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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 222 OF 2015

Pratapsingh S/o Hansram Singh Chauhan (DIED)
Through : Legal representatives Brigmohansingh and others
...PETITIONER

VERSUS

Vasantrao Pralhadrao Mulwekar ...RESPONDENT

Mr Balaji A. Shinde, Advocate, holding for Mr Anandsingh Bayas,
Advocate for petitioner.
Mr. P.P. Mandlik, Advocate holding for Mr Amol Gandhi,
Advocate for respondent.

CORAM : N.W. SAMBRE, J.

DATE : 17th July, 2017

ORAL ORDER

The respondent/plaintiff filed Regular Civil Suit No. 452 of 2001 for recovery of possession on December 11, 2012, pursuant to the provisions of Section 16 and Section 33 of the Maharashtra Rent Control Act, 1999. The said suit came to be decreed on September 28, 2004. Judgment was confirmed in appeal being Regular Civil Appeal No. 138 of 2004 vide judgment and decree dated January 4, 2011 by the District Judge-4, Parbhani. As such this revision.

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2. The learned Counsel for the applicants/original defendant-tenant while relying upon the language employed in Section 16 of the Act would urge that since part of the cause of action is not covered under the Maharashtra Rent Control Act, 1999, the finding of the Court below to the extent of decreeing the suit, directing eviction, is not sustainable. According to him, neither any issue to that effect nor independent findings are recorded.

3. Shri Mandlik, learned Counsel for the respondent/plaintiff would support judgments of both the Courts below and would invite attention of this Court to the issues framed by the Trial Court at Exh. 17, particularly, issues No. 3, 4 and 5, so as to claim that the submissions of the present applicant were rightly dealt with. According to him, against concurrent findings, revision is preferred, which lacks any issue of failure of exercise of jurisdiction. As such application calls for rejection.

4. Having considered rival submissions, it is required to be noted that the suit came to be filed by the present respondent with following claims:

“ i) Recovery of possession of the suit house No. 299, ward No. 8 situated at station road, Parbhani to the

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extent of Southern four rooms as tenanted and remaining northern four rooms as encroached area from defendant;

ii) Recovery of rent amount of the rate of Rs. 90/- per month since July 1999 to Dec. 2011 total of Rs. 2700/- as an arrears of rent alongwith interest @ 18% p.a.

iii) Recovery of amount of as means profits at the rate of Rs. 90/- per month of northern four rooms of suit house no. 299 ward no. 8 The arrears of rent since May 1993 to the date of filing of suit i.e. December 2001 total amount of Rs. 9360.00 together with interest @ 18% p.a. from the defendant.”

5. Plaintiff has specifically come out with a case that suit property consists of eight rooms and varandah. It is further claimed that adjoining tenant vacated the part of the premises in 1992, on which defendant mischievously stepped in and remained in un-authorised possession. According to him, a police complaint and an application to the Municipal Corporation was made about the act of the present applicant. A plea of non-payment of rent, filing of Regular Civil Suit No. 100 of 1995 for recovery of rent, dismissal of appeal being Regular Civil Appeal No. 74 of 1997 preferred by the present applicant/defendant, was also raised.

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6. Though the present applicant/defendant by his written statement denied the claim of the plaintiff, the Trial Court considering respective claims, framed issues, particularly, issues No. 3, 4 and 5, which read, thus:

- “3. Does plaintiff prove that defendant has malafidely dismantled three partition walls of the northern portion in year 1993 ?
4. Does plaintiff prove that defendant is unlawfully occupying the suit premises ?
5. Does plaintiff prove that defendant has encroached over northern half portion of H.No. 299 ?”,

and answered the same in affirmative.

7. The Appellate Court endorsed the said findings.

8. While dealing with the claim, as is sought to be raised here, it was incumbent on the part of present applicant/tenant to move at an appropriate stage seeking for framing of specific issue about tenability of the suit. No such ground is raised in written statement as regards tenability of the suit under the Maharashtra Rent Control Act, 1999, and it is for the first time before this Court in revisional jurisdiction a ground is sought to be canvassed to that effect.

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9. The learned Counsel for the applicant while trying to make out such ground as regards tenability of the suit, has admitted tenancy to the extent of four rooms and has disputed Landlord-Tenant relationship in relation to the remaining part of the suit property. The present appellant/applicant is unable to demonstrate before this Court as to source of possession of such extended premises. Apart from above, it has to be considered that cause, which prompted for filing of the suit, is very conduct of present applicant of encroaching upon the remaining property, which was vacated by another tenant. As such, for both the causes, the respondent/plaintiff has initiated the suit citing single cause of action, which, in my opinion, appears to be just and proper. Suit was very much maintainable in view of relationship of Landlord and Tenant. As such, revision against the concurrent findings, in my opinion, lacks merit. Hence the revision stands dismissed.

10. In view of disposal of the Civil Revision Application, relating Civil Application, if any, stands disposed.

(N.W. SAMBRE, J.)

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