishra and Mr. Omkar Khaiyam Shaikh, *for the Applicant.*
Mr. G.S. Godbole, Senior Advocate with Ms. Aishwarya Shinde *for Respondent.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 13 DECEMBER 2024.
PRONOUNCED ON : 20 DECEMBER 2024.

J U D G M E N T:

1 Applicant has filed this Revision Application challenging the judgment and decree dated 2 November 2023 passed by the Appellate Bench of the Small Causes Court dismissing Appeal No. 19 of 2023 filed by him and confirming the eviction decree dated 20 April 2023 passed by the Small Causes Court in RAE Suit No.438 of 2017. The

Small Causes Court, while decreeing the suit filed by the Respondent/Plaintiff, has directed the Revision Applicant/Defendant to vacate the suit premises by handing over its possession to the Respondent/Plaintiff.

2 Brief facts of the case are that Plaintiff claims to be one of the landlords and owner of the property known as 'Flat No.2B, Saxena House' situated at Road No. 2, 13, Jai Prakash Nagar, Goregaon (East), Mumbai–400063. Revision Applicant / Defendant was inducted as a tenant in respect of Flat No. 2-B admeasuring 500 sq. ft. carpet area in the building ‘Saxena House’ on monthly rent of Rs. 3,000/- vide Rent Agreement dated 15 December 2005 executed between Ms. Taradevi Ganesh Saxena (through her constituted attorney being Mr. Ramesh Ganesh Saxena) and the Defendant-tenant. Plaintiff claims that Defendant was a defaulter in payment of monthly rent and was very irregular in paying the same. Plaintiff served Advocate notice dated 21 January 2009 communicating the default committed by the Defendant in payment of rent. Another notice dated 14 July 2012 was served on the Defendant calling him upon to regularize the payment of monthly rent.

3 In the above background, Plaintiff instituted RAE Suit No.438 of 2017 in the Court of Small Causes at Bandra, Mumbai, for recovery of possession of the suit premises from the Defendant on the ground of default in payment of rent as well as Defendant's acts of breach of terms of tenancy. Defendant appeared in the suit and filed Written Statement contesting the right of the Plaintiff. It was contended that Plaintiff merely signed the tenancy agreement as constituted attorney of the owner Ms. Taradevi Ganesh Saxena, who passed way leaving behind 10 legal heirs. That therefore Plaintiff was one of the landlords

and owners of the property and not the sole owner. Additionally, Defendant also contended that Shri Swetamber Murti Pujak Tapogachh Jain Sangh has purchased 37.5% share in the building from the heirs of deceased Ms. Taradevi Ganesh Saxena. That said Sangh had not consented for filing of the suit. Defendant also denied that he was irregular in payment of rent. He further contended that originally, the monthly rent of the suit premises was only Rs.810/-, which was increased by the Plaintiff from time to time and he is started demanding Rs. 3,000/- towards the rent.

4 Based on pleadings, Small Causes Court framed issues. Rival parties led evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, Small Causes Court proceeded to decree the suit by judgment and order dated 20 April 2023 holding that the Defendant was not ready or willing to pay monthly rent and was irregular in paying the same since October 2008. The Small Causes Court further held that Defendant had committed breach of terms of agreement of tenancy. The Small Causes Court rejected the contentions of the Defendant that Plaintiff is not co-owner of the suit premises or that he did not have *locus* to file the suit. Trial Court accordingly directed Defendant to handover possession of the suit premises to the Plaintiff.

5 Defendant filed Appeal No.19 of 2023 before Appellate Bench of the Small Causes Court challenging the eviction decree dated 20 April 2023. The Appellate Court has however dismissed the Appeal filed by the Applicant/Defendant by its judgment and decree dated 2 November 2023, which is the subject matter of challenge in the present Petition.

