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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 819 OF 2014**

Khadi & Villages Industries Commission and anr.Applicants
versus
Smt. Jeroo Porus Karai AdultRespondent

Mr. S. S. Dubey, learned counsel for the applicants.
Mr. V. A. Thorat, senior counsel with Ms.Prachi Tatake i/b. Mr. K. Y.
Mandlik, advocate for the respondent.

**CORAM : RANJIT MORE, J.
DATED : 20th January, 2015.
(In Chambers)**

P.C.:

Heard Mr. Dubey, learned counsel for the applicants and
Mr. Thorat, learned senior counsel for the respondent.

2. By this revision under Section 115 of the Code of Civil Procedure, 1908, the applicants are challenging the concurrent decree of eviction passed under Bombay Rent Act. The eviction decree is passed on the ground that the applicants have erected permanent structures on the suit premises without the consent of respondent-landlady and secondly, the respondent requires the suit premises reasonably and bona-fide for her own occupation.

3. So far as ground of erection of permanent structures is concerned, the evidence lead by the applicants' witnesses itself shows that they had demolished the entire structure on V.P. Nos.324 and 325 and erected new pucca structures on the said place, that too, without the permission of respondent-landlady or the gram panchayat. As far as the

ground of *bona fide* requirement is concerned, the lower Courts below relied upon the decision of the Apex Court in **Michael Anthony William Gareth versus Mrs. Maria Do Rosario Da Fatima 2014(2) A.B.R.281** and held that the landlady is the best judge of her residential requirement and ultimately recorded the finding that the respondent-landlady is in *bona fide* need and requirement of the suit premises. The issue regarding comparative hardship was also held in favour of the respondent-landlady. While recording the finding on this issue, the lower Courts below found that the applicants have taken premises of Mr.Rajesh Mukane on lease at Dahanu and these premises are double the size of the suit premises. The lower Courts below also found that the activities of the applicant No.1 has been reduced day by day. The lower Courts below ultimately held that the comparative hardship would not be caused to the applicants if decree of eviction is passed. The above findings of facts are recorded on the basis of evidence on record. I do not see any error in the said findings so as to enable this Court to exercise the jurisdiction conferred upon it under Section 115 of the Code of Criminal Procedure, 1908.

4. Learned counsel for the applicants submitted that the decree of future mesne profits could not have been granted in favour of the respondent-landlady in the absence of pleading to that effect. I have perused the plaint. The prayers made by the respondent are at page 26. By relief claimed under prayer clause (b), the respondent has prayed for future mesne profits. The trial Court, by its decree, ordered inquiry into future mesne profits under the provisions of Order XX Rule 12 of the Code of Civil Procedure, 1908. The grant of relief of future mesne profits is not challenged specifically by the applicants before the lower appellate Court. The applicants, in this regard, relied upon the decision of the Apex Court in the case of **Ganapati Madhav Sawant(Dead) Through His Lrs. Versus Dattur Madhav Sawant (2008) 3 SCC 183** and decision of

learned Single Judge of this Court in **Shankar s/o. Manikrao Waghmare and anr. Versus Bhaurao s/o.Bapurao Waghmare 2012(3) Mh.L.J.134.** Ratios of both the decisions are not applicable to the facts and circumstances of the present case, inasmuch as in those cases, there was no prayer for future mesne profits. In the present case, there is a specific prayer and, therefore, same is rightly granted. Learned counsel submitted that the applicants are non-profit making institutions and, therefore, mesne profits should not be granted. The applicants are always at liberty to raise this defense in the inquiry that may be conducted under the provisions of Order XX Rule 12 of the Code of Civil Procedure, 1908.

4. Taking overall facts and circumstances into consideration, I do not find any merit in the revision and same is, accordingly, dismissed.

(RANJIT MORE, J.)