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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.113 OF 2016

Shila Ramchandra Sachdeva
Age - 54 years, Occ – Teacher
R/o 1479, Sindhi Building,
Vanjar Lane, Ahmednagar

APPLICANT
(Original Defendant)

VERSUS

Vinod Harchamal Santani
Age - 35 years, Occ - Business,
R/o C/o Ajay Mandal Kukreja,
Pankaj Colony, T. V. Center,
Ahmednagar

RESPONDENT
(Original Plaintiff)

.....
Mr. Ajit M. Gholap, Advocate for the applicant
Mr. R. R. Mantri, Advocate for the respondent
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 23rd MARCH, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. This civil revision application has been preferred by defendant in Regular Civil Suit No. 260 of 2007. Regular Civil Suit No. 260 of 2007 had been instituted by present respondent claiming to be owner and landlord of suit premises.
3. Suit premises are two room admeasuring about 300

square feet, situated on first floor of a building situated in CTS No.1513 and 1514/2 at Wanjar Lane, in Ahmednagar city.

4. Suit premises were let out to one Savitri Ramchandra Sachdeva, on rent at the rate of Rs.80/- per month. However, she had been in arrears of rent since November, 2004 onwards. She died on 16th March, 2005.

5. The applicant – defendant is daughter of Savitri Sachdeva. She occupies suit premises after death of Savitri.

6. The respondent - plaintiff had issued notice dated 13th March, 2007 by registered post to defendant and demanded arrears of rent up to 16th March, 2005 and compensation at the rate of ₹.1000/- per month alleging illegal occupation after death of Savitri and, possession on various other grounds, *inter alia*, for reasonable and *bona fide* requirement.

7. According to plaintiff, neither the notice had been responded to nor possession had been handed over, as such, aforesaid suit ensued.

8. Defendant, in response to suit summons, had in defence filed written statement denying all the averments in the plaint excluding rate of monthly rent and her possession over suit

premises. It was contended by the defendant that she was and has always been ready and willing to pay rent, however, the plaintiff had not accepted payment of rent from her. She had sent a sum of Rs.2160/- by a cheque dated 21st March, 2007 to plaintiff along with reply to the notice. However, same had been received back. The defendant has deposited rent in court under an application and as such, she has not committed any default in making payment of rent. It is the contention of the defendant that she has not changed user of suit premises, as alleged. Students come to her for consultation and queries in respect of their studies and she is providing guidance and knowledge to them. She further denied that suit premises were in dilapidated condition. It is contended by her that plaintiff is a permanent resident of Shrirampur and has business at Babhaleshwar and has no intention to settle down at Ahmednagar. Suit premises are not, as such, required reasonably and *bona fide* by the plaintiff. There are other rooms, which are lying vacant in the building. The plaintiff is not using those rooms. The defendant is staying alone in suit premises and have no other premises in possession providing accommodation and as such, would suffer greater hardship, if decree of eviction is granted against her.

9. Trial court, with reference to the pleadings, had framed

necessary issues. Trial court had dismissed the suit, *inter alia*, holding that the defendant is not a defaulter, tenancy is not terminated by notice and also holding in the negative that the plaintiff requires suit premises reasonably and *bona fide* and it had considered that relationship of landlord and tenant had not ceased after death of mother of the defendant.

10. In the circumstances, the plaintiff – landlord had been before appellate court in Regular Civil Appeal No.140 of 2011, wherein points for determination in respect of default being willful in making payment of rent and reasonable and *bona fide* requirement of the landlord along with concomitant point regarding greater hardship between parties had also been framed. The appellate court found that there has been default, which has been willful and that the requirement of the landlord being reasonable and *bona fide* and comparatively hardship suffered by the plaintiff would be greater than that of the defendant. The appellate court, as such, set aside the dismissal of the suit of the landlord and had decreed the same directing vacation of suit premises by the defendant – tenant.

11. It is, as such, against aforesaid reversal of decision of trial court by the appellate court present civil revision application has

been preferred by the defendant.

