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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.65/2017

WITH

CIVIL APPLICATION NO.6751/2015

Smt.Sindhubai w/o Narayan Pardeshi,
Age 63 years, Occu. Household,
R/o Main Road Kotasthane Chawl,
Ward No.5, Shrirampur,
Tq.Shrirampur Dist.Ahmednagar

..APPLICANT
(Org.defendant)

versus

1. Nilima Nagesh Kuvar,
Age: 53 years, Occ.Household,
2. Meera d/o Bansi Khandelkar,
Age: 48 years, Occ.Household,

Both R/o Main Road Kotasthane Chawl,
Ward No.5, Shrirampur,
Tq.Shrirampur Dist.Ahmednagar.

..RESPONDENTS
(Org.plaintiffs)

.....

Shri R.R. Karpe, Advocate for applicant.
Shri K.N. Shermale, Advocate for respondent nos.1 & 2.
Shri Naseem Shaikh, Advocate present.

.....

CORAM: SUNIL P. DESHMUKH, J.

DATE: 20.03.2017

ORAL JUDGMENT :

1] Learned counsel Shri Naseem Shaikh states that
in view of appearance of learned counsel Mr.K.N.Shermale

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for respondents no.1 & 2 in the civil revision application, he be relieved from appearance, dispensing with the usual procedure, seeking discharge from the civil revision application.

2] Learned counsel Mr. Shermale states on instructions that the respondents no.1 & 2 concede to that, in view of his appearance, Mr. Naseem Shaikh be discharged from appearance in the matter.

3] In view of aforesaid, Mr. Naseem Shaikh stands discharged from appearance for the respondents no.1 & 2 in the present civil revision application (formerly second appeal).

4] Matter to proceed accordingly.

5] Rule. Rule made returnable forthwith and with the consent of learned counsel for the parties, civil revision application is taken up for final disposal.

6] Heard learned counsel for the parties finally by consent.

7] Regular Civil Suit bearing No.74 of 2008 for eviction by present respondents, who are plaintiffs, against the applicant - original defendant, on the ground of commission of default referable to Section 15 of the

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Maharashtra Rent Control Act, 1999, and *bona-fide* requirement came to be decreed. The suit had been instituted on various grounds *inter-alia* default, *bona-fide* and reasonable requirement of landlords and their family members, causing permanent alteration to structure and change of user. The trial Court had decreed the suit on the ground of default referable to Section 15 of the Act and had given negative findings against the plaintiffs - respondents in respect of the other grounds. The suit was decreed on 27.9.2012 against which present applicant - defendant had moved District Court under Appeal bearing No.123 of 2012. The appellate Court as well had framed points with respect to default, *bona-fide* and reasonable requirement of family members and consequent issue of greater hardship, change of user and about entitlement of the respondents - plaintiffs to possession. The appellate Court too negatived the claim of respondents - plaintiffs on rest of the grounds while concurring with the trial Court and confirming the eviction of applicant - defendant - tenant on the ground of default.

8] After hearing the learned counsel for the

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parties, so far as the events as those have occurred, there is no dispute either on facts or on the dates. Learned counsel Mr. Karpe strenuously submits that since there is no default in respect of payment of rent immediately preceding date of institution of the suit, as pursuant to the provisions of the Limitation Act, a decree for arrears of rent could be possible for only past three years. Default of a period preceding three years of suit would not entail eviction on that ground as recovery of said period would not be possible. He, therefore, urges to indulge into request to reverse the decree and dismiss the suit.

9] Learned counsel Mr. Shermale appearing for the landlords contends that the submissions may ostensibly appear to be persuasive, yet on little pondering over the arguments, the same are only illusory and there is no substance in the same. He points out observations of the two Courts hitherto and particularly draws attention to default for any period would constitute a good ground for eviction, whether recovery of the amount is possible or not and this has been the consistent view of the Supreme Court. He, therefore, submits that both the Courts

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hitherto have rightly considered the matter in respect of default and have relied on the judgment of the Supreme Court in the case of *Khadi Gram Udyog Trust v. Shri Ram Chandraji Virajman Mandir* reported in **AIR 1978 SC 287**.

10] The appellate Court has observed in paragraph nos.8, 9 and 10, which are reproduced hereinbelow for ready reference.

