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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.372 OF 2014

Ashok Mahipati Dalvi ..Applicant.

V/s.

Arya Kshatriya Samaj, Kolhapur ..Respondent.

Ms.Shakuntala Mudbidri for the Applicant.

Mr.Pankaj Das for Respondent No.1.

CORAM : N.M.JAMDAR, J.

DATED : 19 DECEMBER, 2016

PC. :-

The Applicant has challenged the concurrent judgment and orders passed by the learned Civil Judge J.D., Kolhapur and the learned District Judge, Kolhapur whereby the suit filed by the Respondent-landlord bearing R.C.S. No.4/1998 was decreed and the appeal filed by the Applicant bearing Civil Appeal No.241/2008 was dismissed. The decree has been passed against the Applicant on the ground of default in payment of rent. Both the Courts below have rendered a concurrent findings that the Applicant is in arrears of rent.

2. Heard the learned counsel for the parties. The learned counsel for the Applicant firstly submits that the notice of demand issued by the Respondent-landlord has not been duly proved in the evidence. It was submitted that since the notice was not duly proved, the suit invoking the provisions of section 12 of the Maharashtra Rent Control Act, 1999 could not have been filed. This submission was advanced in the Courts below as well. The Applicant has not only responded to the notice but has attached a demand draft of the rent to be paid. Having replied and partly complied with the notice, there is no question of now taking up the contention that the notice was not validly served or its contents were not proved.

3. It was then contended that the order fixing the standard rent at Rs.15/- per month by the competent Court could not have been revised by the Court by a subsequent order dated 30 September, 1992 to Rs.125/- per month and such order, not being in consonance with the provisions of law, was illegal. It was submitted that when the present suit was proceeded, the Revision against the order dated 30 September, 1992 was pending. It was also submitted that the Applicant had paid the amount at Rs.15/- per month and the Applicant was bonafide pursuing the Revision. The learned counsel for the Respondent, on the other hand, pointed out that the Revision Application against fixing the standard rent at Rs.125/- was initially dismissed as abated and subsequently restored. The learned counsel for the Respondent-landlord contended that nothing stopped the Applicant from

seeking liberty of the Court to pay the amount of standard rent at Rs.15/ per month by seeking an interim order.

4. The Applicant could not have simply ignored the order fixing the standard rent at Rs.125/- per month. The order fixing the standard rent at Rs.125/- per month had become final and, therefore, the finding of fact recorded by both the Courts that the Applicant was in arrears of rent, having not paid the dues at the rate of Rs.125/- per month, cannot be stated to be perverse, illegal or without jurisdiction so as to warrant interference under section 115 of the Civil Procedure Code. In the circumstances, there is no merit in the Revision Application. The Revision Application is accordingly rejected.

5. At this stage, the learned counsel for the Applicant seeks protection for a period of 10 weeks. This request is granted subject to the Applicant filing an affidavit / undertaking of himself and his family members who are residing with him that they will not create any third party rights or part with the possession. The affidavit / undertaking will be filed on or before 6 January, 2017. Subject to the filing of this undertaking in the above mentioned period, the impugned judgment and decree will not be executed for a period of 10 weeks from today.

(N.M.JAMDAR, J.)