

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

REVIEW PETITION NO.154 OF 2015

IN

WRIT PETITION NO.6841 OF 2014

M/s. Lokmanya Sahakari Bhandari Ltd.

.. Review Petitioner

IN THE MATTER BETWEEN

M/s. Lokmanya Sahakari Bhandari Ltd.

.. Petitioner

Versus

Morarji Hariram

(Since deceased through legal heirs)

Nirmalaben Morarji Thakkar and others

.. Respondents

Mr. K. U. Nikam, for the Petitioner.

Mr. Neel G. Helekar, for the Respondent No.1.

Mr. Shailesh Thakkar, Respondent No.2 present.

CORAM : R.M. SAVANT, J.

DATE : 6th JANUARY 2016

PC.

1. By the above Review Petition, review of the order dated 17.11.2015 passed in the above Writ Petition is sought. The review is sought on the ground that this Court whilst dismissing the above Petition has proceeded on a premise that the order dated 23.09.2003 passed by the Trial Court directing the Petitioner to deposit the amount of Rs.83579.03 and monthly amount towards rent of Rs.1041.36 was not complied with

by the Petitioner. This Court had proceeded on the said premise in view of the order passed by the Trial Court and the finding recorded by the Appellate Bench of the Small Causes Court. The Appellate Bench of the Small Causes Court had refused to remand the matter back to the Trial Court on the ground that no useful purpose would be served in remanding the matter back to the Trial Court as the Petitioners who are the original Defendants have not complied with the order dated 23.09.2003 in the matter of depositing the said amount of Rs.83579.03. This recording of the Appellate Bench of the Small Causes Court according to the Review Petitioner is erroneous as the Petitioner has deposited the said amount on 27.11.2003 and thereafter has deposited in advance the rent from January 2004 to December 2007 by the payments made which have been shown in the table appearing below paragraph 4 of the Review Petition. The factum of deposit of the said amount by the Petitioner is not disputed by the Learned Counsel for the Respondents i.e. landlords. However, it is the contention of the Learned Counsel that the Petitioners have fallen foul of Section 15(3) of the Bombay Rent Act as the same mandates the tenant to make the deposit of the arrears in Court within 90 days of the receipt of summons. However, the fact remains that the order dated 23.09.2003 passed by the Trial Court has intervened in the proceedings. The said aspect would however impinge upon the merits of the decree passed on

the ground of arrears of rent, which this Court is not required to go into in the Review Petition. However, in so far as the Review Petition is concerned, in view of the fact that this Court has proceeded on the premise that the amount as directed by the order dated 23.09.2003 has not been paid by the Petitioners and has thereby endorsed the finding recorded by the Appellate Bench of the Small Causes Court which finding is now found to be factually incorrect. The order dated 17.11.2015 dismissing the above Petition therefore suffers from an error apparent on the face of the record. A case for review is therefore made out. The Review Petition is accordingly allowed. The order dated 17.11.2015 is therefore set aside and the Petition is restored to file to be heard on merits. Place the Writ Petition for admission on 08.02.2016.

2. One of the co-owner Mr. Shailesh Thakkar who is an advocate states that a copy of the Petition may be directed to be served upon him. The Learned Counsel for the Petitioner Mr. K. U. Nikam agrees to serve a copy before the date that would be fixed for admission of the Petition.

3. The ad-interim relief granted vide order dated 30.07.2014 would also stand restored.

[R.M. SAVANT, J]