

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

CIVIL REVISION APPLICATION NO.349 OF 2017

Mr. Harishankar Dudhnath Yadav	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

WITH
CIVIL REVISION APPLICATION NO.352 OF 2017

Mr. Dhamraj B. Yadav	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

WITH
CIVIL REVISION APPLICATION NO.359 OF 2017

Mr. Sankataprasad Shyamraj Rajbhar	]	
through Power of Attorney Shri Ashish	]	
Sankatprasad Rajbhar	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

WITH
CIVIL REVISION APPLICATION NO.360 OF 2017

Mr. Mataprasad Ramjas Yadav	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

CIVIL REVISION APPLICATION STAMP NO.34906 OF 2017

Mr. Bhagwandas Mourya	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

WITH
CIVIL APPLICATION NO.140 OF 2018

CIVIL REVISION APPLICATION NO.514 OF 2017

Mr. Bodi Ramsumer Yadav	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

**WITH
CIVIL REVISION APPLICATION NO.519 OF 2017**

Mr. Manubhai Popatbhai Devani	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

**WITH
CIVIL REVISION APPLICATION NO.522 OF 2017**

Mr. Raju Gajaraj Rajbhar	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

**WITH
CIVIL REVISION APPLICATION NO.523 OF 2017**

Ms. Subhadra Ramvilas Sharma	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

**WITH
CIVIL REVISION APPLICATION NO.524 OF 2017**

Mr. Kedar Kamhai Yadav	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

**WITH
CIVIL REVISION APPLICATION NO.531 OF 2017**

Mr. Shyamlal Yadhav	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

CIVIL REVISION APPLICATION (ST) NO.34897 OF 2017

Rakesh Kedarnath Singh	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

WITH
CIVIL REVISION APPLICATION (ST) NO.35768 OF 2017

Abhinav Narottam Yadav	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

WITH
CIVIL REVISION APPLICATION (ST) No.19051 OF 2017
(REJECTED CASE NO.2399 OF 2017)

Chamela Bakelal Jadav	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

CIVIL REVISION APPLICATION (ST) NO.24882 OF 2017

Mr. Satyaram Jaiju Yadav	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

WITH
CIVIL REVISION APPLICATION NO.641 OF 2017

Kripa Ramnath Bhardwaj	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

WITH
CIVIL REVISION APPLICATION NO.643 OF 2017

Kailashprasad Munilal Rajbhar	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

WITH
CIVIL REVISION APPLICATION (ST) NO.36548 OF 2017

Rajkumar Ramraj Mishra	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

WITH
CIVIL REVISION APPLICATION NO.500 OF 2017

Omprakash Pandey s/o Ramkaran Pandey	]	Applicant
Vs.		
Gauri Pannalal Prajapati	]	Respondent

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Heard Mr. G.S. Godbole, learned Senior Counsel for Applicants in C.R.A's No.349 of 2017, 352 of 2017, 359 of 2017 and 360 of 2017.

Mr. Upadhyay for Applicant in C.R.A (ST) No.34906 of 2017 with C.A No.140 of 2018, C.R.As No.514 of 2014, 519 of 2017, 522 of 2017, 523 of 2017, 524 of 2017 and 531 of 2017, CRA (ST) No.34897 of 2018, C.R.A (ST) No.35768 of 2017, C.R.A (ST) No.19051 of 2017 (Rejected Case No.2399 of 2017) C.R.A (ST) No.24882 of 2017.

Mr. Pandey, learned Counsel for applicants in C.R.As No.641 of 2017 and 643 of 2017 and CRA (ST) No.36548 of 2017.

Mr. Bhanage, for applicant in C.R.A. No. 500 of 2017.

Mr. D.R. Singh, for respondents in all Civil Applications and Civil Revision Applications.

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CORAM : R.G. KETKAR, J.

DATE : 6TH MARCH, 2018.

P.C.

