

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 163 OF 2009

Vajinath Gundappa Teli
Since deceased through his L.Rs.
1-A. Shivshankar Vajinath Kshirsagar
(Teli) and another .. Petitioners

Versus

Balmukund Babulal Baldawa
Died through his L.Rs.
1. Shantabai W/o Balmukund Baldawa
and others .. Respondents

Shri S. S. Halkude, Advocate for Petitioners.
Shri Milind Patil, Advocate for Respondents.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 20TH AUGUST, 2015.**

PER COURT :

. The present respondent/landlord has filed a suit for recovery of arrears of rent. The tenancy is yearly tenancy, wherein the rent was paid on Diwali of each year. The rent was Rs. 10,800/- at the relevant time. In the suit the landlord/plaintiff has claimed rent for the years 2001 to 2003. The Trial Court dismissed the suit. The plaintiff filed an appeal. The Appellate Court allowed the appeal. Aggrieved thereby the present revision.

2. Mr. Halkude, the learned counsel for the petitioner/tenant submits that, the tenant is not a defaulter. In fact, tenant had issued a notice to the plaintiff calling upon the plaintiff to pass on the receipts of the rent which the defendant has already paid in the year 2001 to 2003 and along with the notice the defendant had also issued cheque for the rent of six months which was paid on the date of that notice. The cheque was not encashed by the plaintiff. The oral evidence is led before the Trial Court. The Trial Court upon appreciation of the evidence has come to the correct conclusion and accepted the case of the defendant that the defendant has paid the rent. However, the plaintiff could not prove otherwise. The Appellate Court did not consider the reasonings and the appreciation of evidence on the part of the Trial Court and allowed the appeal decreeing suit of the plaintiff for recovery. According to the learned counsel, the Appellate Court has not considered the conduct of the plaintiff. The Trial Court had considered and concluded that, the conduct and evidence of the defendant inspires confidence and rightly dismissed the suit.

3. Mr. Patil, the learned counsel for respondent/plaintiff submits that, the plaintiff had replied the notice issued by the defendant stating that no rent amount is paid from 2001 onwards. Even cheque is not issued. Even the defendant in his evidence was not certain as to who had signed the cheque, which

was said to have been issued by the defendant along with the notice. The Appellate Court considered the said aspect. The defendant has not discharged the burden of proof that the rent from the year 2001 has been paid. Whenever rent is paid by the defendant, plaintiff has issued the receipts of the same.

4. With the assistance of learned counsel I have gone through the judgment, evidence and the pleadings. No doubt, Trial Court had dismissed the suit for recovery. However, the Appellate Court re-appreciated the whole evidence being a first appellate Court. It was the duty of the first appellate Court to re-appreciate the whole evidence. It is observed by the lower Appellate Court that, the defendant could not prove the payment of rent from the year 2001. It would appear that in the notice the defendant had referred to the name of one Mr. Ramkrushna in whose presence the defendant is said to have paid the rent. However, the said person is not examined. No reason is forthcoming for not examining the said person. There was no reason to withhold the best witness. The defendant had taken over the burden upon himself. The said burden has not been discharged on the touch stone of the principle of preponderance. This Court in its revisional jurisdiction would not re-appreciate the whole evidence, unless it is shown that the appreciation of evidence at the hands of Courts below is perverse.

5. Considering appreciation of the evidence on the part of the District Court, I do not find any illegality in the same. In the light of that, the civil revision application is dismissed. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Aug. 15