

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

CIVIL REVISION APPLICATION NO. 51 OF 2013

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 respondent/landlord had filed suit for eviction against the tenant on the ground of default. The Trial Court decreed the suit. Aggrieved thereby the defendant/tenant filed an appeal before the District Court. The District Court dismissed the appeal. Against the said concurrent findings the tenant has filed the present revision.

2. Mr. Halkude the learned counsel for the petitioner submits

that, the tenant is not a defaulter. Even application is filed for deposit of rent before the Court. The same is not considered. The defendant has paid the rent to the plaintiff regularly, but it is the plaintiff who has not issued rent receipts. The plaintiff cannot take advantage of his own wrong. This aspect has not been considered. The dates and time are not required to be calculated with mathematical precision.

3. Mr. Patil, the learned counsel for the respondent/landlord supports the judgment.

4. With the assistance of learned counsel I have considered the judgment of both the Courts below. In separate judgment, I have upheld the judgment of the District Court decreeing the suit of the plaintiff/landlord against the tenant for arrears of rent. It is proved that the defendant was in arrears of rent. As per Sec. 15 of the Maharashtra Rent Control Act the landlord had issued notice to the defendant on 30th September 2006. The same is received by the defendant. The rent is not paid within ninety days of the receipt of the notice. Even the said amount is not deposited on first date of hearing along with interest at the rate of 15% per annum.

5. The default of the tenant is already proved in the proceedings which have culminated in Civil Revision Application

No. 163 of 2009. Both the Courts below have concurrently appreciated the fact of defendant being defaulter. In the light of that, there is no merit in the civil revision application. The civil revision application is dismissed, however, with no order as to costs.

6. At this stage Mr. Halkude, the learned counsel for the petitioner seeks time for vacating the suit premises. Mr. Patil, the learned counsel for the respondents opposes the said request on the ground that since 15 years the said shop is closed.

7. Considering the fact that, it is a business premises and till today the stay was operating, I am inclined to grant time of six (6) months to petitioners to vacate the suit premises on condition that the petitioners/tenant file an undertaking to this Court that the petitioners would vacate the suit premises on or before 20.02.2016. So also shall further undertake not to create any third party interest in the suit property and shall pay the rent/damages regularly. The undertaking shall be filed within a period of three (3) weeks from today.

[S. V. GANGAPURWALA, J.]