

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 45 OF 2018**

Mr. Pradeep Laxmidas Thakker ... Applicant

vs.

Mr. Yogesh Jagjivandas Suchak and Ors ... Respondents

Ms. Nishtha Garg a/w. Mr. Krunal S. Thakkar for the Applicant.

Mr. Harsh Pathak a/w. Rajani Yadav i/b. Lex Firmus for the Respondents.

CORAM : GAURI GODSE, J.

DATED : 19th AUGUST 2026

ORDER:

VARSHA
VIJAY
RAJGURU

Digitally signed by
VARSHA VIJAY
RAJGURU
Date: 2026.08.24
20:23:08 +0530

1. This civil revision application is filed by the original defendant to challenge the concurrent judgments and decrees granting a decree for eviction directing the defendant to hand over possession of the suit premises. The eviction decree is passed on the ground of default and the defendant causing nuisance to the plaintiff and the neighbouring tenants.

2. Learned counsel for the applicant submits that demand notices were issued and there was correspondence between

the parties regarding issuing bills and receipts of payment. The demand notice dated 4th July 2001 was issued, and the defendant had issued two cheques. Thereafter, a demand notice dated 7th September 2002 was issued for permitted increases from December 2001. She submits that the suit summons was served on 26th July 2004, and the application for permission to deposit the demanded arrears was filed within 90 days of the service of the suit summons. She submits that the said application remained pending; however, after the order was passed on 4th August 2005, the arrears were deposited.

3. She also relies upon a subsequent application filed for clarification and modification of the earlier order. Pursuant to the second order dated 25th October 2005, the amount was deposited. She therefore submits that an attempt was made to tender the arrears in court within 90 days of the date of service of summons, and that, because the application was pending, the actual deposit could not be made within that period. However, in terms of the orders passed by the trial court, the amount of arrears with interest and costs was deposited by the defendant.

4. She also relies upon the chart annexed to the petition, to show that, as per the orders passed by the court, the monthly permitted increases were also regularly deposited by the defendant. She therefore submits that the decree on the ground of default could not have been passed when the defendant had paid the entire arrears demanded, with interest, and costs. To support her submissions, learned counsel for the applicant relies upon the decision of this court in ***Joseph Anthony (since deceased) through his legal heir Mrs Maizaben Anis Khan and Anr. v. Rukmini Krishna Turbhekar***¹. In the facts of the said case, within 90 days of service of summons, an application to tender the amount in court was filed. She submits that this Court has taken the view that the delay on the part of the learned judge in allowing the application would not cause any prejudice to the defendant. She thus submits that this Court has taken a view in the said decision that when the arrears and cost amount was paid after the order was belatedly passed, the tenant cannot be held liable to be evicted on the ground of default. She further submits that in view of the similar facts of the present case, the decree on the ground of default

1 2024 SCC Online Bom 251

would not be sustainable.

5. On the allegations of causing nuisance, she submits that both the courts have not correctly appreciated the evidence led by the defendant to show that the cause of nuisance pleaded by the plaintiff would not be satisfactory for eviction of the defendant. No evidence was led to support the allegations that fixing tiles without permission has caused nuisance as a ground for eviction. The second allegation of nuisance was in view of the installation of decorative lights in view of the marriage ceremony of the defendant's son. She submits that the defendant led evidence showing that the lights were immediately removed on the same day in response to the plaintiff's complaint. She therefore submits that even on the ground of nuisance the decree for eviction would not be sustainable. She therefore submits that the impugned judgments and decrees would warrant interference by this Court.

6. I have perused the papers of the petition. Both courts have concurrently held that the defendant has not satisfied the requirement to avoid the decree under Section 15 of the

Maharashtra Rent Control Act, 1999 (**'Rent Act'**). The trial court has considered the date of service of the summons and the applications filed by the defendant to tender the arrears in court. The correspondence exchanged between the parties, produced before the court, was also considered. As held by the trial court, the landlord demanded the arrears towards the permitted increases since December 2001. The demand notice dated 7th September 2002 was issued by the plaintiff demanding the arrears towards the permitted increases. Although the demand notice was served, neither was any reply filed nor was it complied with. Hence, another notice dated 8th March 2003 was issued, thereby demanding the permitted increases since 2001. Even the second notice was neither replied to nor complied with by the defendant. Hence, a suit for eviction was filed on 20th March 2004. As far as the applications for depositing the arrears towards permitted increases are concerned, both courts considered the filing of the application within 90 days from the date of service of the summons.

