

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 590 OF 2015**

Vasant M Risbud (deceased) through LRs & Ors. ..Applicants

Vs.

Sharad M Risbud (deceased) through LRs & Ors. ..Respondents

Mr. Indrajeet Kulkarni for the Applicants

Mr. R. A. Thorat Senior Advocate with Mr. S. R. Pawar for the Respondents

CORAM : R. M. SAVANT, J.

DATE : 18th NOVEMBER, 2015

PC.

1 The Revisionary Jurisdiction of this Court is invoked against the order dated 30-1-2013 passed by the Learned District Judge-6, Thane by which order, the Appeal being Civil Appeal No.95 of 2011 filed by the Applicants came to be dismissed and resultantly the decree dated 29-10-2010 passed by the Trial Court for eviction on the ground of arrears of rent came to be confirmed.

2 There is therefore a concurrent finding recorded by the courts below in respect of the ground of arrears of rent on the basis of which the decree in question has been passed against the original Defendant. The Applicants are heirs of the Original Defendant who was put in occupation of the suit premises pursuant to the agreement which was executed in between the parties which agreement is dated 30-9-1986 (wrongly referred to as 1987

in the order). The said agreement contemplates the payment of rent by the Defendant. The Defendant was put in possession of the suit premises and thereafter defaulted in payment of rent which was payable to the Respondents in terms of the said agreement. The Defendant was therefore issued a notice dated 18-2-1999 by the original Plaintiff/Landlord claiming an amount of Rs.21,300.60 paise as arrears of rent from the year 1980. The Respondents are the heirs of the original landlord. In spite of the said notice, the Defendant did not comply with the same neither did the Defendant file any application for fixation of standard rent or fixation of quantum of monthly rent nor has deposited the amount of rent claimed before the first date of hearing of the Suit. It is much later that is sometime in March 2008 that the Defendant filed an application for fixation of standard rent. The said application was rejected by the Trial Court by order dated 24-4-2008. The challenge to the said order also resulted in failure, in as much as the Writ Petition filed by the Defendant was dismissed by this court.

3 It is having regard to the aforesaid facts that both the Courts below have reached a conclusion that the original Defendant has defaulted in the payment of rent and therefore is liable to be evicted on the ground of default in payment of rent. The courts below have also referred to the judgment of a Learned Single Judge of this court in the matter of **Karamch Deoji Sanghavi Vs. Tulshiram Kalu Kumawat**¹ which is an exposition of this

1 1992 Bom R.C. 395

Court in so far as Section 12 of the Bombay Rent Act is concerned. The Learned Single Judge has observed that a statutory right is created in favour of the landlord if the tenant fails to pay all the arrears within the said period and that in such a case no discretion is left with the court if it is proved that the requirements of sub-section (2) or (3) have not been complied with and the Court has to pass a decree. In the said judgment a reference is made to the Judgment of the Apex Court in the matter of **Bombay Dyeing and Manufacturing Company Ltd. Vs. The State of Bombay & Ors.**², wherein the Apex court has held that when a debt becomes time barred, it does not become extinguished but only unenforceable in a Court of law. The Apex Court further observed that the modes in which an obligation under a contract becomes discharged are well defined and the bar of limitation is not one of them. The Apex Court observed that though remedy may be barred, the right is not extinguished. This observations were made by the Apex Court in the context of the proposition put forward that the amount claimed was time barred.

4 In the light of the concurrent orders of the courts below, no case for interference in the Revisionary Jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

5 At this stage, the Learned Counsel for the Applicants applies for stay of the execution of the decree. It is required to be noted that the

2 AIR 1958 SC 328

Applicants have not paid the rent till date though by the notice dated 18-2-1999 an amount of Rs.21,300.60 paise was claimed which was an amount due from the year 1980. The Learned Counsel for the Applicants is also not in a position to make a statement as to whether the Applicants are ready to deposit the entire arrears with the Respondents/Landlords. In view thereof, no indulgence can be shown to the Applicants. The said prayer is therefore rejected.

[R.M.SAVANT, J]