6 Mr. Naphade, the learned counsel appearing for the Revision Applicant would submit that the Trial and the Appellate Courts have grossly erred in entertaining the suit filed by the Plaintiff, which was not maintainable in the first instance. That there is no demand notice issued by the Plaintiff to the Defendant-tenant within the meaning of section 15(2) of the Maharashtra Rent Control Act, 1999 (MRC Act) and in absence of such a notice, Plaintiff's suit on the ground of arrears of rent could not have been entertained. That the notices earlier issued on 21 January 2009 and 14 July 2012 did not contain any specific demand for payment of rent. Therefore, the said notices cannot be construed as the one issued under provisions of sub-section 2 of section 15 of the MRC Act. That in any case, after receipt of the last notice dated 14 July 2012, Defendant made as many as 12 payments covering the rent in respect of period upto February 2017. That therefore there was no cause for the Plaintiff to file the suit. That if Plaintiff wanted to sue Defendant in respect of alleged default after March 2017, he ought to have issued notice as contemplated under section 15(2) of the MRC Act. He would submit that since suit itself was not maintainable, it was not necessary for Defendant to deposit the arrears of rent within 90 days of service of suit summons or to regularly pay/deposit the same in the Court under section 15(3) of the MRC Act. Mr. Naphade would also rely upon provisions of section 112 of the Transfer of Property Act, 1882 (**TP Act**) in support of his contention that acceptance of rent after issuance of notice otherwise constitutes waiver of forfeiture.

7 So far as the second ground of alleged denial of Plaintiff's title by the Defendant is concerned, he would submit that the said ground was not pleaded anywhere in the plaint and that it was impermissible for the Trial and the Appellate Courts to utilize the said ground for

ordering eviction of the Defendant. That even if the said ground became available to the Plaintiff after filing of the Written Statement, he did not amend the plaint and raised the said ground. That in absence of pleading and evidence, it was impermissible for the Trial and the Appellate Courts to direct eviction of the Defendant on the alleged ground of denial of Plaintiff's title. Without prejudice, he would submit that the Defendant has not denied title of the Plaintiff. That there is express admission in the Written Statement that Plaintiff is the co-owner in respect of the suit premises. Mr. Naphade would accordingly pray for setting aside the impugned decrees passed by the Trial and the Appellate Courts.

8 The Petition is opposed by Mr. Godbole, the learned senior advocate appearing for the Respondent/Plaintiff. He would submit that concurrent findings recorded by the Trial and the Appellate Courts on the issues of default in payment of rent and commission of breach of terms of tenancy by denying Plaintiff's title do not warrant any interference by this Court in exercise of revisionary jurisdiction in absence of any perversity or error in exercise of jurisdiction. Mr. Godbole would submit that the suit was preceded by valid demand notice dated 14 July 2012. That what is contemplated under provisions of section 15(2) of the MRC Act is issuance of intimation to the tenant that there are arrears of rent and such intimation itself constitutes demand within the meaning of section 15(2) of the MRC Act. That no period of limitation is prescribed under provisions of section 15 of the MRC Act for filing of the suit after issuance of the demand notice. That the Defendant has been always irregular in payment of rent and despite issuance of two notices dated 21 January 2009 and 14 July 2012, he continued his conduct of not paying the rent regularly. That regular payment of rent being an essential

condition of tenancy agreement, breach thereof must result in a decree for eviction. He would place reliance on the judgment of Full Bench of this Court in ***Babulal Fakirchand Agrawal vs. Suresh Kedarnath Malpani and others***[1]**,** and of Division Bench in ***Chandiram Dariyanumal Ahuja vs. Akola Zilla Shram Wahtuk Sahakari Sanstha, Akola***[2] in support of his contention that the tenant who disobeys provisions of section 15(1) of the MRC Act can be evicted independently though such tenant may not necessarily be in arrears of rent on the date of filing of the suit. That he would submit that a tenant, who wants to enjoy protection under section 15(1) of the Act, has to prove that he paid rent voluntarily and not when coerced. He would therefore submit that since irregular payment of rent prior to filing of the suit is writ large from records, this Court would be loathe in interfering in concurrent findings recorded by the Trial and Appellate Courts. Mr. Godbole would further submit that even after filing of the suit, Defendant did not comply with mandatory provisions of sub-section (3) of section 15 of the MRC Act. That the summons was served on 27 November 2017, but application for deposit of rent was made by Defendant three years later on 3 March 2020. That even otherwise he continued being irregular in the matter of deposit of rent during pendency of the suit.