12. Mr. Gholap, learned advocate appearing for the applicant – defendant forcefully submits that the matter gives rise to host of questions. In the first place, whether the suit could be maintained for eviction under provisions of the Maharashtra Rent Control Act, 1999 in the face of the situation that the landlord has refused to consider the applicant – defendant as his tenant. According to learned advocate, in the circumstances, a suit under section 33 of the Maharashtra Rent Control Act, is not maintainable. The plaintiff in his capacity as owner of suit premises may have to approach a different forum as he himself on his own volition denies relationship of landlord and tenant between the parties. He submits that section 33 of the Maharashtra Rent Control Act is available for resolution of disputes between landlord and tenant and not otherwise. While landlord having contested status of the defendant as “tenant”, suit under provisions of Maharashtra Rent Control Act would not lie and the appeal, which is continuation of the suit is much less tenable pursuant to provisions of the Maharashtra Rent Control Act.

13. Mr. Gholap further contends that even assuming for the

sake of arguments that such a suit may be possible, yet it is not a case wherein it can be said that grounds on which eviction has been directed by the appellate court would be available for the respondent – landlord. He submits that the notice issued by landlord cannot be said to be a legal notice and it cannot be termed a notice in accordance with law, it having demanded an amount much more than deserved by way of rent. He submits that it is an admitted position that rate of rent had been Rs.80/- per month, whereas from March, 2005 demand has been for an amount of Rs.1000/- per month, which is far more than the rate of rent. He contends, it cannot be said that the notice is as contemplated in law and is not in accordance with law and that such a demand is illegal demand. He submits that section 10 of the Maharashtra Rent Control Act would evince that the demand being made under the notice is not legal and as such, the notice is rendered illegal.

14. He further submits that despite notice being illegal, the applicant *bona fide* had tendered an amount of Rs.2160/- through a cheque along with reply to the notice to the plaintiff. However, the plaintiff had avoided to receive the tendered amount and response to the notice, as would emerge from evidence on record. He submits that there is a categorical

endorsement of the postal department depicting that while the notice was tried to be served, in the first attempt, the remark shows that "*addressee had been absent*" and on the second occasion the remark shows that "*addressee is not traceable*". This according to him, shows that the plaintiff has been resident of Shrirampur whereat the response to the notice had been sent by the defendant.

15. Learned advocate further purports to point out that the response to the notice had to be sent to Shrirampur, for, the plaintiff had not been resident of Ahmednagar and it surfaces from evidence that he had in fact not been residing at Ahmednagar. For said purpose, he purports to refer to the statement of plaintiff in his cross examination, according to him, which depicts that he is not resident of Ahmednagar since he has stated that he does not know about his address on the ration card or for that matter voters' list and further intriguingly that he did not know name of his landlord where he was supposed to be residing in Ahmednagar. He submits that overall position, as such, emerges that the defendant is justified in sending response to the notice to Shrirampur.

16. He, therefore, submits, it is a case wherein it is easily

discernible that the notice has been complied with removing the very cause against the defendant and once this has emerged, the suit on the ground of default is absolutely untenable.

17. Mr. Gholap submits that it is likely that a counter argument in this respect would be advanced with reference to section 15 (3) of the Maharashtra Rent Control Act that after institution of the suit and service of summons on the defendant, there had been no tender of rent in the stipulated prescribed period under section 15 (3) of the Act. He submits that, may be ostensibly, tender of rent is not within stipulated period. Yet, there is only a marginal delay and it is readiness and willingness which should be taken into account. He submits that provisions of section 15 of the Maharashtra Rent Control Act prominently show that while tenant is ready and willing to pay amount of rent, ordinarily no eviction on the ground of default would be possible. One will have to flex the provision accommodating little delayed payment, as tenant is ready and willing to pay, no decree for eviction shall be passed by court in a suit for recovery of the possession on ground of arrears of rent.

18. Learned advocate further submits, so far as other ground of reasonable and *bona fide* requirement is concerned, it had

glaringly emerged that the plaintiff does not at all require suit premises reasonably or *bona fide* and that the same is testified in his cross examination. The plaintiff has unequivocally stated that two rooms are in possession of the defendant and rest of the six rooms are in his possession and there is no documentary evidence to show that he is occupying those six rooms and has further stated that said rooms have been presently locked. He, therefore, submits that even on the ground of reasonable and *bona fide* requirement, suit, as such, could not have been decreed and the appellate court on both the counts has erred in granting decree of eviction.

