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

CIVIL REVISION APPLICATION NO.210 OF 2016

M/s. Satkar Hotel,
The Partnership Firm,
through its partners:

1. Shrilal S/o Ramkishan Agrawal,
age 70 years occupation business
R/o C/o Satkar Hotel, Signal Camp,
near Vivekanand Hospital, Main road,
Latur Taluka and Dist. Latur.
2. Gopikishan S/o Ramkishan Agrawal, (DIED)
through legal representatives:
 - 2/A. Kamalbai W/o Gopikishan Agrawal,
age major occupation household,
 - 2/B. Ravindra S/o Gopikishan Agrawal,
age 50 years occupation business,
 - 2/C. Rajendra S/o Gopikishan Agrawal,
age 55 years occupation business

Nos. 2/A to 2/C. R/o Arvi
Taluka and Dist. Latur

 - 2/D. Saroj W/o Ashokkumar Agrawal,
age major occupation household
R/o Cycle Society, Bungalow No. 8,
Second Floor, Quarter Gate, Pune-1.
 - 2/E. Shakuntala W/o Madhusudan Agrawal,
(Deleted)
 - 2/F. Umadevi W/o Madanlal Agrawal,
age major occupation household
R/o Krushnadhan Building, Flat No.3,
Bhakti Nagar, Nava Renapur Naka,

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Railway /Station road, Latur.

3. Mohanlal S/o Ramkishan Agrawal,
age 75 years occupation business
R/o Asopa Galli, near Agrasen Bhavan,
Latur Taluka and District Latur.

...APPLICANTS

VERSUS

1. Bajranglal S/o Hiralal Joshi,
age 67 years occupation agriculture
R/o Tilak Nagar, behind S.B.H. ATM,
Latur Taluka and Dist. Latur.
2. Govind S/o Hiralal Joshi,
age 55 years occupation agriculture
R/o Tilak Nagar, behind S.B.H. ATM, Latur
Taluka and Dist. Latur.
3. Vishnudas S/o Ramkishan Agrawal,
age 80 years occupation business
R/o Adarsha Colony, House No. 12,
Latur Taluka and Dist. Latur.
4. Adv. V.N. Mirkale
(Receiver appointed in R.C.S.
No. 575 of 1979) R/o Signal Camp,
Latur Taluka and Dist. Latur.

...RESPONDENTS

WITH

CIVIL REVISION APPLICATION NO. 220 of 2015

1. Shrilal S/o Ramkishan Agrawal,
age 69 years occupation business
R/o C/o Satkar Hotel, Signal Camp,
near Vivekanand Hospital, Main road,
Latur Taluka and Dist. Latur.
2. Gopikishan S/o Ramkishan Agrawal, (DIED)
through legal representatives:

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- 2/A. Kamalbai W/o Gopikishan Agrawal,
age major occupation household,
- 2/B. Ravindra S/o Gopikishan Agrawal,
age 49 years occupation business,
- 2/C. Rajendra S/o Gopikishan Agrawal,
age 54 years occupation business

Nos. 2/A to 2/C. R/o Arvi
Taluka and Dist. Latur

- 2/D. Saroj W/o Ashokkumar Agrawal,
age major occupation household
R/o Cycle Society, Bungalow No. 8,
Second Floor, Quarter Gate, Pune-1.
- 2/E. Shakuntala W/o Madhusudan Agrawal,
(Deleted)
- 2/F. Umadevi W/o Madanlal Agrawal,
age major occupation household
R/o Krushnadhan Building, Flat No.3,
Bhakti Nagar, Nava Renapur Naka,
Railway /Station road, Latur.
- 3. Mohanlal S/o Ramkishan Agrawal,
age 74 years occupation business
R/o Asopa Galli, near Agrasen Bhavan,
Latur Taluka and District Latur.

...APPLICANTS

VERSUS

- 1. Hiralal S/o Motilal Joshi (DIED)
Through legal representatives:
- 1/A. Bajranglal S/o Hiralal Joshi,
age 66 years occupation agriculture
R/o Tilak Nagar, behind S.B.H. ATM,
Latur Taluka and Dist. Latur.

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1/B. Govind S/o Hiralal Joshi,
age 54 years occupation agriculture
R/o Tilak Nagar, behind S.B.H. ATM, Latur
Taluka and Dist. Latur.

1/C. Nathibai W/o Hiralal Joshi,
age 84 years occupation agriculture
R/o Tilak Nagar, behind S.B.. ATM,
Latur Taluka and Dist. Latur. (DIED)
(L.Rs. No. 1A, 1/B, 1/D & 1/E already
on record, vide order dated 16/11/2015)

1/D. Shivkanya W/o Vasudev Vyas,
age major occupation household
R/o C/o Bajranglal S/o Hiralal Joshi,
Tilak Nagar, behind S.B.H. ATM, Latur
Taluka and Dist. Latur.