9 So far as the second ground of denial of title of Plaintiff is concerned, Mr. Godbole would submit that the Defendant has specifically denied the title of the Plaintiff-landlord in the Written Statement. That in addition to raising a specific contention that Plaintiff is not the owner of the suit premises as per tenancy agreement, Defendant has attempted to set up title of the Sangh in paragraph 4 of the Written Statement. That since title of the landlord

1 2017 (4) Mh.L.J. 406
2 2013 (1) Mh.L.J. 28

is questioned, provisions of section 116 of the Indian Evidence Act, 1872 (**Evidence Act**) would come into play and eviction of the Defendant-Tenant becomes imminent. Mr. Godbole would accordingly pray for dismissal of the Revision Application.

10 Rival contentions of the parties now fall for my consideration.

11 The tenancy in respect of the suit premises is created through Agreement dated 15 December 2005 executed between Ms. Taradevi Ganesh Saxena and the Defendant, under which the premises were demised on to the Defendant-tenant on payment of Rs. 2,430/- towards security deposit and Rs. 810/- towards monthly rent payable on or before 10th day of each calendar month. Plaintiff served notice dated 21 January 2009 to the Defendant vaguely alleging irregularity in payment of rent in paragraphs 3 and 6 of the Notice as under:

> "3. My client states that you are in gross violation and continuously in breach of the terms of tenancy/occupancy upon which you were permitted to occupy the said premises.
>
> 6. My client states that you are in arrears of rent from the period October, 2008 to December, 2008, which you have failed to pay inspite of being asked to pay the same and you have told my client that you shall pay the arrears of rent/monthly compensation only if my client succumbs to your demands and allows you to use the premises as you feel like, which is not agreeable to my client."

12 Plaintiff accordingly terminated Defendant's tenancy and adjusted the amount of security deposit of Rs. 2,430/- towards arrears of rent from October 2008 to December 2008. Plaintiff also raised various other allegations such as unlawful sub-letting, change of user, abusing and threatening the Plaintiff as well as nuisance and annoyance by way of parking his vehicles in the building compound. However, Plaintiff did not institute any suit based on notice dated 21 January 2009.

13 Plaintiff thereafter served second notice dated 14 July 2012 on the Defendant this time contending that the rent in respect of the suit premises was Rs. 1150. He contended in the notice dated 14 July 2012 as under:

> "2. That you are very irregular in making monthly payments in respect of the said premises and paying lump sum at the end of 3 months or so. You are infact liable to pay the monthly rent every month and as such you are a defaulter. As on date you are liable to pay monthly rent from 01.04.2012 and it's onwards, and as such you are not ready and willing to perform the terms of Agreement dated 15.12.2005."

14 Plaintiff again terminated the tenancy of the Defendant by raising additional allegations of abusing and threatening the landlord, accommodating outsiders in the suit premises, storing hazardous goods and materials of factory in suit premises, extension of balcony of the flat etc. This time Defendant replied notice dated 14 July 2012 by sending Reply dated 18 August 2012 contending that he had cleared the rent upto August 2012 and that the Plaintiff had followed practice of collecting the monthly rent after every three months. Defendant stated in Reply dated 18 August 2012 as under:

> "3) With reference to Para 2 of the plaint, my client denies that "he is very irregular in making monthly payment in respect of the said premises and paying lumpsum at the end of three months or so" and put your client strict proof thereof. My client states that he has paid up to date monthly rent to his landlord i.e. up to August, 2012. My client states that he has been always ready and willing to regularly pay his monthly rent to his landlord but it has been practice of his landlord to collect the monthly rent of said premises generally after every three months. My client states that hereinafter he will regularly tender his monthly rent to his landlord irrespective whether his landlord accept it or not. My client hereby attaching a cheque bearing no.511831 dated 18/8/2012 amounting to Rs.4,800/-(Rupees Four Thousand Eight Hundred Only) drawn on Punjab National Bank in favour of Mr. Ramesh G. Saxena for rent for the period September, 2012 to December, 2012 (@ Rs. 1,200/- p.m.) in advance and therefore your client Mr. Ramesh G. Saxena is requested to issue rent receipt for that effect. My client denies that, " he is not ready and willing to perform the terms of Agreement dated 15/12/2005" and put your clients to the strict proof thereof.

15 Plaintiff again did not institute any suit after service of notice dated 14 July 2012. RAE Suit No.438 of 2017 was instituted by him on 25 September 2017 i.e. after a period of more than five years from the date of issuance of notice dated 14 July 2012. However, in the plaint itself, Plaintiff admitted that after service of the notice dated 14 July 2012, Defendant made payment of rent on 12 different occasions. Plaintiff averred as under:

> "6. The Plaintiff states that the Defendant has been irregular in payment of monthly rent as he has paid rent in the past few years in the following manner:

Sr.No.	Bill No.	Date of Receipt	Period of rent	Amount
1.	578	01.04.2013	January, February, March 2013	2,500x3=7500/-
2.	580	01.08.2013	April, May, June, July 2013	2,500x4=10,000/-
3.	581	01.10.2013	August, September 2013	2,500x2=5,000/-
4.	583	01.01.2014	October, November, December 2013	2,500x3=7,500/-
5.	586	08.08.2014	January, February, March, April, May, June 2014	2,500x6=15,000/-
6.	589	09.12.2014	July, August, September, October, November, December 2014	2,500x6=15,000/-
7.	591	08.07.2015	January, February, March, April, May 2015	3,000x5=15,000/-
8.	592	04.12.2015	June, July, August, September, October 2015	3,000x5=15,000/-
9.	599	01.03.2016	November, December 2015	3,000x2=6,000/-
10.	603	22.10.2016	January, February, March, April, May 2016	3,000x5=15,000/-
11.	606	01.12.2016	June, July, August, September, October 2016	3,000x5=15,000/-
12.	610	15.03.2017	November, December, January, February 2017	3,000x4=12,000/-

16 The above particulars of payment of rent pleaded in paragraph 6 of the Plaint would indicate that Plaintiff had received rent upto February 2017 at the rate of Rs.3,000/- per month. Thus, rent was paid from time to time by the Defendant after service of notice dated 14 July 2012. Therefore, the said notice dated 14 July 2012 cannot form a basis for institution of a suit on the ground of default in payment of rent under section 15 of the MRC Act. Section 15 of the MRC Act provides thus:

"**15. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases**

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other, conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(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."

17 Thus, under provisions of sub-section (2) of Section 15 of the MRC Act, no suit for ejectment of tenant on the ground of non-payment of standard rent or permitted increases can be instituted until expiry of 90 days after service of demand notice in the manner provided under section 106 of the TP Act. Mr. Godbole has contended that Section 15 of the MRC Act does not prescribe any time limit within which the landlord is supposed to file Suit after service of notice. However, the issue is if the tenant has paid rent to the landlord, which is accepted by him over a period of time, whether a suit can be instituted on the basis of a stale notice? Answer to the question, to my mind appears, to be in the negative. The real objective behind enacting Section 15(2) of the MRC Act is to provide an

opportunity to the tenant to make good the default in payment of rent. Unlike the grounds enumerated under Section 16 of the MRC Act, where right is created in favour of landlord to secure eviction decree the moment the act is committed, the act of default in payment of rent *ipso facto* result in ejectment of a tenant. Legislature has consciously segregated the ground of default in payment of rent (which is also an act in breach of conditions of tenancy) from other breaches enumerated in Section 16 of the Act. For breaches committed under Section 16 of the Act, no opportunity is provided to remedy the breach and eviction becomes imminent the moment the act is committed. As against this, for the tenant's act of default in payment of rent, an opportunity is provided to remedy the breach. If this statutory scheme is borne in mind, filing of suit based on stale notice becomes impermissible, especially when the notice is followed by payment and acceptance of rent on multiple occasions.