19. In support of his submissions, Mr. Gholap, learned advocate, relies on a clutch of judgments tendered across the bar during the course of hearing. He refers to and relies on a judgment of this court in the case of “*Vinayak Narayan Deshpande V/s Deelip Pralhad Shisode*” reported in 2010 (3) *Mh.L.J.* 807, in support of his submission that as in the case of notice pursuant to section 12 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, notice under section 15 of the Maharashtra Rent Control Act, shall have to be strictly construed and since notice, as referred to above, being illegal, in his submission, suit seeking decree of recovery of possession on the ground of non

payment of rent, was not maintainable. He for said purpose refers to paragraphs No.14 and 17 of said judgment.

20. Mr. Gholap, further refers to a decision of this Court in the case of “*Ganpat V/s Motilal Champalal Lunawat*” reported in [1977] 0 AIR (Bom) 344, which according to him rules that a defective notice is fatal.

21. He further purports to rely on the judgment in the case of “*Ramchandra Govind Palekar and Others V/s Ramesh Nana Jangam and Another*” reported in 1992 Bom. C. R. 310. He draws attention to this citation for the purpose that since the defendant had made an attempt to tender arrears of rent and tender having not been accepted and returned, very cause for eviction on the ground of default stands removed. According to him, situation in the present matter is very similar to the one as observed in paragraph No.4 in said judgment, reading, thus -

“ 4. the admitted and proved facts in this petition clearly show that within one month, the tenant on March 11, 1975 remitted the entire arrears of Rs.2421.14 paise by a Demand Draft. A look at the envelope shows the necessary postal endorsements that the landlord not having been found at the delivery time. The fact clearly show that the landlord, plaintiff No.1 has admitted that the envelope bears his correct address. It is common that the postal authorities in the matter of addressee not being found at delivery time consecutively sent intimation and then keep

the registered envelope for a period of a week to enable the addressee to collect the envelope personally attending the post office. The envelope (Exhibit-35) in the instant petition bears all the necessary endowments and the learned counsel appearing for the petitioners has not raised any dispute in regard thereto. In law, failure on the part of the addressee in collecting the envelope on intimation in spite of the fact that the postal authorities retaining the envelope for a period of one week, as has been placed on evidence in this matter, cannot but would amount to a refusal on the part of the landlord. This court in P.A. Kowli V. Narayan Jagannath Mahale, Mah LJ 1981, P.355 has already taken such a view in regard to the fact and not found at delivery time in regard to the notice of demand amounting to refusal. ”

22. He then cites another judgment of the Supreme Court in the case of “*Mohan Laxman Hede Vs. Noormohamed Adam Shaikh*” reported in *AIR 1988 SC 1111* in order to buttress his submission that delay caused in making payment of rent pursuant to provisions of section 15 (3) of the Maharashtra Rent Control Act will have to be liberally construed and it may not be said to be fatal irregularity so far as defendant is concerned.

23. The other citation he relies on is in the case of “*Bismilla Bee Sk Chand and Another Vs. Mohd. Anwar Modh. Akhtar*” reported in 2010 (2) *Mh.L.J.* 829 to urge that section 16 (2) of the Maharashtra Rent Control Act has cast an injunction on the court against passing a decree of eviction if greater hardship would be caused to the tenant.

