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

**CIVIL REVISION APPLICATION NO.29 OF 2017**

Prabhakar s/o Sakharam Khobare  
Age - 60 years, Occ - Business  
R/o Tilak Road, Beed  
District - Beed

APPLICANT

VERSUS

1. Vishwambhar s/o Sakharam Thigale  
Age - 41 years, Occ - Business,  
R/o Bobadeshwar Galli, Beed  
District - Beed
2. Madhusudan s/o Sakharam Thigale  
Age - 37 years, Occ and R/o As above
3. Rajkumar s/o Sakharam Khobare  
Age - 39 years, Occ - Business  
R/o Tilak Road, Beed  
District - beed
4. Digambar s/o Sakharam Khobare  
Age - 40 years, Occ - Business  
R/o Behind Hanuman Mandir,  
Near Renuka Mata Mandir, CIDCO,  
N-9, Aurangabad, District - Aurangabad
5. Balasaheb s/o Sakharam Khobare  
Age - Major, Occ - Business  
R/o Tilak Road, Beed  
Taluka and District - Beed

RESPONDENTS

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Mr. Dhananjay P. Deshpande, Advocate for the applicant  
Mr. G. K. Thigale, Advocate for respondents No.1 and 2

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**[CORAM : SUNIL P. DESHMUKH, J.]**

**DATE : 21<sup>st</sup> FEBRUARY, 2017**

**ORAL JUDGMENT :**

1. Rule. Rule made returnable forthwith and heard learned advocates for the appearing parties finally with consent.

2. The applicant – tenant – defendant No.1 in Regular Civil Suit No. 296 of 2005 is before this court challenging two decisions rendered by courts, trial as well as appellate, granting and confirming eviction on the grounds of default in payment of rent, causing permanent alteration to tenanted premises, for reconstruction - referable to sections 15, 16 (1) (b), 16 (1) (i), respectively of the Maharashtra Rent Control Act and that the tenant had acquired alternate accommodation. Both the courts, on aforesaid grounds, have rendered concurrent findings.

3. It is the case of plaintiffs – respondents No.1 and 2 - landlords that the tenant had defaulted payment of rent; has caused permanent alteration to the structure by removing columns and putting up steel shutter replacing old wooden door; the building had become dilapidated and as such, is required for reconstruction to put it up to more beneficial use and that the tenant and his family has about five shops in Beed city, situated in main business area and even in the area where the suit premises are situated.

4. Aforesaid contentions had been combated by the applicant - tenant contending that rent had been duly tendered in advance, once in 2000 for five years by money order to one Janardan Thigale, who was recorded as guardian of minor plaintiffs in the municipal record and had accepted the same accordingly and thereafter once again for a further period of five years in 2005, however, the money order on this occasion had not been accepted and as such, the ground of default is untenable. It is contended that as the old door had not been sufficiently protective, it needed replacement and it had so been replaced with permission. So far as reconstruction is concerned, it was contended that, neither the premises were so dilapidated as would be required to be reconstructed nor was there any notice by the local authority to that effect to the landlord. So far as alternate accommodation is concerned, the tenant had contended that he is separate from other brothers, who are alleged to possess properties in Beed city.

5. Both the courts, trial as well as appellate, however, are in unison referring to that the tenant - applicant could not establish tender of rent to the landlord - plaintiffs and that acceptance of money order by Janardan Thigale was not payment of rent and

would not tantamount to tender of rent to landlord, and he was not authorized to act as such. There is no further evidence about any other effort being made by applicant tenant for payment of rent, apart from money order, which is stated to have been issued to Janardan Thigale during the course of suit, which had not admittedly been accepted by said Janardan Thigale.

6. The courts have concurred at that removal of columns and replacement of door is indeed without written consent of the landlord and in the given circumstances, the ground for eviction referable to section 16 (1) (b) of the Maharashtra Rent Control Act emerges. A decision of Hon'ble Single Judge of this court in the case of "*Ravindra D. Ahirkar V/s Ravikishore Ramkisanji Pashine and Another*" reported in 2008 (5) Mh.L.J. 955, had been relied on, in the process.

7. So far as the ground of reconstruction is concerned, the courts have considered that as the premises had become dilapidated, as such, eviction sought on that ground referable to section 16 (1) (i) of the Maharashtra Rent Control Act, was also proper.