18 The effect of acceptance of rent after service of notice can also be seen in the light of provisions of section 112 of the TP Act, under which forfeiture of tenancy gets waived by acceptance of rent which had become due since the forfeiture. Section 112 of the TP Act provides thus:

> "**112. Waiver of forfeiture**. - A forfeiture under section 111, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:
> Provided that the lessor is aware that the forfeiture has been incurred:
> Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver."

19 Ofcourse reliance on Section 112 of the TP Act is not to suggest that the moment rent is paid after receipt of demand notice, the landlord is precluded from filing eviction Suit. As held by the Full

Bench of this Court in ***Babulal Fakirchand Agrawal*** (supra), the landlord can still file eviction suit and the Court can examine whether the tenant pays the rent regularly during pendency of the Suit. This Court held in ***Babulal Fakirchand Agrawal*** as under:

> "20. On the analysis of the provisions of section 15 as well as various judgments, it must be concluded that the provisions of sub-sections (1), (2) and (3) of section 15 shall be read independently. In order to claim relief against forfeiture, the tenant must satisfy all the conditions in respect of payment of rent or tender in Court all the arrears then due on the first day of hearing of the suit or within contemplation of provisions of law and to deposit the rental liability regularly in the Court till the suit is finally decided and there is no extinction of the cause of action by reason of payment of existing arrears by the tenant. It is thus, clear that in order to avoid decree, once the notice is issued within contemplation of sub-section (2) of section 15 of the Maharashtra Rent Control Act by the landlord, the tenant shall have to fulfil the conditions laid down under sub-section (3) of section 15 of the Maharashtra Rent Control Act and there is no escape therefrom.
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> 21. It would be inappropriate to infer something which is not specifically recorded in the provision and to read the restrictions on the entitlement of the landlord to present proceeding for eviction of a tenant on payment of the amount of rent or permitted increases, if any, as demanded by the landlord under a notice within contemplation of sub-section (2) of section 15, without considering the impact of sub-section (3) of section 15. It would amount to adding to the provision in place and making violation and thereby putting unnecessary restrictions on the right of the landlord. The principle that the Statute must be read as a whole is equally applicable to different parts of the same section. The section must be construed as a whole whether or not one part is a saving clause. Similarly, "elementary rule of construction of section is to be made of all the parts together" and that "it is not permissible to omit any part of it; the whole section must be read together". The words of Statute are first understood in their natural, ordinary and popular sense and phrases and sentences are constructed according to their grammatical meaning unless there be something in the context, or in the object of the statute in which they occur or in the circumstances in which they are used, to show that they were used in special sense different from their ordinary grammatical meaning.
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> 24. The view expressed by Division Bench in the matter of *Chandiram Ahuja* (supra) lays down correct preposition and we are in agreement with the view expressed by the Division Bench in aforesaid matter. The view expressed by Division Bench in the matter of Narhar Wani (supra) does not lay down correct law and we disagree with the view expressed therein.
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> 25. To infer that once the tenant pays the amount recorded in the notice or tenders the same, the landlord has no right to institute a suit for recovery of possession for non-payment of those arrears or continue with such proceeding for eviction and no decree for possession can be asked for, is not

within contemplation of provisions of section 15 of the Act. The provision does not interfere with the right of the landlord to initiate proceeding for eviction, however, sub-section (2) of section 15 prescribes precondition for presentation of suit, that is to say that no suit can be initiated without issuing a notice within contemplation of said sub-section (2) of section 15 and tenant's entitlement to claim relief against forfeiture shall be subject to fulfilment of conditions stipulated under sub-section (1) and (3) of section 15 of the Rent Act."