Heard Mr. Godbole, learned Senior Counsel for the applicants in C.R.A. No.349 of 2017, 352 of 2017, 359 of 2017 and 360 of 2017. Mr. Upadhyay, learned Counsel for Applicants in C.R.A (ST) No. 34906 of 2017 with Civil Application No. 140 of 2018, C.R.A. No. 514 of 2017, C.R.A. No.519

of 2017, C.R.A. No. 522 of 2017, C.R.A. No. 523 of 2017, C.R.A. No. 524 of 2017, C.R.A. No. 531 of 2017, C.R.A (ST) No.34897 of 2017, C.R.A. (ST) No. 35768 of 2017, C.R.A. (ST) No.19051 of 2017 in (Rejected Case No. 2399 of 2017), C.R.A (ST) No.24882 of 2017. Mr. Pandey, learned Counsel for the applicants in C.R.A No. 641 of 2017, C.R.A. No. 643 of 2017, CRA (ST) No.36548 of 2017 and Mr. Bhanage, learned Counsel for applicant in C.R.A. No. 500 of 2017 and Mr. Singh, learned Counsel for respondent in all Civil Revision Applications at length.

2. These Civil Revision Applications challenge the judgments and decrees dated 6th May, 2014 passed by the learned Judge, Court Room No.40, Court of Small Causes at Mumbai (Bandra Branch) in various suits instituted by the respondent, hereinafter referred to as “plaintiff” as also the judgments and decrees dated 6th May, 2017 passed by the Appellate Bench of Small Causes Court in various appeals preferred by the applicants, hereinafter referred to as “defendants”. By these orders, the Courts below have decreed the suits instituted by the plaintiff u/s 15 of the Maharashtra Rent Control Act, 1999 (for short 'Act').

3. As common questions of law and facts arise in these Civil Revision Applications, the same can conveniently be disposed of by this common order. At the request and by consent of the parties, facts from C.R.A No.349 of 2017 are taken into consideration for the sake of brevity and convenience.

4. Respondent, hereinafter referred to as “plaintiff” had instituted R.A.E. Suit No. 939 of 2007 against the applicant (hereinafter referred to as “defendant”) for recovery of possession of Room No.5 in Gauri Pannalal Prajapati Chawl No.2, Pandey Nagar, Shiv Vallabh Road, Dahisar (East), Mumbai – 400 068 (hereinafter referred to as “suit premises”), inter alia, on

the ground that monthly rent of the suit premises is Rs.80/-. The defendant was irregular in payment of monthly rent and was in arrears of rent since March, 2004. The plaintiff requested the defendant orally on several occasions and demanded arrears of rent from him. The defendant was not ready and willing to pay arrears of rent and permitted increases. The plaintiff issued demand notice on 16th July, 2007 calling upon the defendant to pay arrears of rent. The said notice was sent by the Registered Post Acknowledgment (for short 'R.P.A.D') and Under Certificate of Posting (for short 'U.P.C'). The demand notice sent by R.P.A.D returned with remark "unclaimed". The notice sent by U.P.C did not return and hence, it was served upon the defendant. The plaintiff craved leave to refer and rely on the returned packet by R.P.A.D. The plaintiff, therefore, claimed possession of the suit premises on the ground of default as contemplated by section 15 of the Maharashtra Rent Control Act, 1999 (for short 'Act').

5. The defendant resisted the suit by filing written statement, inter alia, denying assertions made in the plaint. In paragraph 10 of the written statement, the defendant contended that no notice was received by him at the address of the suit premises which was given by the plaintiff. The defendant further asserted that the suit premises has been declared as a slum area under section 4(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short "Slum Act") and that the plaintiff has not taken prior permission from the Competent Authority for institution of the suit. In the absence of the permission to institute the suit, the suit instituted by the plaintiff is not maintainable.