1/E. Kiran W/o Sunilkumar Pande,
age major occupation household
R/o C/o Bajranglal S/o Hiralal Joshi,
Tilak Nagar, behind S.B.H. ATM,
Latur Taluka and Dist. Latur.

2. Vishnudas S/o Ramkishan Agrawal,
age 79 years occupation business
R/o Adarsha Colony, House No. 12,
Latur.

3. Adv. N.B. Mirkale
(Receiver appointed in R.C.S.
No. 575 of 1979) R/o Signal Camp,
Latur Taluka and Dist. Latur.
(Deleted as per order
dated 16th November 2015)

...RESPONDENTS

Mr V.J. Dixit, Senior Counsel I/b Mr A.N.
Nagargoje, Advocate for applicants;
Mr A.N. Sabnis, Advocate for respondents

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CORAM : NITIN W. SAMBRE, J.**DATE : 18th JULY, 2017****ORAL ORDER :**

Both these revisions are by the partnership firm through its partners, who claimed to be tenants of the property bearing House Nos.64A and 64B (old), No. 164/23 (new) located at Latur, which was popularly identified as 'Satkar Hotel'.

2. The applicants claim that the applicant partnership firm was having five partners, who had taken the suit property on lease from one Dhanraj. Since Dhanraj was of insane mind, Gitabai, his wife was looking after his interest.

3. It is claimed that lease amount of the suit property was only Rs.1700/- and period of lease was commencing from Diwali to Diwali of each year.

4. Some time before 1979, a dispute cropped

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up between partners of firm, resulting into one of the partners filing suit being Regular Civil Suit No. 575 of 1979, for dissolution of partnership firm and rendition of accounts.

5. Vide order dated 25th June, 1981 passed in Regular Civil Suit No. 575 of 1979 for dissolution of partnership firm and rendition of accounts, the Court receiver was appointed and as such, the suit premises are locked and possession remained with the Court in lock and key.

6. It is claimed that the property in question was originally owned by one Laxminarayan, who effected partial partition in 1971 and as such, the suit property had gone to the share of one Bajranglal Joshi and Hiralal Joshi, which is marked as Part A and B in the plaint map.

7. The respondent – land owner claims that since 1978 onwards though amount was demanded, same was not paid for quite long time, resulting into

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landlord filing proceedings for eviction before Rent Controller at Latur, vide RCA-CR-10 of 1983 on the ground of bonafide need and failure to pay the arrears.

8. The claim was resisted by the applicants, who claimed to be partners of the firm, on the ground that address of land lord was not available and as such, rent could not be paid. The rent offered by demand draft in April, 1983 was not accepted. The competency to file suit of the plaintiff was also questioned. It is then claimed that rent of the share of the property of respondent – plaintiff was already paid.

9. The Rent Controller, after considering the relevant pleadings and evidence of the parties, vide order dated 23rd May, 2011 dismissed the suit for eviction under Section 15 of the Hyderabad Rent Control Act, 1954 (hereinafter referred shall be referred as the 'Rent Act').

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10. The original plaintiff – respondent/ landlord preferred Rent Appeal No.12 of 2011, which came to be allowed vide judgment and order dated 8th August, 2016, whereby the order of Rent Controller dismissing the suit came to be set aside, with direction to present applicants to deliver vacant and peaceful possession of the suit property described in Part-A of the plaint map within period of four months. As such, this revision application.

11. So far as Civil Revision Application No. 220 of 2015 is concerned, with similar set of facts before Rent Controller, landlord filed suit No. 96/RCA/CR-11 for eviction under Section 15 of the Rent Act on the ground of failure to pay rent. The said suit came to be dismissed by the judgment and order delivered by Rent Controller on 23rd May, 2011, however, Rent Appeal No.11 of 2011 came to be allowed by learned Principal District Judge with similar order as that of in Civil Revision Application No. 210 of 2016, directing handing over

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possession of Part-B property mentioned in plaint map.

12. Both the revisions are heard together and are being decided by this common order, with the consent of the parties as in both the revisions, the orders of eviction passed by learned Principal District Judge are in relation to same parties, property is similar and pleadings are also identical and issues involved are also common.