20 Mr. Godbole has also relied upon judgment of Division Bench of this Court in ***Chandiram Dariyanumal Ahuja*** (supra) view expressed in which has been confirmed by Full Bench in ***Babulal Fakirchand Agrawal*** . The Division Bench has held in paragraph 18 as under:

"18. The entire Scheme of Chapter III relief against forfeiture, as provided under the provisions of section 15, indicates that a tenant can perform his obligation and then claim protection in the form of relief against forfeiture as forfeiture occurs in accordance with general law governing lease under the Transfer of Property Act. The provision protects the tenant from the forfeiture when the tenant is paying rent or has proved his readiness and willingness to pay it. Section 15(3) added further obligation upon the tenant to pay entire arrears till date with interest and costs, as may be ordered by the Court. If tenant is continuing to pay rent due during the pendency of the suit instituted against him on the ground of non-payment of standard rent and permitted increases, then such tenant is entitled to claim relief against forfeiture of tenancy. To put it otherwise, when tenant does not pay rent as agreed or pays rent only when legal notice is served upon him or Court summons is issued against him, the landlord is not helpless because sub-section (1) of section 15 enables the landlord to insist upon the tenant to pay rent and perform the conditions of tenancy. The tenant who disobeys legal provisions under section 15(1) of the Act can be evicted independently, though such tenant may not necessarily be in arrears of rent on the date of institution of the suit. A tenant who is prompted or induced to pay only after service of legal notice or after service of Court summons cannot be viewed as a tenant who either pays or is ready and willing to pay standard rent and permitted increases. Section 15 of the Maharashtra Rent Act has extended protection to a tenant after the landlord seeks to exercise his right to forfeit the tenancy in accordance with the provisions of general law. A tenant, in order to claim relief against forfeiture of tenancy, gets a period of 90 days after service of pre-suit statutory demand notice by the landlord calling upon the tenant to pay entire arrears of standard rent and permitted increases payable to the landlord. Thereafter when suit is filed, the tenant gets additional opportunity to pay entire arrears of rent and permitted increases demanded after the suit summons is served upon him. Such a tenant has a period of 90 days from the date of service of suit summons to pay or tender the arrears of rent with simple interest thereupon @ 15% p.a. During

> pendency of the suit, the protection is available as above to the tenant to claim relief against forfeiture of tenancy provided that the tenant shall continue to be regular in payment of standard rent and permitted increases payable during the pendency of the suit as also costs of the suit as directed by the Court. The Court cannot be oblivious of landlords who may have to survive only on rental income. Habitual irregular payment of rent and permitted increases by the tenant will prejudice and jeopardize very survival of such landlords who survive on rental income only. Therefore, such a tenant who may be habitually irregular in payment of standard rent and permitted increases can invite eviction in view of section 15(1) of the Maharashtra Rent Act when the Court considers the case of such a tenant who commits breach of conditions of tenancy as also remains habitual in rental arrears. In such exceptional case, provisions of section 15(1) are applicable and procedural compliances under section 15(2) and 15(3) will not apply. "

