

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.596 OF 2013

Shripal Chunilal Chowdree : Applicant.
Versus
Ajay Dalsukhlal Goradia and anr. : Respondents.

Mr. P M Shah a/w Mr. M K Tanna and Mr. Ankur Kalal for the Applicant.
Mr. A R Rana i/by Ms. Kamini K Rana for the Respondents.

CORAM : R. M. SAVANT, J.
DATE : 17th November 2015

P.C.

1 The revisionary jurisdiction of this Court is invoked against the order dated 4/4/2013 passed by the Appellate Bench of the Small Causes Court, Mumbai by which order the Revision Application filed by the Applicant herein came to be partly allowed and the order fixing the standard rent passed by the Trial Court came to be modified in terms of the operative part of the impugned order.

2 The Applicant herein is the proponent of the application being RAN No.94/SR of 2000 filed for fixation of the standard rent in respect of a premises which is a gala used for commercial purposes in the property in question which is the ownership of the Respondents landlords. The cause for filing of the said application was the demand notice dated 19/08/1999 issued by the Respondents landlords calling upon the Applicant to pay rent in terms of

the demand made therein which is in the following terms :-

- i] Rent from 1st January, 1999 to 31st July, 1999 Rs.1039.25 ps.
- ii] Property tax from 1st April, 1998 to 31st December, 1998 Rs.169.70 ps.
- iii] Repair cess from 1st October, 1998 to 31st December, 1998 Rs.310.80 ps.

3 The said demand notice was replied to on behalf of the Applicant and the liability of the Application to pay the demanded amounts was denied. The Applicant alluded in the said reply to the certified copy of the inspection extract in respect of the property in question for the year 1998-99 as also the certified copies of the inspection extracts for the anterior periods i.e. 1994-95, 1997-98 and 1998-99 and it was the case of the Applicant that having regard to the said inspection extracts the demand made by the landlords was excessive. It was also the case of the Applicant that the building in question was repaired by the Bombay Building Repairs and Reconstruction Board for which it was the case of the Applicant that the Applicant and other tenants have contributed. The Applicant also referred to certain alleged unauthorized construction carried out by the Respondents landlords in the larger premises which according to him had an effect on the rateable value of the property in question. It appears that the Respondents landlords have also filed a suit pursuant to the notice of demand which was made under Section 12(2) of the said Act which as indicated above is dated 19/08/1999.

4 The said application filed for fixation of standard rent proceeded to trial. It seems that the Applicant examined himself and also examined the official of the Bombay Municipal Corporation one Shri Shivaji Kamble. Through the said officer the inspection extracts as also the repair cess bills were got proved and they were marked as exhibits. The Trial Court on the basis of the material on record fixed the standard rent for the year 2000 to 2010 starting from 198.50 ps per month to Rs.294.50 ps per month. However, whilst calculating the repair cess and the permitted increases the Trial Court went on by inspection extracts wherein the rent mentioned was Rs.549.75 ps. and on the said basis calculated the permitted increases and repair cess that is payable by the Applicant. The Trial Court did not countenance the submission made on behalf of the Applicant that since the application was pertaining to fixation of the standard rent, the Trial Court could not go into the aspect of fixation of permitted increases and repair cess. The Trial Court as indicated above, in terms of the rent which was mentioned in the inspection extracts determined the permitted increases as also the repair cess for the period which can be seen from the operative part of the order passed by the Trial Court and especially clauses (4) and (5) thereof and directed the Respondents landlords to inform the B.M.C. about fixation of standard rent and get the bills of property taxes and repair cess revised by redetermining the rateable value of the application premises on the basis of standard rent fixed as above.

5 The order dated 14/12/2010 passed by the Trial Court i.e. the learned Judge of the Small Causes Court, Mumbai was taken exception to by the Applicant-tenant by filing Revision Application being Revision No.95 of 2011 before the Appellate Bench of the Small Causes Court, Mumbai who heard the said Revision Application. The contention that the permitted increases and the repair cess which have been fixed are excessive in nature was urged on behalf of the Applicant. It was also urged on behalf of the Applicant that in an application filed for fixation of standard rent, the Trial Court could not have ventured to fix permitted increases and the repair cess. In so far as 2nd aspect i.e. fixation of permitted increases and the repair cess is concerned, the Appellate Bench observed that since by the demand notice, the landlords apart from the rent had also sought the payment of permitted increases and the repair cess, the Trial Court was entitled to go into the said aspect whilst fixing the standard rent. What has weighed with the Appellate Bench was the fact that the said permitted increases and the repair cess have a nexus with the standard rent that is required to be fixed pursuant to the application filed by the Applicant-tenant.

6 In so far as the first submission of the learned counsel for the Applicant that the permitted increases and the repair cess that have been fixed are excessive in nature is concerned, the Appellate Bench of the Small Causes

Court whilst exercising the revisionary jurisdiction held that the Trial Court has erred in relying upon the rent mentioned in the inspection extracts when it had fixed standard rent from Rs.198.50 ps. pm to Rs.294.50 ps. pm. for the years from 2000 to 2010 and it is on the said basis that the permitted increases and repair cess were required to be fixed. The Appellate Bench thereafter has taken into consideration the taxes that are leviable on the property in question and it is on the said basis it has calculated the permitted increases and the repair cess. The Appellate Bench has also taken into consideration the amount of the standard rent fixed by the Trial Court whilst computing the rateable value for the property in question which in turn has a nexus with the amount to be fixed for permitted increases and the repair cess. A reading of the impugned order passed by the Appellate Bench therefore discloses that the Appellate Bench has carried out an elaborate exercise and has taken into consideration all the relevant factors whilst fixing the permitted increases and the repair cess. As indicated above, the Appellate Bench has by the impugned order modified the order passed by the Trial Court in so far as the fixation of the permitted increases and the repair cess is concerned and in fact has fixed them at a lower rate.

7 The learned counsel appearing on behalf of the Applicant-tenant would seek to reiterate the grounds urged on behalf of the Applicant before the Trial Court. The endeavour of the learned counsel was to question the findings

recorded by the Appellate Bench in so far as fixation of permitted increases and the repair cess is concerned. It is required to be noted that the standard rent has been fixed on account of the application filed by the Applicant and the logical corollary to the same would be to fix the permitted increases and the repair cess in respect of the premises in question.

8 As indicated above the Appellate Bench has found fault with the manner in which the said two aspects were considered by the Trial Court and has therefore modified the order passed by the Trial Court. In my view, the orders passed by the Appellate Bench cannot be said to suffer from any error of jurisdiction committed by it in the matter of fixing the standard rent, permitted increases and the repair cess. No case for interference in the revisionary jurisdiction of this Court is therefore made out. The above Civil Revision Application is accordingly dismissed.

[R.M.SAVANT, J]