13. In the aforesaid background, while questioning the order of learned Principal District Judge, Mr. Dixit, learned Senior Counsel assisted by Advocate Mr. Nagargoje would urge that though arrears of rent was claimed to be due, still, the fact remains that after partition, no notice was given and as such, default, if any, was bonafide. According to him, in 1979 suit initiated amongst partners, if receiver is appointed pursuant to the provisions of Order 40 of the Code of Civil Procedure, permission of the Court should have been

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taken before initiating the suit in question. He would rely upon the provisions of Section 14 of the Rent Act so as to claim that since there was bonafide mistake on the part of applicant-tenant, the Court should have given opportunity to them to deposit the rent. He would try to rely upon certain admissions given by the witness of the landlord so as to claim that there is change in the period of default in payment of rent. He claims that the entire amount is deposited and there is no arrears and as such, he would harp upon Section 15(2) of the Rent Act to claim that the order of learned District Judge is not maintainable.

14. Per contra, learned Counsel for the respondents would urge that the revision at the behest of applicant No.1 is not maintainable, as there is no resolution amongst partners to file proceedings. At least, no such resolution is produced on record authorizing some of the partners to file present applications. According to him, learned District Judge has taken into account

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litigation between the parties, particularly about recovery of rent decree passed and rightly decreed the suit for eviction. It is also claimed that bonafide need of the respondent – landlord is taken into account, particularly in the backdrop of the fact that the suit premises remained locked since 1981.

15. According to him, the evidence brought on record speaks of intentional default on the part of applicants of non payment of rent. He submits that there is no jurisdictional error and revisions be dismissed.

16. With the assistance of respective Counsel, I have perused the evidence adduced in the backdrop of pleadings brought on record.

17. In the evidence of landlord Bajrang, it is brought on record that since 1980 onwards agreed rent was not paid. He has also brought on record filing of recovery proceedings No. 304 of 1989,

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R.D. No. 60 of 1991, non payment of rent from 1989 to 1992, for recovery of which Regular Civil Suit No. 254 of 1992 was filed. Thereafter, for recovery of rent from 1992 to 1995 Regular Civil Suit No. 394 of 1997 was filed. Thereafter, Regular Civil Suit No. 37 of 2005 for recovery of rent from 1998 to 2000 was filed. Thereafter, Regular Civil Suit No. 624 of 2001 for recovery of rent from 2000 to 2001 onwards alongwith various execution proceedings was filed.

18. Though in cross examination, landlord has given certain admissions, still, such admissions cannot be read in isolation, as the evidence of said witness is required to be appreciated qua demand of rent, payment made and period within which such demands are made. Filing of the aforesaid suits for recovery, execution proceedings pursuant to such decree for recovery, is the fact which is not in dispute. It is then to be noted that evidence of present applicant-tenant particularly of Mohan Agrawal does not speak of

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satisfactory tendering of amount towards clearing the arrears of rent.

19. Learned appellate Court, while dealing with the appeal of present applicants, has framed points for determination and noted that there exists landlord and tenant relationship, as admitted by present applicant and also fact remains that prior to 1979 there exists dispute as reflected in Regular Civil Suit No. 575 of 1979, amongst partners, on the issue of rendition of accounts. Filing of the suit for recovery of arrears and consequential recovery proceedings vide Regular Darkhast is also taken note of by learned lower appellate Court, which was lost sight by learned Rent Controller. Learned District Judge then proceeded to analyze the period of tenancy, agreed rent and non payment of rent. Lower appellate Court considered that for the first time, rent was offered on 6th April, 1983, which was towards arrears from 1979 onwards.

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20. Lower appellate Court then analyzed requirement of landlord of bonafide need and noticed that landlord has failed to establish the same.

21. Apart from from above, while considering the provisions of Section 15(2) of the Rent Act, learned District Judge has considered various opportunities which were available to the present applicants-tenants to pay rent which they failed to avail, in spite of the fact that it was demanded and as such, proceeded to decree the suit.

22. In the wake of findings recorded by learned District Judge, it has to be inferred from the record that the present applicants have no respect to rule of law viz., various decrees for recovery of rent passed against them and failure on their part to honour the same, which prompted the respondent-landlord to file Regular Darkhast for recovery.

23. The fact remains that the applicants are

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no more interested in running the partnership business as there exists dispute as regards very existence of the firm itself, as partners are fighting before the Civil Court qua dissolution of partnership firm and rendition of accounts. The suit premises remained locked since 1981 and for last more than 35 years, no steps are taken to resolve the dispute amongst the partners.

24. It is established beyond reasonable doubt that the requirement under Section 15 of the Rent Act is very much established by the respondent-landlord and same was duly appreciated by learned District Judge in the back drop of pleadings and evidence brought before it, including that of oral and documentary evidence.

25. In the wake of above, findings recorded by learned District Judge, while decreeing the suit for eviction, in my opinion, hardly call for interference, particularly when such findings are in tune with the requirements under Section 15 of

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the Rent Act. Both these revisions do not reflect any material irregularity or jurisdictional error. Both the revisions, as such, fail and stand dismissed.

(NITIN W. SAMBRE, J.)

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