21 However the law expounded by the Full Bench of this Court in ***Babulal Fakirchand Agrawal*** and by Division Bench in ***Chandiram Dariyanumal Ahuja*** cannot be read to mean as if ejectment suit could be premised on a stale notice issued 5 years prior to the date of filing of the suit, particularly where the notice is followed by several payments of rent by the tenant. In both the judgments, this Court has expounded the law that mere making good of default in payment of rent by a tenant after receipt of notice under section 15(2) of the MRC Act does not prevent the landlord from filing and maintaining suit for eviction and in the event the tenant is irregular in paying the rent as contemplated under section 15(3) of the Act, the Court can pass a decree for eviction. However, neither in ***Babulal Fakirchand Agrawal*** nor in ***Chandiram Dariyanumal Ahuja*** this Court had held that a suit for eviction on the ground of default in payment of rent can be filed without issuing notice under section 15(2) of the MRC Act. In the present case, if Plaintiff was to issue a notice to Defendant demanding rent from March 2017 onwards and if Defendant was to make good the default within a period of 90 days of receipt of notice, the Plaintiff could still have filed and maintained suit for eviction and in the event of Defendant

becoming irregular in payment/deposit of rent during pendency of the suit, the Small Causes Court would have been justified in decreeing the suit. However, there is no demand notice issued by the Plaintiff alleging non-payment of rent from March 2017 or demanding the arrears. The stale notice issued on 14 July 2012 which was not acted upon and waived off by conduct by the Plaintiff cannot form the basis for filing of the suit for eviction of the Defendant, on non-payment of rent.

22 In my view therefore, notice dated 14 July 2012 cannot be treated as the one issued under section 15(2) of the MRC Act for maintaining RAE Suit No.438 of 2017. If Plaintiff wanted to sue Defendant for non-payment of rent after March 2017 he ought to have served a notice on the Defendant under section 15(2) of the MRC Act and thereafter instituted a suit on expiry of period of 90 days.

23 The Trial and the Appellate Courts have grossly erred in not appreciating the position that the suit for eviction was filed without issuance of demand notice required under section 15(2) of the MRC Act. The Trial Court in fact erred in not framing the issue about issuance of valid demand notice to the Defendant and straightaway proceeded to decide whether the Defendant was irregular in paying the rent or not. Section 15 of the MRC Act gives an opportunity to the tenant who is irregular in payment of rent to become regular by availing first opportunity of making good the default within 90 days of receipt of demand notice and thereafter continuing to regularly pay/deposit the rent throughout pendency of the proceedings. Therefore, mere irregularity on the part of the tenant in payment of rent prior to filing of the suit does not *ipso facto* gives rise to a cause of action to the Plaintiff for filing and maintaining an ejectment action unless the landlord serves upon the tenant a demand notice

under section 15(2) of the MRC Act. The Trial and the Appellate Courts, in my view, have completely misdirected themselves in not appreciating the statutory scheme of section 15 of the MRC Act and have erroneously proceeded to decree the suit without having cosnidered whether there was any valid notice of demand or not.

24 The Trial and the Appellate Courts have further erred in holding that the Defendant did not avail the second opportunity of making good the default within 90 days of service of suit summons. If the suit itself was not maintainable, the Defendant was not required to make any deposit of rent in the Court.

25 In my view therefore, the Trial and the Appellate Courts have erred in upholding the ground of default in payment of rent.

26 Careful perusal of the findings recorded by the Trial and the Appellate Courts on the issue of Plaintiff's title would show that the issues in this regard are answered more to deal with the objection of maintainability of the suit raised by the Defendant. The Trial Court did not record the specific finding of consequences arising out of denial of Plaintiff's title by the Defendant. However the Appellate Court has held that the act of Defendant in disputing the title of the Plaintiff was not allowed under section 116 of the Evidence Act. However since Mr. Godbole has strenuously contended that the Defendant's act of denying Plaintiff's title itself is sufficient for ordering his eviction, it would be necessary to consider this aspect as well.

27 Defendant raised following pleadings in his Written Statement:

"2. With reference to paragraph No.1 of the Plaint on the Plaintiff's own showing he is one of the Landlord and owner of the suit property. It is submitted that the Plaintiff is not entitled to file the suit as one of the Co-owner of the suit property.