7. From the record produced before the court, the trial court held that the defendant failed to make payment towards

arrears, and considered the application moved by the defendant for permission to deposit the amount. The first order permitting the defendant to make the payment was dated 4th August 2005, granting a one-month time to pay the arrears of permitted increases, with interest, and to continue depositing the permitted increases on the 10th day of every month. However, the amount was not deposited within the time granted by the court. Thereafter, the second application was filed, and only after the order dated 25th October 2005 was the amount deposited by the defendant.

8. Non-compliance with the first order dated 4th August 2005 is an important factor in determining whether the defendant is a defaulter. The second application was filed after the expiry of the one-month time granted by the initial order. The second application is dated 25th October 2005. The ground argued on behalf of the applicant is that the second application was filed immediately after the certified copy of the first order was received. A perusal of the order passed on the said application dated 25th October 2005 records the plaintiff's objection. Hence, the application was allowed without prejudice to the

rights and contentions of the parties. Hence, the trial court held that there was a default in payment of the arrears of permitted increases, despite the court's order directing deposit of the amount within one month.

9. I have perused the application. I do not find any substance in the arguments raised on behalf of the applicant that the prayer for extension of time and modification of the order could not have been made before the expiry of the time granted by the court, as the certified copy of the application was made available only on 21st October 2005. A perusal of the endorsement on the order dated 4th August 2005 regarding application for certified copy shows that the application was made only on 26th August 2005. It is not the case of the defendant that he was unaware that one month's time was granted on 4th August 2005 to deposit the arrears. Another ground argued on behalf of the defendant is that it was necessary to file the application for a certified copy only because the registry refused to accept the amount without it.

10. A perusal of the second application dated 25th October 2005 raises a ground that since the judgment and order were

not ready and signed, the office was unable to accept the amount. Admittedly, the application for a certified copy was made only on 26th August 2005, and accordingly the certified copy was furnished on 25th October 2005. In such circumstances, the trial court, while granting an extension, allowed the application without prejudice to the rights and contentions of the parties. However, it appears that the grounds raised in the application for failure to comply with the order within time are not satisfactorily explained. Hence, based on the evidence on record, the trial court has refused to accept the deposits made by the defendant as due compliance to avoid the eviction decree on the ground of default.

11. The appeal court has confirmed the findings recorded by the trial court on the ground of default. I do not find any reason to interfere with the findings of fact in the absence of any explanation for not complying with the conditions contemplated under sub-section (3) of Section 15 of the Rent Act to avoid a decree of eviction on the ground of default.

12. In the decision of this court in the case of *Joseph Anthony*, relied upon by the learned counsel for the applicant,

the deposit of the arrears with interest and cost was made within the time granted by the court. Since the application was filed within 90 days as permitted by the court, this court accepted the defendant's contention that the delay in deciding the application would not prejudice the defendant; accordingly, the defendant was held not to be in default. So far as the issue under sub-section (3) of Section 15 is concerned, the said decision does not lay down any binding precedent that merely filing an application within 90 days is sufficient to avoid a decree for eviction despite non-compliance with the requirement of sub-section (3) of Section 15 of the Rent Act. Sub-section (3) of Section 15 of the Rent Act reads as under:

“15(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.”

