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

CIVIL REVISION APPLICATION NO. 106 OF 2016

Madanlal s/o Uttamchand Desarda,
Age: 79 years, Occ: Business,
R/o. Raja Bazar, Aurangabad. ..APPLICANT

VERSUS

Datta s/o Anandrao Sawant,
Age: 59 years, Occ: Business,
R/o. Sarafa Road, Aurangbad. ..RESPONDENT

Mr Ajit D. Kasliwal, Advocate for applicant;
Mr Ajay S. Deshpande, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 5th JUNE, 2017

ORAL ORDER :

This revision is by original defendant – tenant questioning the concurrent findings of eviction recorded against him on the default of payment of arrears of rent.

2. Amongst other, the grounds as are canvassed before this Court by Mr. Kasliwal,

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learned Counsel for the applicant-tenant are; the landlord in his evidence has given admission that he has received entire rent and as such, according to learned Counsel for the applicant, suit is barred under Section 15 of the Maharashtra Rent Act. The second limb of submission is, there was joint ownership and rent was tendered separately to the joint owners, which is admitted position on record. According to him, in fact, the cheque was tendered to other co-owner which was produced by respondent – landlord before the Court below, which demonstrates bonafides of the applicant of offering rent even though cheque was not encashed. The third limb of submission is, there are other parallel proceedings initiated by joint owners prior to the present proceedings under earlier Rent Control Orders/Act and respondent cannot pursue two proceedings against applicant for the same cause. In addition, the issue of non joinder of necessary parties particularly joint owner is also sought to be canvassed. So as to substantiate the contention that the respondent has not discharged burden

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thereby proving outstanding rent, reliance is sought to be placed on the judgment of this Court in the matter of **M/s New Laxmi Cycle Co. vs Jagdishchandra s/o Amrutlal Vakharia**, reported in **2010(1) ALL MR 39**. In addition to above, so as to substantiate the contention, particularly about Section 15 of the Maharashtra Rent Act, a support is sought to be drawn from the judgment of this Court in the matter of **Vinayak Narayan Deshpande and others vs Deelip Pralhad Shisode**, reported in **2010(2) ALL MR 747**.

3. Per contra, Mr Deshpande, learned Counsel for respondent – landlord would urge that looking to the scope of revision, the Court should be slow in interfering with concurrent findings. He would then urge that approach on the part of applicant in praying before this Court about re-appreciating evidence in revisional jurisdiction is not permissible, as there has to be error of jurisdiction or failure to exercise jurisdiction. He would then took me through observations made by

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both the Courts below so as to substantiate his contention that there was probate proceedings answered in favour of the respondent-owner and said fact was brought to the notice of the applicant-tenant, still tenant continue to tender rent as is claimed by him to a person who is not owner of the property. According to him, revision is liable to be dismissed.

4. Having considered the rival submissions, it is required to be noted that upon perusal of the plaint, it is clear that present respondent has specifically come out with a case of non payment of increase in the rent, whereas admitted in his evidence about payment of basic admitted rent. Perusal of paragraph-6 of the plaint depicts that respondent has discharged his burden, particularly in the light of provisions of Section 15 of the Maharashtra Rent Act by coming out with specific pleadings about arrears, non payment thereof, in spite of notice and his documentary and oral evidence. In view of the said findings, reliance

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placed by learned Counsel for the applicant on the judgment of **Vinayak Narayan Deshpande**, will be of hardly any assistance.

5. So far as the contention as regards pendency of parallel proceedings is concerned, it is worth to observe here that earlier proceedings which are pending at the behest of respondent and co-owner was under earlier enactment, which proceedings are very much saved in view of saving clause under the Maharashtra Rent Control Act, 1999. Apart from above, the cause of action in the said proceedings and present proceedings admittedly differs. As such, said contentions are also liable to be rejected.

6. So far as the issue as regards non joinder of necessary parties i.e. Vishwas and earlier co-owner is concerned, the fact about probate proceedings being answered in favour of the present applicant and notice to that effect was issued to the present applicant-tenant is very much proved in

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the evidence by the plaintiff. As such, in the present proceedings, earlier co-owner Vishwas, is rightly not joined as party plaintiff. Same is not fatal to the interest of the plaintiff-respondent.

7. Admission as is given about receipt of rent by respondent-landlord is very much clarified in further part of the evidence. If the evidence in paragraph-12 which is read as a whole clarifies the same. What is sought to be canvassed by learned Counsel for the applicant is to read evidence to the extent of admission given about receipt of rent in isolation which does not suit to the principles of Evidence Act.

8. In the backdrop of above, I hardly see any failure on the part of Courts below to exercise jurisdiction. No case for interference is made out. As such, civil revision application lacks merit and same stands dismissed.

(N.W. SAMBRE, J.)