3. It can be seen from the Agreement of tenancy annexed to the Plaint the Plaintiff is not the owner at all. He has signed a Tenancy Agreement as Constituted Attorney of one Smt. Taradevi Ganesh Saxena. It is therefore, submitted that Smt. Taradevi Ganesh Saxena was the owner and landlady of the suit premises. The said Smt. Taradevi died leaving behind her (i) Mr. Avdesh Ganesh Prasad Saxena, (ii) Mr. Ramesh Ganesh Prasad Saxena. the Plaintiff abovenamed, (iii) Mr. Umesh Ganesh Saxena, (iv) Mr. Naresh Ganesh Prasad Saxena, (v) Smt. Usha Sunder Saxena, (vi) Smt. Asha Shiv Kumar Saxena, (vi) Smt. Usha Shrivastav, (viii) Smt. Neelam Dinesh Saxena, (ix) Mr. Abhijit Dinesh Saxena and (x) Mr. Abhishek Dinesh Saxena as her heirs and legal representatives. The Plaintiff has not mentioned in the Plaint that who are other Co-owners of the suit property and neither they have consented to the Plaintiff filing suit as one of the Co- owners alone.

4. It is submitted that Shri Shwetambar Murti Pujak Tapogachh Jain Sangh has purchased 37.5% share of the suit property from some of the heirs of deceased Smt. Taradevi Ganesh Saxena. Shri Shwetambar Murti Pujak Tapogachh Jain Sangh has not consented to the Plaintiff to file the above suit against the Defendant in his own name as one of the Co-owners. Infact, Shri Shwetambar Murti Pujak Tapogachh Jain Sangh is against filing the suit against the tenant i,e. the Defendant. It is therefore, submitted that the suit filed by the Plaintiff as one of the Co-owners as landlord is not maintainable in absence of consent of other Co-owners and objection from one of the Co-owners."

28 Thus Defendant clearly asserted in paragraph 2 of the Written Statement that "*he is one of the Landlord and owner of the suit property*". Again in paragraph 4 Defendant asserted that "*It is therefore, submitted that the suit filed by the Plaintiff as one of the Co-owners as landlord is not maintainable … ....*"

29 Thus Defendant clearly admitted the title of the Plaintiff. He only raised objection about maintainability of the suit on account of existence of other co-owners. Merely because Defendant raised

objection about maintainability of the suit for being filed by one of the co-owners, it cannot be contended that he questioned the title of the Plaintiff in any manner. I am therefore not impressed by the findings recorded by the Appellate Court that Defendant disputed the title of the Plaintiff in any manner.

30 The conspectus of the above discussion is that the Plaintiff has failed to make out even single valid ground for seeking ejectment of the Defendant in absence of a valid notice under provisions of section 15(2) of the MRC Act. The suit filed by the Plaintiff for eviction of the Defendant on the ground of default in payment of rent was not maintainable and ought to have been dismissed. Defendant has not disputed the title of the Plaintiff in any manner and accordingly provisions of section 116 of the Evidence Act would have no application to the present case. The Trial and the Appellate Courts have palpably erred in decreeing the suit filed by the Plaintiff. The jurisdiction has been exercised with material irregularity by not even framing the issue about issuance of valid demand notice. Therefore there is a warrant for exercise of revisional jurisdiction by this Court under section 115 of the Code.

31 Civil Revision Application accordingly succeeds and I proceed to pass the following order:

i) Judgment and decree dated 2 November 2023 passed by the Appellate Bench of Small Causes Court in Appeal No.19 of 2023 confirming the decree passed by the Small Causes Court on 20 April 2023 passed in RAE Suit No.438 of 2017 is set aside.

ii) RAE Suit No.438 of 2017 is dismissed.

iii) Plaintiff shall pay to the Defendant costs of Rs.25,000/-.

iv) The Revision Applicant/Defendant shall be entitled to withdraw the amount deposited towards interim compensation in pursuance of order dated 9 August 2023 passed by Appellate Bench of Small Causes Court alongwith accrued interest.

32 With the above directions, the Civil Revision Application is **allowed.**

(SANDEEP V. MARNE, J.)