24. Countering aforesaid submissions of Mr. Gholap, Mr. Mantri, learned advocate appearing for the respondent, at the outset submits that it is not the case that the court lacks jurisdiction. Decree has been passed by a civil court having jurisdiction to deal with the case either under section 33 of the Maharashtra Rent Control Act or for that matter pursuant to section 9 of the Code of Civil Procedure or for that matter even under section 5 of the Specific Relief Act. Apart from aforesaid, he relies on a case decided by a three judges' bench of the Supreme Court in the case of *"Babulal Bhuramal and Another Vs. Nandra Shivram and Others"* reported in *AIR 1958 SC 677*, and submits that the Supreme Court had been considering scope of section 28 of the Bombay Rents, Hotel and Lodging Houses Rates (Control) Act and section 28 of said Act is *pari materia* with section 33 of the Maharashtra Rent Control Act. As such, having regard to observations in paragraph No.7, the wind is taken out of sail, resisting suit on the ground of jurisdiction. Paragraph No.7 is reproduced hereinbelow for ready reference:

“ 7. In a suit for recovery of rent where admittedly one party is the landlord and the other the tenant, S. 28 of the Act explicitly confers on courts specified therein jurisdiction to entertain and try the suit and expressly prohibits any other court exercising jurisdiction with respect thereto. Similarly, in a suit relating to possession of premises where the

*relationship of landlord and tenant admittedly subsists between the parties, jurisdiction to entertain and try such a suit is in the 374 courts specified in s.28 and no other. All applications made under the Act are also to be entertained and disposed of by the courts specified in s.28 and no other. In all such suits or proceedings the courts specified in s.28 also have the jurisdiction to decide all claims or questions arising out of the Act or any of its provisions. The words employed in s. 28 make this quite clear: **Do the provisions of s. 28 cover a case where in a suit one party alleges that he is the landlord and denies that the other is his tenant or vice versa and the relief asked for in the suit is in the nature of a claim which arises out of the Act or any of its provisions ?** The answer must be in the affirmative on a reasonable interpretation of s. 28. Suit No. 483/4400 of the Court of Small Causes, Bombay was admittedly by a landlord. Eviction of the tenant and those to whom he had sublet the premises was sought on the ground that the latter were trespassers and the former was not entitled to remain in possession, that is to say, that none of the defendants to that suit were protected from eviction by any of the provisions of the Act. The suit, in substance, was a denial of the right of the defendants as tenants. The claim of the defendants was that they were protected by the provisions of the Act. In such a suit the claim of the defendants was one which arose out of the Act or any of its provisions and only the courts ,specified in s.28 and no other could deal with it and decide the issue. ”*

25. Learned advocate, therefore, submits that section 33 of the Maharashtra Rent Control Act takes within its fold even the case where landlord denies relationship that defendant is his tenant and the Supreme Court, as referred to above, is very explicit on that and as such, there is no substance in the objection, in the first place for not having taken defence on this

ground and further having regard to aforesaid ruling on the point.

26. Next, he submits that the decision being relied upon by the applicant in the matter of "*Vinayak Narayan Deshpande*" (*Supra*) is a decision which has been held to be *per incuriam*, under a reasoned decision of this court by Hon'ble Single Judge and submits that a strict construction of notice is not contemplated as is contended on behalf of the applicant. He submits that the notices are to be construed reasonably, rather liberally, giving allowance to parties concerned.

27. For aforesaid purpose, he refers to and relies on a decision of this high court in the case of "*Fahemeeda Begum Mahamood Khan Pathan Vs. Abdul Hafiz Sheikh Anwar*" reported in 2013 (2) Mh.L.J. 524 and refers to paragraph No.6 which is being reproduced hereinbelow-

“ 6. On hearing the learned counsel for the parties and on a perusal of the judgments referred herein above, it appears that the first appellate Court was not justified in reversing the decree passed by the trial Court in favour of the landlady. The first appellate Court was not justified in holding that the notice issued by the landlady under Section 15 of the Maharashtra Rent Control Act, 1999 was bad in law as the landlady claimed the arrears of rent at the rate of rupees four hundred and fifty per month instead of seeking the rent at the rate of rupees two hundred per month, which was admitted. The first appellate Court while relying on the judgment reported in 2010 (3) Mh.L.J. 807 (*Vinayak Narayan*