6. On the basis of the pleadings of the parties, the learned trial Judge framed necessary issues. The parties adduced evidence. By order dated 6th May, 2014, the learned trial Judge decreed the suit. The learned trial Judge

held that the plaintiff established that the defendants are wilful defaulters and that the plaintiff is entitled to decree of eviction on the ground of arrears of rent as contemplated by Section 15 of the Act. The learned trial Judge, however, held that the suits were instituted in the year 2007 and pending the suits, CTS No.2482 (Part) was declared as a Slum area and, therefore, the plaintiff can execute the decree after obtaining previous permission of the Competent Authority u/s 22(1) (b) of the Slum Act'.

7. Aggrieved by this decision, the defendant preferred appeal before the Appellate Bench of Small Causes Court. The plaintiff filed Cross-Appeal at Exhibit 8. By the judgment and decree dated 6th May, 2017, the Appellate Court dismissed the appeal and allowed the Cross Appeal. Condition at Clause No.3 (wrongly mentioned as “clause No.2”) of the trial Court's judgment requiring the plaintiff to obtain permission of the Competent Authority u/s 22(1) (b) of the Slum Act before executing the decree was set aside. Against these orders, the defendant has instituted the present Civil Revision Application.

8. In support of these Application, Mr. Godbole strenuously contended that the Courts below committed serious error in decreeing the suit. The suit is decreed only on the ground of arrears of rent i.e u/s 15 of the Act. He submitted that basically the demand notice issued by the plaintiff is not served on the defendant. He submitted that endorsement on the registered post acknowledgment is “unclaimed”. The plaintiff did not examine the postman. He submitted that presumption about service is rebuttable. As the defendant has stated on oath that he has not received the demand notice, the burden is on the plaintiff to establish valid service of the demand notice on the defendant. He relied upon following decisions:

[1] **Anil Kumar Vs. Nanak Chandra Verma, (1990) 3 Supreme Court Cases 603,**

[2] **Lalmani Ramnath Tiwari Vs. Bhimrao Govind Pawar, 2001 (3) Bom. C.R.21;**

In this decision, the learned Single Judge referred to decisions in the case of **Hajrabi Abdul Gani v. Abdul Latif Azzizulla, A.I.R 1996 Bom.2** as also the decision of the Apex Court in the case of **Anil Kumar Vs. Nanak Chandra Verma, A.I.R. 1990 S.C 1215**. In the case of **Hajrabi Abdul Gani (supra)**, this Court referred to Section 27 of General Clauses Act 1897, Section 114 of the Indian Evidence Act, 1872 (for short 'Evidence Act'). Learned Single Judge also referred to decision in the case of **B.S. Mahajan (since deceased) by his heirs and legal representatives v. Chapsey R. Mistry, 1988 (3) Bom. C.R. 535**. In this decision, the decision in the case of **Meghji Kanji Patel v. Kundamal Chamanlal Mehtani, A.I.R 1968 Bom.387** was referred.

9. Mr. Godbole further submitted that the plaintiff had issued demand notice dated 16th July, 2007 by RP.A.D as also U.P.C to all the defendants. All these notices returned with remark “un-claimed”. He submitted that this cannot be considered as a mere co-incidence and raises a serious suspicion as regards service of demand notices on the defendants. Mr. Godbole submitted that as the demand notice is not served upon the defendant, the Courts below were not justified in decreeing the suit on the ground of arrears of rent as contemplated by Section 15 of the Act.

10. Mr. Godbole further submitted that the suit property falls in a slum area. He heavily relied on the declaration dated 22nd May, 2008 published in the Maharashtra Government Gazette on 29th May, 2008. In that Notification, following properties were declared as a slum area.

