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

CIVIL REVISION APPLICATION NO. 108 OF 2016

Rambhau Chaitram Patil,
Age: 62 years, Occ: Flour Mill,
R/o. Borse Galli, Amalner,
Taluka Amalner, Dist. Jalgaon. ..APPLICANT

VERSUS

1. Sharayu Vasudeo Bhalde,
Deceased through her L.Rs.

1A. Shobha Arun Pant,
Age: 48 years, Occ: Household,

1B. Sulochana Pravin Pingale,
Age: 39 years, Occ: Household,

1C. Pratibha Kishor Pinjarkar,
Age: 39 years, Occ: Household,

1D. Anjali Shrikant Kale,
Age: 34 uyars, Occ: Household,

Respondent Nos. 1A to 1D
R/o. C/o. Sudhir Vasudeo Bhalde,
Kunte Road, Opp. School No.1,
Amalner, Taluka Amalner,
District Jalgaon

2. Sudhir Vasudeo Bnhalde,
Age: 52 years, Occ: Business,
R/o. Kunte Road, Opp. MARATHI
School No.1, Amalner,
Taluka Amalner, Dist. Jalgaon. ..RESPONDENTS

Mr Girish S. Rane, Advocate for applicant;
Mr Amol S. Sawant, Advocate for respondents

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CORAM : N.W. SAMBRE, J.**DATE : 13th JUNE, 2017****ORAL ORDER :**

The respondents filed Regular Civil Suit No. 70 of 2004 in the Court of Civil Judge, Junior Division, Amalner for recovery of rent and possession. Amongst other grounds for eviction as are raised in the suit are, non payment of arrears of rent, carrying out permanent change of roof without permission of the landlord.

2. The claim was resisted by the present applicant-tenant by filing written statement. Learned Civil Judge, Junior Division, Amalner vide judgment dated 12th March, 2010 passed a decree against the present applicant directing him to deliver possession of the suit premises to the plaintiffs within two months.

3. Regular Civil Appeal No. 30 of 2010 at the behest of present applicant-tenant suffered fate of

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dismissal. As such, present criminal revision application.

4. It is required to be noted that before trial Court, recovery of arrears of rent was sought. Same claim was negated, however, possession was granted only on the ground that there was construction/substantial improvements to the premises without written permission of the landlord-respondents.

5. Mr. Rane, learned Counsel for the applicant, while inviting attention of this Court to the nature of change carried out to the premises in question, would urge that the circumstances as were created by the plaintiffs resulting into damage to the roof has prompted him to carry out initial repairs then and there only. According to him, subsequently against certain activities of the respondents-landlord has prompted him to carry out substantial repairs to the roof by replacing support by iron planks with that of wooden planks.

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Sum and substance of his submission is (a) it is landlord, who compelled the applicant to carry out such repairs/improvements of the roof and (b) such repairs cannot be inferred to be causing substantial change to the existence structure.

6. According to learned Counsel for the applicant, on the said count, the decree of possession is not sustainable. He would invite attention of this Court to the judgment of this Court in the matter of **Gopaldas Kishanchand Talreja vs Vijaysingh Bhimsingh Patil and others** reported **in AIR 1982 BOMBAY 305**, particularly paragraphs-27 and 28 thereof, which read thus :

"27. Dealing with S. 13(1)(b) Justice Kantawala observed that in order to obtain a decree for recovery of possession, the landlord has to establish that a tenant without his written consent erected a permanent structure on the demised premises. Such a permanent structure would not be on the demised premises. It presupposes that it must be in addition to or

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different from the original demised premises. It is this last part of the observation on which considerable reliance is placed. Shri Desai contended that these observations were not necessary for the decision in that case. I am unable to agree with this submission of Shri Desai. The court in that case was required to consider whether in the circumstances the tenant had erected a permanent structure by contravening the provisions of S. 13(1)(b) and thereby incurred the penalty of eviction. It was said what S. 13(1)(b) contemplates is an addition to or different kind of structure from the original. What was being done in that case was laying down the law so far as the provisions of S. 13(1)(b) were concerned. It was in the context of this requirement of S. 13(1)(b), namely, whether the premises were an addition to or different from the original structure that the question as to whether premises built by the tenant came within its ambit or otherwise had to be decided.