Deshpande and others. v. Deelip Pralhad Sisode), failed to consider the subsequent judgment of this Court reported in 2011 (2) Mh.L.J. 156 (*Sriniwas Babulal V. Ramakant s/o Shivnarayan Jaiswal*) which in turn had referred to the judgments reported in 1983 Mh.L.J. 254 (*Chhaganlal Mulchand Jain v. Narayan Jagannath Bangh*) and 1998 (3) Mh.L.J. 237 (*Lalji Lachhamanadas Vs. Amiruddin Amanulla and Another*). It appears that when the learned Single Judge was considering the question of validity of the notice under Section 15 of the Maharashtra Rent Control Act, 1999 in the judgment reported in 2010 (3) Mh.L.J. 807 (*Vinayak Narayan Deshpande and others. v. Deelip Pralhad Sisode*), the judgment of the Division Bench reported in 1983 Mh.L.J. 254 (*Chhaganlal Mulchand Jain Vs. Narayan Jagannath Bangh*) and the judgment of the learned Single Judge reported in 1998 (3) Mh.L.J. 237 (*Lalji Lachhamanadas Vs. Amiruddin Amanulla and Another*) were not brought to the notice of the learned Single Judge. It was held by the Division Bench of this Court in the judgment reported in 1983 Mh.L.J. 254 (*Chhaganlal Mulchand Jain v. Narayan Jagannath Bangh*) that a notice seeking arrears of rent should not be construed strictly and if the notice seeks an amount higher than the admitted rent, it would be open to the tenant to send such amount as according to him is due subject to the liability that if ultimately a larger amount is found to be due, he could not be said to have complied with the requirements of the notice. A similar view was expressed in the judgment reported in 1998 (3) Mh.L.J. 237 (*Lalji Lachhamandas Vs. Amiruddin Amanulla and another*) wherein this Court has held that the notice of demand by a landlord seeking arrears of rent at the rate of Rs.13.56 per month as against the standard rent at the rate of Rs.12.00 per month was not bad-in-law and the tenant had an option to pay the undisputed amount at the rate of Rs.12.00 per month and raise a dispute as regards the claim made by the landlord. Admittedly, in the instant case the respondent-tenant had not paid the arrears of rent at the rate of rupees two hundred per month within a period of ninety days from the receipt of the notice. So also, the tenant

had admittedly not deposited the arrears of rent at the rate of rupees two hundred per month within ninety days from the receipt of the suit summons in the trial Court. The trial Court, therefore, rightly held that the landlady was entitled to possession under Section 15 of the Maharashtra Rent Control Act, 1999. The first appellate Court, however, relied on the judgment reported in 2010 (3) Mh.L.J. 807 (Vinayak Narayan Deshpande and others. v. Deelip Pralhad Sisode) to hold that the notice was bad-in-law and the suit was not maintainable. It is clear from the various decisions of this Court that the notice was not bad-in-law and it was open for the respondent-tenant to deposit the admitted arrears of rent. The tenant, having failed to deposit the admitted rent, was liable to hand over the possession of the property to the landlady under Section 15 of the Maharashtra Rent Control Act, 1999. ”

28. He submits that the gist of the notice is that the tenant had fallen in arrears and that he should make good by paying arrears of rent. He further points out that high court in aforesaid paragraph No. 6 reproduced has clearly considered, if notice seeks amount higher than the admitted rent, it would be open to the tenant to send such amount as according to him is due subject to the liability that if ultimately a larger amount is found to be due, he could not be said to have complied with the requirement of the notice. He therefore, submits that as such, in the ground being taken that the notice is defective or illegal or for that matter fatal there is no water.

29. He submits that it had never been intended to receive

amount from the date of death of Savitri as rent, as such, said ground is not at all available to render the notice illegal or unlawful or fatal.

30. He submits that even the contended tender of amount, which had never been received at the end of the plaintiff, cannot be said to be genuine and *bona fide*. He submits, tender of rent by cheque is not at all a legal tender and that sending reply to the notice to Shrirampur was merely an attempt to create a piece of evidence showing tendering of rent. However, according to him, evidence shows that, it was a lame excuse being taken and the appellate court has rightly appreciated that it did not comply with the statutory requirement of response to the notice pursuant to relevant provisions. He, with reference to a decision of the Supreme Court in the case of “*Gopi Chand Gupta V/s Jain Plastic Industry*” reported in 2002 AIR (SC) 2276 makes aforesaid submission drawing attention to contents of paragraphs No. 8 and 9 therein.