"8] In the present case, relationship between plaintiffs and defendant as landlord and tenant is not disputed. It is also not disputed that month of tenancy commences on first day and ends on last day of said month as per English Calender and by virtue of Standard Rent Petition No.18/1990 decided on 5-10-1991, standard rent of the suit house of Rs.50/- per month was fixed. As per provisions of Section 15(1) of the Maharashtra Rent Control Act, landlord is not entitled to recover possession of the premises so long as tenant pays, is ready and willing to pay standard rent and permitted increases. Further, according to Section 15(2) of the said Act, to institute a suit for recovery of possession on the ground of non payment, the tenant must fail to pay the standard rent or permitted increases within 90 days from the receipt of notice in writing regarding the demand of his dues. Further,

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according to Section 15(3) of the Act, if after institution of suit, within 90 days from the date of service of summons, a tenant paid or deposits the arrears of standard rent and permitted increases with simple interest on the amount of arrears at the rate of 15% p.a., landlord is not entitled to recover the possession. Hon'ble Supreme Court, in the case of Khadi Gram Udyog Trust vs. Shri Ram Chandraji Virajman Mandir : **AIR 1978 Supreme Court 287** held that even though suit for recovery of arrears of rent is time barred, it is not a ground to deny decree of eviction on the ground of default. In the present case also, plaintiffs did not file suit for recovery of arrears of rent of Rs.8050/- which was time barred. According to defendant, she has paid rent of the suit house to the plaintiffs regularly and some times plaintiffs refused to accept the same. However, in cross examination, defendant admitted that she is ready to file the receipts of payment of rent. Accordingly, defendant has filed receipt of money order and receipt of amount deposited in the Court. The plaintiffs have claimed that since 1992 upto date of institution of suit, arrears of rent have not been paid by the defendant. The defendant filed receipt dated 15-10-1995 at Exh.47 which shows that in Civil Revision No.21/1991, defendant has deposited an amount of

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Rs.2250/- in the Court towards rent till December 1995. It reveals from the said receipt that it was rent for 45 months. When the said receipt (Exh.47) clarifies that rent was paid upto December 1995, it has to be held that rent was paid from March 1992 to December 1995.

9] Further, plaintiffs have filed two money orders, one is dated 17-6-2002 by which rent from January 2002 to June 2002 was paid and another is dated 31-1-2003 by which Rs.450/- paid towards rent from July 2002 to March 2003. Defendant has filed receipt issued by Assistant Superintendent of Court at Exh.46 dated 14-10-2008 for Rs.3150/- i.e. rent for 63 months. Assuming that said amount was paid against the arrears of rent immediately preceding year of the suit, it was since April 2003 to July 2008.

10] Thus, from the above receipts i.e. Exh.46 to Exh.48, it is clear that defendant has paid rent from March 1992 upto December 1995 and from Jan 2002 to July 2008. The defendant has not produced on record any documentary evidence to show that she has paid the standard rent from January 1996 to December 2001 to the plaintiffs. Neither money order receipts nor Court receipts are produced on record by the defendant to show that she has paid the rent for the above said period. Hence, it can be held that defendant has committed default in payment of rent to the plaintiffs for the period from 1996 to 2001. In

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view of observations of Apex Court in the case of *Khadi Gram Udyog* (cited supra), even though suit is filed for recovery of time barred arrears of rent, it is not a ground to deny decree of eviction on the ground of defaulter. The finding recorded by trial Court in this respect is legal and proper and it does not require any interference at the hands of this Court. Hence, I answer point no.1 in the affirmative."

11] From the aforesaid, additionally, it emerges that although an amount of Rs.3150/- has been paid in October, 2008, it is not the case of the tenant that the said amount comprises of the interest pursuant to Section 15(3). It further transpires, after hearing the learned counsel, that the tenant had not been regular in payment of rent as required u/s 15 during the pendency of the litigation.

12] Having regard to aforesaid, it emerges that the tenant hardly has any case to defend on the ground of default. The findings recorded by the two Courts hitherto do not appear to be either arbitrary or perverse. As such, exercise of revisional powers in the present facts and circumstances does not appear to be

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called for. Civil revision application stands dismissed. Rule is discharged.

13] At this stage, learned counsel Mr.Karpe seeks time for vacating the suit premises. Learned counsel Mr.Shermale purports to resist the said prayer.

14] However, it would be expedient and appropriate to give some time for vacating the suit premises. Having regard to that, the applicant - tenant has been in the suit premises since 1990, it would be appropriate that the applicant shall vacate the suit premises within a period of six months from today subject to conditions given hereinbelow :-

" The applicant shall vacate the suit premises peacefully within a period of six months from today, without creation of any third party interest or any encumbrance of any sort or transfer in any way and he himself shall handover vacant possession of suit premises to the respondents without demur and without creating any hurdle, and on the condition that he shall continue to pay to the landlord compensation for occupation of this period of six months at the

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same rate as rent was being paid. Time of six months for vacating the suit premises is being granted subject of course to filing of an undertaking to aforesaid effect. Undertaking be filed by the applicant within a period of six weeks from today in this Court. In case of failure to file undertaking within stipulated period, it would be open for the plaintiffs to proceed with the execution."

15] In view of aforesaid, Civil Application No.6751 of 2015 also stands disposed of.

(SUNIL P. DESHMUKH, J.)