8. As far as alternate accommodation is concerned, the courts have elaborately discussed the same and have found that the

tenant and / or his near relatives had been in possession of several properties in Beed town, commercial as well as residential. Apart from that, it has also been observed that quite a few of the properties belonging to the tenant's family have been rented out on higher rent.

9. Mr. Deshpande, learned advocate vehemently contends that it cannot be gainsaid that there had been tender of rent through money order to Janardan Thigale, which had been duly accepted in advance in 2000 and he had indeed been acting as guardian of the plaintiffs as shown in municipal record. He further submits that even there is an admission to said effect in the evidence given by said Janardan Thigale and tender of rent through money order stands established on the foundation of Exhibit-54. Here, in the present case, according to him, there had been tender and acceptance of rent and thus eviction on the ground of default is untenable. He further refers to the reply to the notice issued by the landlord on this count.

10. In addition to aforesaid, he submits, the tenant had tendered rent to Janardan Thigale for further period of five years in advance during pendency of the suit. He, therefore, submits that when a tenant pays or is ready and willing to pay rent, his

eviction is not possible on the ground referable to section 15 of the Maharashtra Rent Control Act. He purports to place reliance on a decision of Hon'ble Single Judge of this Court (Mr. M. S. Sonak, J.) in the case of “*Vasant Mahadeo Gujar and Others V/s Baitulla Ismail Shaikh and Others*” reported in 2016 (4) ALL MR 174, particularly putting emphasis on paragraphs No.36, 37 and 38 of the same, reading thus -

“ 36. The Appeal Court has made a decree of eviction by merely recording that the applicants failed to comply with the provisions of Section 15 (3), in as much as arrears of rent, permitted increases together with interest, were not deposited in the Court within ninety days from the date of service of summons in the suit. There is no consideration whatsoever of the tenants' plea that the tenants had paid or in any case were ready and willing to pay rents and permitted increases to the landlords, but it was the landlords who had refused to accept the same.

37. From the scheme of Section 15 of the Rent Act, it is clear that benefit under Section 15 (3) of the Rent Act can be availed of by a tenant, even if such tenant is admittedly, in default. From the tenor of Section 15 (3) of the Rent Act, it does appear that no Court can make a decree of eviction on the grounds of default, where such tenant deposits within ninety days, arrears of rent, permitted increases and complies with other prescribed requirements. This, however, does not mean and imply that resort to benefit under Section 15 (3) of the Rent Act is only mode available to a tenant to avoid a decree of eviction on the ground of default. The tenant, can always establish that he has paid or was always ready and willing to pay the rent and the permitted increases to the landlord and on such basis avoid a decree of eviction. In fact, Section 15 (1) of the Rent Act, in terms provides that a landlord shall not be entitled to a decree of eviction

*so long as the tenant pays or is ready and willing to pay the standard rent, permitted increases and observes other terms and conditions of the tenancy, so far as they may consistent with the provisions of the Rent Act.*

*38. The reasoning of the Appeal Court, in fact, constitutes an error of law apparent on face of record. The Appeal Court does not appear to have reversed the findings of the fact in the context of payment or dispatch of money orders by the tenants and their refusal by the landlords. The Appeal Court, however, makes decree of eviction on the ground of non-compliance with the provisions contained in Section 15 (3) of the Rent Act. There is no consideration whatsoever to the pleas of the tenants that rents were indeed tendered regularly and punctually to the landlords, by means of money orders and the same were refused by the landlords. The Appeal Court has held that 'all three clauses of Section 15 are parallel to each other'. This is an error of law apparent on face of record. Even where, there is no compliance with the provisions contained in Section 15 (3) of the Rent Act, it is always open to a tenant to establish the factum of payment or the factum of readiness and willingness of payment of rent. If such factum is indeed established, the landlords cannot secure a decree of eviction on the ground of default in payment of rents. This proposition which emerges upon the plain reading of the provisions in Section 15 of the Rent Act, as also from the authorities on the subject, has been ignored by the Appeal Court. The finding on this aspect is therefore, vitiated by error of law apparent on face of record. ”*

11. Aforesaid arguments on behalf of the applicant - tenant are sought to be countered by Mr. Thigale, learned advocate for respondents No. 1 and 2 - plaintiffs - landlords. Learned advocate points out that on the date of institution of the suit in