31. He thereafter submits that it is not at all a case wherein it can be said that decree of eviction can be arrested, since there has been blatant disregard to comply with the statutory and mandatory stipulations under section 15 (3) of the Maharashtra

Rent Control Act. He submits that even it is not at all a case of the defendant that the tender of payment of rent made in the court had been, as per prescription under section 15 (3). He submits, it is an accepted position by the defendant that the tender of rent had been delayed by fifty three days beyond the ninety days stipulation under section 15 (3) of the Maharashtra Rent Control Act. He submits, coupled with that it is further an accepted position by the defendant that the tender of rent beyond the period had not been along with 15% interest as is obligatory under said provision. He, therefore, submits that on this count alone, eviction decree was inevitable and has accordingly been passed and no fault can be found with the same.

32. As far as reasonable and *bona fide* requirement of the landlord is concerned, according to Mr. Mantri, it has been specifically pleaded by the plaintiff that he is an educated person looking out for carrying on some business and for the same he needed suit premises. He submits, it is not the case that the plaintiff has not occupied suit premises at all. What has been stated in his deposition was a position as had been subsisting while giving deposition. He further submits that the suit premises had become dilapidated. He submits that evidence

sufficiently shows the dilapidated condition of suit premises. It is not a case, in Ahmednagar plaintiff is carrying on business at other place.

33. He further submits, so far as comparative hardship is concerned, it is not the case that the defendant is occupying suit premises for the purpose for which those were occupied by her mother. It is being utilized for commercial purpose according to him. It emerges on record that the defendant is resident of a different address altogether and according to him, it is evident from record that the defendant is occupying premises in Vijaya Residency and even while Savitri died, she had been residing along with the defendant in said Vijaya Residency. As such, according to him, while appellate court has taken proper stock of the situation and found that greater hardship would be caused to the landlord and it being a finding of fact on appreciation of evidence, is not open for to be meddled with under the revisional powers.

34. He submits that the appellate court has rightly adjudged that the landlord is the best judge of his requirement and requirement is not to be equated with dire need. The court has also appreciated the legal position that neither the court nor the

tenant can dictate the landlord to occupy particular premises. The appellate court has rightly considered that though the suit has been filed in 2007 for recovery of possession, the defendant has not taken any effort to find out alternate house or accommodation and further she has not made out a case that it is impossible for her to get alternate premises. It is in the circumstances, the appellate court has rightly adjudged that the landlord would suffer greater hardship than the tenant.

35. Having heard learned advocates as aforesaid, pertinent for consideration is that there is no denial by the defendant that suit premises has come in her occupation through her mother, who was tenant of suit premises and further that the defendant does not dispute rate of rent fixed between landlord and her mother.

36. The appellate court has observed in its judgment in paragraphs No. 27, 28, 30 and part of 31 thus -

“ 27. Thereafter, the plaintiff has filed present suit on 10/7/2007 for decree of eviction against the defendant. The suit summons was served to defendant on 30/9/2007. It is the duty of defendant either to pay or tender in court the arrears rent together with simple interest @ 15% p.a. within 90 days and thereafter continue to pay or tender in the court, regularly till the decision of the suit. The defendant has tendered the arrears of rent Rs.3120/- on 21/2/2008 vide receipt Exh.28. Said arrears were at the rate of Rs.80/- p.m. for the period November 2004 to January

2008. The defendant has failed to pay or tender in the court, the arrears of rent within 90 days, from service of suit summons, as provided in section 15 (3) of the Maharashtra Rent Control Act. She has deposited arrears of rent in the court after 143 days from the date of receipt of summons. She has caused delay of 53 days after the mandatory period of 90 days.

28. It is further noted that as per sec. 15 93) of the Maharashtra Rent Control Act, the defendant is liable to pay the standard rent then due, together with simple interest @ 15 % p.a. In the present matter, the defendant has deposited arrears of rent only. The defendant has failed to deposit the interest @ 15% p.a. on the arrears of rent. The amount of Rs.3120/- was deposited for 39 months rent @ Rs.80/- p.m. (Rent Rs.80/- p.m. X 39 months = 3120/-). However, the defendant has failed to pay the interest of Rs.456/0 @ 15% p.a. on the arrears of rent.