Sr. No.	C.T.S NO.	AREAS IN SQ. METERS
1.	2408 (part)	249.37
2.	2482 (part)	2105.10 (where suit premises is situate)
3.	2483	709.00
4.	2484	<u>623.30</u> Total <u>3689.77</u> Reservation <u>(-) 37.00</u> Net Total <u>3652.77</u>

He submitted that by order dated 7th April, 2016, Collector Bombay Suburban District corrected area of CTS No.2482 from 2105 square meters to 3679.00 square meters. Accordingly, mutation entry No.1238/2016 was certified on 2nd May, 2016. Thus, entire CTS No.2482 is declared as a slum area. He has taken me through the oral evidence adduced by the parties. He submitted that as the Notification is issued after instituting the suit, the learned trial Judge was justified in directing the plaintiff to obtain prior permission of the Competent Authority as per section 22(1) (b) of the Slum Act before executing the decree. In fact, in pursuance of the trial Court's order, the plaintiff filed application on 5th November, 2016 obtaining permission of the Competent Authority for executing the decree in respect of another tenant. The said application was rejected by the Competent Authority on 26th May, 2017.

11. Mr. Godbole has invited my attention to map at page No.168 of the compilation in C.R.A No.523 of 2017 to contend that structures are standing in CTS No.2482-A and not in CTS No.2482-B. He submitted that the suit premises is situate in CTS No.2482-A. Mr. Godbole submitted that in the cross-examination, defendants in C.R.As No.360, 352 and 359 of 2017, deposed that they did not receive the demand notice. He, therefore, submitted that application requires consideration.

12. Mr. Upadhyay adopted the submission of Mr. Godbole in C.R.As No.514 of 2017, 519 of 2017, 522 of 2017, 523 of 2017, 524 of 2017, 531 of 2017 as also CRA(ST) No.19051 of 2017, CRA (ST) No.24882 of 2017, CRA (ST) No.35768 of 2017, CRA (ST) No.34897 of 2017, CRA (ST) No.34906 of 2017. He submitted that demand notice issued u/s 15 of the Act was not served upon the defendants in these applications. Suit property is situate in a slum area. He, therefore, submitted that the applications require consideration.

13. Mr. Pandey appearing on behalf of defendants in C.R.A (ST) No.36548 of 2017, CRA No.641 of 2017 and CRA No.643 of 2017 substantially adopted submissions advanced by Mr. Godbole. As far as defendant in C.R.A. No.641 of 2017 is concerned, Mr. Pandey submitted that in the cross-examination, the defendant stated that he did not receive the demand notice dated 16th July, 2017.

14. In support of CRA No.500 of 2017, Mr. Bhanage adopted the submissions advanced by Mr. Godbole. He submitted that liberty may be reserved to the defendant to approach the appropriate Authority seeking direction against the plaintiff to obtain prior permission of the Competent Authority u/s 22 (1) (b) of the Slum Act.

15. On the other hand, Mr. Singh supported the impugned orders. He submitted that defendant in C.R.A. No.349 of 2017 admitted service of demand notice. He did not give reply to the notice. He admitted that he has no documentary evidence to show that that suit chawl is situate in a slum area. He submitted that similarly, defendant in C.R.A. No.523 of 2017 also admitted receipt of the demand notice. He also admitted that he has no documentary evidence to substantiate that the suit property is situate in a slum area.

16. Apart from that, he submitted that demand notice was sent by R.P.A.D and returned with the remark “unclaimed”. He submitted that there is statutory presumption available u/s 27 of the General Clauses Act, 1897, Section 28 of the Bombay Clauses Act as also section 114 (e) of the Evidence Act. He submitted that in the instant case the defendants have not rebutted the presumptions. In support of his submission, he relied on following decisions:

- [1] **P.T. Thomas v. Thomas Job, 2005 (2)RCR, 222 and in particular paragraphs 11, 13 and 14;**
- [2] **David K.N Vs. S.R. Chaubey (Chaturvedi), 2003 (4) Bom. C.R. 612.**

17. He submitted that in the case of **David K.N.**, (supra), the learned Single Judge referred to the decision of the Apex Court in the case of **Anil Kumar (supra)**, **Meghji Kanji Patel (supra)** as also **Lalmani Ramnath Tiwari (supra)**. After considering the decision of the Apex Court in **M/s. Madan and Co., V. Wazir Jalvir Chand, AIR 1989 SC 630**, the learned Single Judge held that it is not necessary for the plaintiff to examine the Postman and it is for the defendant to rebut the presumption. He, therefore, submitted that Courts below rightly came to the conclusion that the demand notice was duly served on the defendants.