13. It is a well-established legal principle that to avoid a decree of eviction on the ground of default, the tenant is under an obligation to make payment or tender the amount in the court of the standard rent and the permitted increases or demanded amount that is due together with simple interest at the rate of 15% per annum and continue to pay or tender in court the standard rent or permitted increases. Thus, tendering the amount in court is one option to comply with the demand for arrears. Hence, in the absence of any case made out that the tenant had attempted to pay the amount to the landlord, and he was required to tender the amount in court only upon the landlord's refusal, the submissions made by relying upon the said decision that once an application is filed for tendering the amount, the defendant cannot be held to be in arrears cannot be accepted. The observations by this court in the decision of *Joseph Anthony* are on the facts of the said case. Hence, the observations made by the court in the facts of the said case would not be of any assistance to the arguments made on behalf of the applicant in the present case. Hence, I do not see any reason to interfere with the impugned judgment and decree of eviction on the ground of default.

14. So far as the ground of nuisance is concerned, both the courts have elaborately discussed the evidence on record. The allegation of fixing tiles and decorative lights without permission is not the only allegation of causing nuisance. Both courts have exhaustively dealt with the allegations and the evidence that the plaintiff was required to file the police complaint in view of the defendant's conduct. The plaintiff has also relied upon the photographs to support the allegation of nuisance. The evidence led by the defendant's son is not accepted as convincing evidence to rebut the evidence led on behalf of the plaintiff in support of the allegations of nuisance. The threats made by the defendant to the plaintiff are also considered by both courts, which hold that the defendant was unable to produce any satisfactory evidence that the water supply was at any time cut by the plaintiff, and that the plaintiff filed a false complaint. The defendant's conduct of filing a police complaint against the plaintiffs, making false allegations, is also considered one of the factors in creating a nuisance. Thus, in view of the evidence led on behalf of the plaintiff to prove the allegations regarding the defendant's conduct of causing nuisance, it is accepted by both the courts as sufficient

evidence to hold that the landlord was entitled to a decree of eviction even on the ground of nuisance caused by the defendant.

15. Considering the well-settled legal principle on the allegations of nuisance as discussed by the trial court, even the ground of eviction pleaded on the allegations of nuisance is accepted by both the courts. The findings of the appeal court confirm the trial court's findings on default and nuisance. Both courts, after referring to well-established legal principles, have accepted the grounds of default and nuisance to grant the decree for eviction. The nuisance, wastage and damage caused to the suit premises is therefore accepted in view of the satisfactory evidence produced by the plaintiff. The evidence led through the defendant's son is disbelieved by both courts as insufficient to rebut the evidence led on behalf of the plaintiff. In view of the concurrent findings of fact recorded by both the courts, which are based on the appreciation of the entire evidence in detail, I do not see any reason to interfere with the impugned judgment and decree.

16. I do not find any jurisdictional error or any manifest error

in the reasons recorded in the impugned judgments warranting any interference in exercising power under Section 115 of the Civil Procedure Code, 1980. The civil revision application is devoid of any merits.

17. Hence, the civil revision application is dismissed.

18. At this stage, learned counsel for the applicant seeks a stay of the implementation of the decree for twelve weeks. I do not see any reason to grant a stay for twelve weeks. However, to enable the applicant to approach the higher court, the implementation of the eviction decree shall remain stayed for a period of six weeks from the date of uploading of this order on the official website, subject to the applicant filing an undertaking to this court on usual terms. The undertaking shall be filed on behalf of the applicant and all the adult members residing along with the applicant. The undertaking shall state that if favourable order is not passed by the Apex Court, the possession of the suit premises shall be handed over to the respondents(plaintiffs) within two weeks from the expiry of the period of stay granted by this order, the arrears, if any, and the amount of monthly rent and permitted increases in the form of

compensation shall be deposited in this court, no third-party rights shall be created, and possession shall not be parted in favour of any third party. The affidavit shall also state the particulars of the persons occupying the premises, and the affidavit-cum-undertaking must be filed on behalf of those persons. The said affidavit shall be filed within two weeks from the date of uploading this order on the official website.

19. It is clarified that if the affidavit-cum-undertaking is not filed within the time granted or there is any breach of the undertaking, the protection granted by this court shall stand vacated. A copy of the affidavit-cum-undertaking shall be served upon the learned advocate for the respondent.

(GAURI GODSE, J.)