

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

CIVIL REVISION APPLICATION NO.690 OF 2014

Smt. Indrarani Uggarsen

Through her constituted attorney

Sandeep Uggarsen Nandlal Bharadwaj

: Petitioner.

Versus

Parasnath Lalji

: Respondent.

Mr. P J Thorat for the petitioner.

Respondent in person present.

CORAM : R. M. SAVANT, J.

DATE : 03rd February 2016

P.C.

1 The revisionary jurisdiction of this Court is invoked against the judgment and order dated 21/01/2014 passed by the Appellate Bench, Small Causes Court, Mumbai by which the Appeal filed by the Petitioner came to be dismissed and resultantly, the judgment and order dated 24/08/2001 passed by the Trial Court dismissing the suit came to be confirmed.

2 The Petitioner herein is the original Plaintiff and the Respondent herein is the original Defendant in the suit filed for eviction by the Petitioner being RAE & R Suit No.585/2222 of 1982. The said suit was founded on the ground of arrears of rent for the period commencing 1/9/1974. The said suit was preceded by the notice dated 17/05/1979 calling upon the Defendant to pay arrears of rent from 1/9/1974. It appears that the Plaintiff had earlier

filed RAE & R Suit No.485 of 1975 seeking eviction of the Defendant on the ground of nuisance. It appears that in the said suit the Defendant had filed an application that he may be permitted to deposit the rent. The Defendant was permitted to do so and accordingly deposited Rs.1688.05 ps. Thereafter the Plaintiff has filed the instant suit seeking eviction of the Defendant on the ground of arrears of rent. It seems that in the earlier suit i.e. RAE & R Suit No.485 of 1975 , the Plaintiff, after the dismissal of the application for fixation of standard rent, had filed another application for fixation of standard rent in which an order came to be passed permitting the Defendant to deposit the rent at the rate of Rs.25/- per month sometime in the year 1979. It appears that in terms of the interim standard rent which was fixed at Rs.25/- per month the Defendant has deposited various amounts in the said RAE & R Suit No.485 of 1975 and has deposited such arrears amounting to Rs.1150/- for the period May 1979 to January 1983 as reflected in the order passed by the Appellate Bench of the Small Causes Court, Mumbai. The said order records that the Defendant had deposited Rs.1688.05 in the said RAE & R Suit No.485 of 1975 which was for the period from December 1974 to April 1979, and had sent money order for the month of October and November 1974 which was not accepted by the Plaintiff. In the present suit also the Defendant had deposited Rs.654.30 ps as per the orders passed by the Trial Court. The Trial Court as well as the Appellate Bench of the Small Causes Court, Mumbai had recorded that the aforesaid facts clearly show that the Defendant was not in arrears of

rent and that the Defendant was always ready and willing to pay the standard rent and permitted increases as demanded by the Plaintiff. The Trial Court as well as the Appellate Bench of the Small Causes Court, Mumbai has therefore negated the contention of the Plaintiff that the Defendant was in arrears of rent for more than 6 months. The Courts below also recorded a finding that on account of the deposits made by the Defendant, he could not be said to be in arrears of rent for more than 6 months and therefore the Defendant cannot be termed as a “defaulter”. The Appellate Bench of the Small Causes Court in dismissing the Appeal has thereby endorsed the finding of fact recorded by the Trial Court as regards the aspect as to whether the Defendant was in arrears of rent.

3 The learned counsel for the Petitioner seeks to place reliance on the judgment of the Apex Court in the matter of *Mistry Premjibhai Vithaldas v/s. Ganeshbhai Keshavji* reported in *(1977) 3 SCC 11*. In the said case the application filed by the tenant for fixation of standard rent came to be dismissed for non-prosecution and it is in the context of non-prosecution of the said application that the Apex Court held that the Defendant was obliged to deposit the rent at the agreed rate and having not done so, the decree of eviction would necessarily have to follow. The said judgment is sought to be relied upon as in the instant case also the application for fixation of standard rent was dismissed for non-prosecution. However, the distinguishing factor in

the instant case is that the Defendant has deposited the amounts pursuant to the permission granted in the earlier suit and thereafter on the basis of the interim standard rent, which deposits have been adverted to herein-above. The Defendant has also made deposits for the period even prior to the issuance of the notice dated 17/5/1979 and covering the notice period. Hence this is not a case where there was no interim standard rent fixed or case where the tenant has not deposited a single farthing. Both the Courts below have also recorded the Defendant's readiness and willingness to pay the rent and permitted increases. The judgment in *Mistry Premjibhai Vithaldas'* case (supra) therefore does not further the case of the Petitioner/Landlord in so far as the said ground of arrears of rent is concerned.

4 Having heard the learned counsel for the Petitioner and the Respondent in person and having regard to the finding of fact recorded by the Courts below, no case for exercise of the revisionary jurisdiction of this Court is made out. The above Civil Revision Application is accordingly dismissed.

[R.M.SAVANT, J]