18. As far as other ground that the suit property is declared as a slum area is concerned, the learned trial Judge without appreciating the evidence on record held that the suit premises is situate in the slum area and directed the plaintiff to obtain prior permission from the Competent Authority before executing the decree. The Appellate Court rightly came to the conclusion that as the suit property is not situate in the slum area, prior permission of the Competent Authority u/s 22 (1) (b) of the Slum Act is not required. He further submitted that no case is made out for interfering with the impugned orders.

19. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. It is not in dispute that the plaintiff had issued demand notice on 16th July, 2007 by R.P.A.D and under U.P.C. A perusal of the endorsement made on the envelope sent by R.P.A.D shows that letter was dispatched on 16th July, 2007. Intimation was left on 17th July, 2007 and thereafter endorsement “unclaimed” is made on 25th July, 2007. It is not in dispute that address of the defendant is correctly mentioned on the envelope.. Section 28 of the Maharashtra General Clauses Act, 1904 reads thus;

28. Where any Bombay Act [or Maharashtra Act] made after the commencement of this Act authorizes or requires any document to be served by post whether the expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document and unless, the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post”

20. Section 114 (e) of the Evidence Act reads thus;

“114. Court may presume existence of certain facts._ The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

The Court may presume_

(a)...

(b)...

(c)...

(d)...

(e)That Judicial and official acts have been regularly performed;”

21. I have also perused the endorsement made on the Registered Post A.D., which is “not claimed”. The question is whether the endorsement 'not claimed' will amount to a valid service or not. The said question is no longer *res integra*. In the case of The New India Assurance Co. Ltd. Vs. Nasibunnisa Mohd. Israr Khan, Civil Application No.1979 of 2011 in First Appeal (St.) No.13185 of 2011 decided by this Court (Coram: A. S. Oka, J.) on 14.10.2011, the learned Single Judge has considered the following decisions:

- a. **Lalmani Ramnath Tiwari Vs. Bhimrao Govind Pawar, 2001 (2) Mh.L.J.342;**
- b. **David K. N. Vs. S. R. Chaubey (Chaturvedi), 2003 (4) Bom.C.R. 612;**
- c. **Krishna Ramchandra Jadhav @ Yadav Vs. Shankari B. Ajimal, 2005 (4) Mh.L.J.577;**
- d. **P. T. Thomas Vs. Thomas Job, (2002) 7 SCC 531;**
- e. **M/s. Madan and Company Vs. Wazir Jaivir Chand, AIR 1989 SC 630.**

22. After considering the law on this subject, it was observed thus,

“8. ... There are many decisions dealing with this issue. Once such decision is in the case of **Lalmani Ramnath Tiwari** (*supra*) where an issue arose regarding service of notice by the landlord on the tenant under Section 12 (2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The Court considered the issue when such notice is returned back with the postal remark "not claimed", whether it can be a proper service of the notice contemplated by Section 12 (2) of the said Act. In this decision, the issue considered was whether presumption of service of notice arises in such a case. There is another decision in the case of **David K. N.** (*supra*). The issue which is considered therein is regarding the service of notice by a landlord to his tenant. It will be necessary to make a reference to what is held by this Court. In paragraph No.18 of the Judgment, this Court held thus:

"18. In fact, as far as the contention of the petitioner about

his absence in the premises and therefore absence of occasion to receive notice and, on that count presumption being rebutted, a complete answer is to be found in the decision of Apex Court in *M/s. Madan & Co.'s case (supra)*. Mere absence of the tenant in the premises cannot rebut the presumption arising under section 28 of the Bombay General Clauses Act. It is for the tenant to make necessary arrangement to receive the notice addressed to him in his absence at the suit premises and, failure on the part of tenant in that regard cannot enure to his benefit to contend that on account of his absence at the premises, the presumption of service would stand rebutted. It is further to be noted that postal endorsement is not of refusals to receive but to the effect that the letter was not claimed. In other words, there was presumption not only regarding service of the notice but also regarding intimation of a letter having been received in the post office addressed to the tenant and failure to collect the same by the tenant as he was found absent in the premises at the time when postman approaches the premises to deliver the same. The presumption regarding intimation would arise under section 114 of the Evidence Act, as it is observed by the Apex Court, it is general practice for the postman to intimate either orally or in writing about the letter having been received in the post office addressed to the tenant when the tenant is found absent in the premises at the time when the postman approaches to serve the same. Undisputedly, there was no such efforts made by the petitioner either to receive the notice at the address sent to him during his alleged absence nor any explanation forthcoming as to why arrangement was not made to collect the letter from the postal authorities on intimation thereof. Being so, the presumption of service has not been rebutted.

(underline supplied)"

Thus, this Court invoked presumption under Section 114 of the Indian Evidence Act while dealing with the issue of service of notice by the Landlord to the tenant.

30. In the case of **Krishna Ramchandra Jadhav @ Yadav** (*supra*), the same issue was considered by this Court. This Court relied upon presumption under Section 27 of the Bombay General Clauses Act

and Section 114 of the Evidence Act. In all the aforesaid cases, this Court was dealing with service of notice to the tenant in accordance with Section 106 of the Transfer of Property Act, 1882. It must be noted that this Court considered the question of invoking presumption under the Indian Evidence Act or Bombay General Clauses Act on the basis of the evidence adduced in the suit. My attention was invited to a decision of the Apex Court in the case of **P. T. Thomas** (*supra*). In paragraph Nos.14 and 15, the Apex Court observed thus:

"14. It was he, in fact, who had provided the amount which was deposited on 7-4-2003 and not on 8-4-2003 as assumed by the High Court. It is, thus, seen that the appellant has performed his obligation. He had sent the notice on 30-10-2001 and it was well before the expiry of time on 5-10-2001. Though the notice was correctly addressed and despite the intimation by the post office, the notice was not accepted by the respondent and was returned unserved. In such circumstances, the presumption of law is that the notice has been served on the respondent.

15. The High Court, in our view, has also misinterpreted Section 27 of the Post Office Act, 1898. The requirement of the Section has been complied with in this case. The reasoning of the High Court on this issue is not correct and not in accordance with factual position. In the notice issued, the postman has made the endorsement. This presumption is correct in law. He had given notice and intimation. Nevertheless, the respondent did not receive the notice and it was returned unserved. Therefore, in our view, there is no obligation cast on the appellant to examine the postman as assumed by the High Court. The presumption under Section 114 of the Evidence Act, 1872 operates apart from that under the Post Office Act, 1898."

In this case, the Apex Court was not dealing with service of summons or notice of Court. The Apex Court was dealing with service of notice by the parties to the proceedings. The Apex Court has dealt with the issue of the presumption.

10. It will be necessary at this stage to make a reference to the decision of the Apex Court in the case of *M/s. Madan and Company* (*supra*). It will be necessary to make a reference to what is held by the Apex Court in paragraph No.6 of the decision, which reads thus:

"6. We are of opinion that the conclusion arrived at by the Courts below is correct and should be upheld. It is true that the proviso to Cl. (i) of S. 11(1) and the proviso to S 12(3) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language would be impractical and unworkable. The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through posts. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgment due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under S. 27 of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee. The difficulty is where the postman calls at the address mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee; he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorised to affix the letter on the premises because of the assessee's absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a Court under O. V of the C.P.C. The statutory provision has to be interpreted in the context of this difficulty and in the light of the very limited role that the post office can play in such a task. If we interpret the provision as requiring that the letter must have been actually delivered to the addressee, we would be virtually rendering it a dead letter. The letter cannot be served where, as in this case, the tenant is away from the

premises for some considerable time. Also, an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has B gone or to deliver them to some other person authorised by him. In this situation, we have to chose the more reasonable, effective, equitable and practical interpretation and that would be to read the words "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant.