2005, plaintiff No.1 had been 38 year old and plaintiff No.2 had been 34 year old and as such, tender of rent in 2000 to Janardan Thigale, in the circumstances, as guardian of plaintiffs-landlords, could not have been made nor Janardan Thigale could have been guardian of the plaintiffs, in fact and in law. He refers to that Janardan Thigale had appeared as defendant's witness. He submits that in his entire evidence, not even by whisper he refers to that money order had been accepted as rent towards suit premises. Learned advocate submits that Janardan Thigale had been engaged in insurance business and in the process used to receive lot of money orders. He further refers to his cross-examination in which according to learned advocate, there had been admission of the fact that it is not Janardan Thigale, but grand father of the plaintiffs who could have been said to be guardian of the plaintiffs. In any case, according to learned advocate tender of rent either to Janardan Thigale or for that matter to grand father of the landlords would not satisfy requirement of section 15 of the Maharashtra Rent Control Act. He further refers to that even if it is to be considered that there had been subsequent tender of rent during pendency of suit, the same had intransigently been made to Janardan Thigale, considering that Janardan Thigale is likely to support defendant's

case. However, according to learned advocate these incidents would not change the factual and legal position that Janardan Thigale can hardly be guardian of major plaintiffs and / or much less would be landlord.

12. Aforesaid apart, learned advocate draws attention to that further compliance of stipulations under section 15 of the Maharashtra Rent Control Act is required, as to continuance of making regular payment of rent and other incidental payments referred to under section 15 (3). Rent had neither been tendered during pendency of the suit nor during the pendency of appeal.

13. The situation as such, emerges that while tender of rent in 2000 is contended to be an advance payment for five years, yet it does not appear that the tender had been to the plaintiffs, who are admittedly landlords. The contention is tender of rent had been made to Janardan Thigale as guardian of the plaintiffs, as shown in the municipal record, however, looking at the irrefutable position that plaintiff No.1 had been 38 year old in 2005 and plaintiff No.2 had been 34 year old, it is difficult to consider that Janardan Thigale could have been the guardian of plaintiffs – landlords. Neither evidence of Janardan Thigale shows, nor receipt of money order depicts it had been accepted

towards rent amount and that he was authorized to accept rent by the plaintiffs – land lords. It further emerges that stipulations under section 15 (3) of the Maharashtra Rent Control Act, do not appear to have been observed by the defendant nor it is the case that rent had been paid regularly during pendency of litigation. In the circumstances, the position emerges that findings recorded by the trial as well as the appellate courts with regard to appreciation of the facts, circumstances and events constituting default, does not appear to be away from the pleadings, record and the evidence.

14. As far as permanent alteration is concerned applicant is not able to effectively deal with the case of the plaintiffs - landlords about removal of columns from the suit premises being not a permanent alteration. In the circumstances, findings on that count as well would hardly be amenable for any further probe in the present matter.

15. Learned advocate Mr. Deshpande, during the course of his arguments has referred to section 16 of the Maharashtra Rent Control Act, since ground is taken for eviction pursuant to section 16 (1) (i) of the Maharashtra Rent Control Act, compliance required under section 16 (6) does not appear to

have been brought forward before the courts so also he argues that an alternate accommodation would hardly be a ground for eviction under the Maharashtra Rent Control Act.

16. However, although it is being so submitted as above, in view of the observations of the courts hitherto as appearing with regard to ground of default and of permanent construction without written consent of the landlord, eviction decree is not amenable to any interference in the revisional powers. In the circumstances, it would not be necessary to dwell on observations of two courts hitherto in regard to grounds referable to section 16 (1) (i) and alternate accommodation. As such, civil revision application stands dismissed. Rule stands discharged with no order as to costs.

17. At this stage, Mr. Deshpande, learned advocate entreats this court to indulge into request to grant time for vacating suit premises. He submits that at least six months' period be granted for vacating the suit premises. Learned advocate Mr. Thigale purports to resist the request. In the circumstances, since the tenant is said to have been in possession of the suit premises from 1976, I deem it appropriate that the tenant shall vacate suit premises peacefully within a period of six months from

today, without creation of any third party interest or transfer in any way and he himself shall hand over vacant possession of suit premises to the plaintiffs without demur and without creating any hurdle, and on the condition that he shall continue to pay to the landlords compensation for occupation of this period of six 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 three 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.]**