28. It seems to me that what S. 13(1)(b) also lays down is that the structure which is erected by the tenant must be different from the demised premises and must change

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the character or situation and the nature of the premises demised. Apart from the character of that work being of a permanent nature or enduring and lasting nature, there must be some addition to the premises. Mere, re-erection or reconstruction of premises which had either fallen down or which were required to be pulled down. Cannot be termed as such construction. What was in that case done was a mere restoration of the premises to their original condition. It may be that the material which is used for erecting a permanent construction has been used therein, But it would not mean that it is, therefore, an erection of a permanent structure. What the petitioner-tenant in this case has done must be held to be restoration and reconstruction of the premises which were required to be pulled down in obedience of the orders of the municipal corporation, Jalgaon, The petitioner would have been visited with a prosecution and fine if he had failed to comply with the provisions of S. 195 of the Maharashtra Municipalities Act, 1965. Therefore, the petitioner-tenant had acted not voluntarily but in obedience of the process of law, and may be under a

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compulsion. Under the circumstances it cannot be held that in the present case he has attracted the penalty of eviction under the provisions of S. 13(1)(b), and the structure erected is of a permanent nature."

7. Per contra, Mr. Sawant, learned Counsel for the respondents-landlord would urge that both the Courts below have recorded concurrent findings. According to him, neither notice contemplates under Section 14 was issued to the landlord nor amended plaint was duly replied to. According to him, the Courts below have rightly held that the suit is required to be decreed.

8. From the record, it depicts that the plaintiffs in support of their case have examined PW-1 Sudhir at Exhibit-23, PW-2 Bhagwan at Exhibit-45, whereas defendant has examined himself at Exhibit-51 and DW-2 Mohan at Exhibit-68.

9. From the record, it depicts that when present applicant started making improvements to

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the roof, the respondent-tenant filed a complaint resulting into N.C. at Exhibit-31. Photographs of the roof are at Exhibit-33.

10. It is then to be noted that present applicant has carried out repairs/improvements to the roof in two phases. In first phase, he had replaced only wooden planks, whereas in second phase, he replaced wooden bar with that of iron bars and also entire roof with that of wooden planks. The nature of improvement as is carried out is in fact not denied in view of non submission of written statement to the amended portion of the plaint. Apart from above, oral evidence itself will establish that the applicant has carried out substantial change/improvement, that too without any written permission or intimation of the landlord.

11. In the aforesaid background, both the Courts below, in my opinion, have rightly decreed the suit for eviction. Though Mr. Rane, learned

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Counsel for the applicant has placed reliance upon the judgment of this Court in the matter of **Gopaldas Kishanchand Talreja**, cited supra, what is required to be appreciated is, the nature of change/improvement in the premises by carrying out construction, particularly established through cogent evidence speaks of substantial change in the nature of premises. Once the present applicant has not denied plea of substantial change and in view of oral evidence of respondent, both the Courts below have rightly observed that the applicant has carried out substantial change in the existence premises, that too without written permission of the landlord. The judgment of Bombay High Court in the matter of **Najama Gulab Bagwan and others vs Laxmibai Rangildas Gujar and others**, reported in **2006(3) Bom.C.R. 474** has been rightly relied upon by learned lower appellate Court so as to draw inference that present applicant has carried out such construction which is substantial in nature and has resulted into altering existence structure.

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12. In the backdrop of above, in my opinion, civil revision application lacks merit, as it is devoid of any substantial infirmity so as to draw conclusion that there is failure to exercise jurisdiction. As such, civil revision application fails and stands rejected.

(N.W. SAMBRE, J.)

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