(underline supplied)"

11. It will be material to note that in the aforesaid decision, the Apex Court has observed that the Indian Post Office Rules do not prescribe any detailed procedure regarding delivery of the registered letters where the postman is unable to contact the addressee or a person who is authorized to receive the letter. The Apex Court noted the general practice that after making an attempt to deliver the letter on one or two days, the Postman returns the letter to the sender. The Apex Court held that the responsibility of a postman cannot be equated to that of a process server (Court bailiff) entrusted with the responsibility of serving the summons of a Court under Order V of the Code."

23. That apart, as noted earlier, in C.R.A. No.349 of 2017 and C.R.A. No.500 of 2017, the defendants categorically admitted that they received the demand notice in cross-examination and that they did not give reply to the said notice. A perusal of affidavit of examination-in-chief under Order-XVIII, Rule-4 of the C.P.C shows that the defendants did not assert anything about service of demand notice dated 16th July, 2007. In view thereof, I do not find that the Courts below committed any error in holding that the demand notice was duly served on these defendants. The Courts below after appreciating the evidence on record concurrently recorded finding of fact.

24. As far as defendant in C.R.A No.641 of 2017 is concerned, Mr. Pandey submitted that in the cross-examination the defendant stated that he did not receive demand notice dated 16th July, 2007. A perusal of the affidavit of examination-in-chief of the defendant does not show that the defendant stated that he did not receive the demand notice. In fact, in the cross-examination, this defendant deposed that he did not receive the summons of the suit. When he was confronted with suit summons Exhibit 5, he admitted that suit summons bears his signature and that he received the suit summons on 14th December, 2007.

25. I do not find any merit in the submission of Mr. Pandey that the defendant in C.R.A. No.641 of 2017 did not receive the suit summons. Mere denial is not sufficient and as held by the learned Single Judge of this Court in the case of **David K.N.** (supra), the defendant had to rebut the presumption. The learned Single Judge in paragraph 8 observed that; “mere statements that “I have not received the notice sent to me” or that “notice allegedly sent was never received by me” or the like by themselves would not rebut the presumption. The facts leading to the conclusion about improbability or impracticability of service of notice in spite of endorsement to the contrary will

have to be brought on record by the tenant in order to rebut the presumption. Otherwise provisions in Section 28 of the Bombay General Clauses Act itself would be rendered meaningless and as is observed by the Apex Court in **Madan & Co.'s case** (supra) (AIR 1989 SC 630) a tenant can always create a situation whereby he may be able to return the letter without actually refusing the same.

26. In the light of the aforesaid discussion, I do not find any merit in the submission of the learned Counsel for the defendants that demand notice was not served on the defendants. Mr. Godbole submitted that the plaintiff had issued demand notice dated 16th July, 2007 by R.P.A.D and by U.P.C to all the defendants and all these notices returned with remarks “unclaimed”. He submitted that this cannot be considered as a mere co-incidence and raises serious suspicion as regards service of demand notice on the defendants. I do not find any merit in this submission. The Courts below, after appreciating the evidence on record have concurrently recorded a finding of fact that the demand notice is duly served on all the defendants. The said finding is based upon appreciation of evidence on record. It is, therefore, not possible for this Court in exercise of powers under section 115 of the C.P.C to interfere with the finding of fact based upon appreciation of evidence.

27. As far as ground of default is concerned, the learned trial Judge has considered this aspect in paragraphs 7 to 23. In paragraph 21, the learned trial Judge has considered section 15 (3) of the Act. The learned trial Judge also considered the rent receipts and observed that the case of D.W.1 in respect of payment of rent upto August, 2007 is not reliable in absence of cogent evidence. In paragraph 22, the learned trial Judge recorded a finding that the defendant did not comply all the conditions stipulated in section 15 (3) of the Act. In paragraph 23, the learned trial Judge has held that

the defendant has made default in payment of arrears of rent since March, 2004 to July, 2007.