30. In the conclude, the defendant has failed to pay the standard rent in respect of suit premises regularly. She has committed default to pay the rent from time to time. She was irregular to make the payment of rent. She is not entitled to get protection of sec. 15 91) of the Act.

31. It is further noted that after receipt of suit summons i.e. on 30/9/2007, the defendant has neither paid nor tendered in the Court, the arrears of rent with interest @ 15% p.a. within 90 days, as provided sec. 15 (3) of the Act. She has tendered only the arrears of rent after 143 days after receipt of suit summons. She has not tendered the interest @ 15% p.a. on the arrears of rent. Therefore, she is not entitled to get protection of sec. 15 (2) and (3) of the Act. ”

37. A further indisputable position has emerged that after institution of the suit for eviction by the plaintiff, the defendant had faltered in complying with mandatory prescription stipulated

under section 15 (3) of the Maharashtra Rent Control Act making deposit of arrears of rent along with interest within the period of ninety days from the date of service of suit summons and the arrears of rent were deposited with fifty three days delay, without interest @ 15% as required. Judgment in the case of "*Vinayak Narayan Deshpande*" (*Supra*) relied upon on behalf of the applicant, in paragraph No. 14 makes reference to that if the tenant chooses not to pay arrears of rent as required under section 15 (3) of the Maharashtra Rent Control Act, the landlord cannot be denied a decree for ejectment on the ground of default in making payment of rent, if he proves that the tenant is in arrears of rent.

38. Jurisdiction of the court being questioned is a plea being taken in revision for the first time. It does not appear that such objection had been taken while the suit had been defended. No issue on that ground had been framed. Nor does it appear that this contention had ever been urged before the appellate court. It is not a case wherein it can be said that the court which had dealt with the proceedings, had no jurisdiction to try suits pursuant to section 33 of Maharashtra Rent Control Act, 1999 or Section 9 of the Civil Procedure Code or for that matter section 5 of the Specific Relief Act.

39. So far as jurisdiction of court is concerned, it appears that the situation is no longer *res integra* and appears to be amply covered by the Supreme Court judgment in the case of "*Babulal Bhuramal*" (*supra*) relied upon on behalf of the respondent.

40. In respect of arguments advanced that notice by landlord being defective and illegal with reference to section 10 of the Maharashtra Rent Control Act, it appears to be a case wherein it cannot be said that the same would be rendered fatal in view of the decision of learned Single Judge in the case of "*Fehameeda Begum*" (*Supra*) which points out that the case of "*Vinayak Narayan Deshpande*" (*Supra*) being *per incuriam*, in the face of division bench judgment and the observations of the division bench coupled with the fact that the notice had been for arrears of rent along with compensation for the period which is contended to be in illegal occupation after the demise of original tenant Savitri. Contention now being pressed into service is a newfound objection only in the revision. It is not the case where it can be said that notice *per se* is either illegal or for that matter not in accordance with law.

41. In view of aforesaid, since a decree of eviction can be possible on any one ground, it may not be necessary in the

present matter to dwell upon other grounds including that of suit premises being required reasonably and *bona fide* by plaintiff and incidental finding with regard to greater hardship.

42. In the facts and circumstances of the case and the legal position as emerging, it does not appear that the situation calls for exercise of revisional powers of this court. Civil Revision Application as such, fails and is dismissed. Rule stands discharged.

43. At this stage, learned advocate for the applicant requests that time of six months to vacate the suit premises be granted. In the facts and circumstances of the case, the request appears to be reasonable. As such, the applicant shall vacate suit premises peacefully within a period of six months from today, without creation of any third party interest or encumbrance or transfer in any way and he himself shall hand over vacant possession of suit premises to the respondent 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 three months at the same rate as rent was being paid. Time of six months for vacating suit premises is being granted subject of course to filing of an

undertaking to aforesaid effect. Undertaking be filed within a period eight 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.

[SUNIL P. DESHMUKH, J.]

drp/cra113-16