

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO.22846 OF 2015**

Rajnikant Jairambhai Tank

..Petitioner

Vs.

Suchita Prakash Daga

..Respondent

Mr. Himanshu Kode for the Petitioner

**CORAM : R. M. SAVANT, J.
DATE : 4th FEBRUARY, 2016**

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 7-3-2015, passed by the Learned Principal District Judge, Pune, by which order, the Appeal in question being Civil Appeal No.1019 of 2012 came to be allowed and resultantly the judgment and order dated 2-11-2009 passed by the Trial Court i.e. 2nd Additional Judge, Small Causes Court, Pune, came to be set aside.

2 The Suit in question being Regular Civil Suit No.122 of 2009 is founded on the ground of arrears of rent and was therefore preceded by the notice issued by the Plaintiff dated 19-2-2009. By the said notice, the Plaintiff called upon the Defendant to pay the arrears of rent and electricity charges in the sum of Rs.39,360/-. The said notice was replied to on behalf of the Defendant and the Defendant disputed that the rent was Rs.2500/- per month.

The parties proceeded to trial. It seems that the matter proceeded *ex parte* against the Defendant and resulted in the decree dated 2-11-2009 being passed against the Defendant. The Trial Court recorded a finding that the Defendant was in default of the payment of rent prior to 6 months of issuance of the notice.

3 The Defendant carried the matter in Appeal by way of Civil Appeal No.1019 of 2012. The Lower Appellate Court as indicated above has by the impugned order dated 7-3-2015 has set aside the order passed by the Trial Court dated 2-11-2009. The decree has been principally set aside on the ground that the Suit in question was filed in breach of Section 15(2) of the Maharashtra Rent Control Act, 1999. The said provisions postulates that the Suit could be filed after a period of 90 days has elapsed of the Defendant receiving notice. In the instant Suit, the Appellate Court has observed that though the Defendant had received the notice around February 2009, the Suit filed as on 23-3-2009 was prior to the said 90 days period coming to an end. The Lower Appellate Court therefore observed that the Suit itself was not maintainable. The Lower Appellate Court has also recorded a finding that the Trial Court has erred in accepting the case of the Plaintiff when the Plaintiff has not placed any cogent material on record to show that the Defendant was in arrears of rent from 1-3-2008 to January 2009 and that the rent was fixed at Rs.2500/- per month.. However, the Lower Appellate Court has principally

found fault with the filing of the Suit prior to the period of 90 days getting over and has therefore set aside the decree passed by the Trial Court.

4 In my view, having regard to the mandate of Section 15(2) of the Maharashtra Rent Control Act, 1999, the said finding of the Lower Appellate Court cannot be found fault with. No case for exercise of the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]