28. As far as the Appellate Court is concerned, the Appellate Court has upheld the findings recorded by the learned trial Judge. In fact, during the course of hearing of these applications, the defendant did not seriously challenge the finding recorded by the Courts below in respect of ground u/s 15 of the Act.

29. Now, I will consider the other contention viz; the suit property is situated in the slum area. A perusal of Notification dated 29th May, 2008 shows that CTS No.2482 (Part), admeasuring 2105.10 square meter was declared as slum area. A perusal of the cross-examination of the plaintiff in C.R.A. No.349 of 2017 shows that he stated that C.T.S No.2482 is admeasuring 3660 square meter. That apart, it is common ground between the parties that by order dated 7th April, 2016, Collector Bombay Suburban District corrected the area of CTS No. 2482 from 2105.10 to 3689 square meter. It, therefore, substantiates the claim of the plaintiff that the total area of CTS No.2482 is 3600 square meters. As against this, u/s 4(1) of the Slum Act area admeasuring 2105.10 square meters is declared as slum area. In other words, entire CTS No.2482 is not declared as a slum area. Mr. Godbole submitted that after the order dated 7th April, 2016 of the Collector correcting area, it is not necessary to issue fresh Notification u/s 4 of the Slum Act declaring entire CTS No.2482 admeasuring 3689 as a slum area. It is not possible to accept this submission. I have already extracted the Notification dated 29th May, 2008. By that Notification, only part of CTS No.2482 admeasuring 2105.10 square meters was declared as slum area. It is not in dispute that thereafter no fresh declaration in respect of CTS No.2482 admeasuring 3689 square meters was issued. That apart, as noted earlier, defendant clearly admitted in the cross-

examination that he does not have any documentary evidence to substantiate that suit property is in a slum area. After perusal of the order passed by the trial Court, I am satisfied that the learned trial Judge was not justified in directing the plaintiff to obtain prior permission of the Competent Authority for executing the decree u/s 22 (1) (b) of the Slum Act. The Appellate Court, therefore, rightly interfered with that direction.

30. The defendants are not in a position to demonstrate that the Courts below committed any error in passing the impugned order. The defendants are not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that on the basis of evidence on record no reasonable or prudent person would have come to that conclusions arrived at by the Courts below. The defendants are not in a position to show that the findings are contrary to the evidence on record. Merely because on the basis of evidence on record, another view is possible that by itself, is no ground for exercising the powers under section 115 of C.P.C. In the result, the Civil Revision Applications fail and the same are dismissed.

31. Since, I have dismissed C.R.A. (ST) No.34906 of 2017, Civil Application No.140 of 2018 for restoration of possession of the suit premises to the defendant does not survive and the C.A is disposed of accordingly.

32. At this stage, learned Counsel for the defendants orally pray for stay of the order for a period of ten weeks from today. They state that the defendants and all the adult family members residing with them will file usual undertaking in this Court within two weeks from today, after giving advance copy to the other side incorporating therein that:

- [a] they are in possession and nobody else is in possession of the suit premises;
- [b] they have neither created third party interests nor parted with possession of the suit premises;
- [c] they will hereafter neither create third party interests nor part with possession of the suit premises;
- [d] within two weeks from today, the defendants will deposit the entire arrears in this Court under intimation in writing to the respondent's Advocate.
- [e] in case they are unable to obtain suitable orders from the higher Court within ten weeks from today, they will hand over vacant and peaceful possession of the suit premises to the plaintiff;

33. Subject to the defendants' filing the undertaking in the aforesaid terms within two weeks from today, this order shall remain stayed for the period of ten weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within two weeks from today and/or in case defendants commit breach of any of the conditions of the undertaking, the plaintiff will be at liberty to proceed with the matter in accordance with law. Order accordingly.

34. List the Civil Revision Applications for reporting compliance after three weeks.

[R.G. KETKAR, J.]