

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.103 OF 2018

Laxman Sakharam Sahil	...	Applicant
Vs.		
Gangaram Shivram Kanade	...	Respondent

Mr. P. N. Joshi for Applicant.
Mr. Kishor K. Malpathak for Respondent.

CORAM : R. G. KETKAR, J.
DATE : APRIL 26, 2018

P.C. :

Heard Mr. Joshi, learned Counsel for the applicant and Mr. Malpathak, learned Counsel for the respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the applicant, hereinafter referred to as 'defendant', has challenged the judgment and decree dated 10.11.2017 passed by the learned Principal District Judge, Thane in Civil Appeal No.135 of 2013. By that order, learned District Judge quashed and set aside the judgment and decree dated 21.12.2012 passed by the learned 9th Joint Civil Judge, Senior Division, Thane in Regular Civil Suit No.772 of 2010 and directed the defendant to handover vacant and peaceful possession of room No.8 (subsequently changed to room No.9) admeasuring 19' x 10' ft. (for short 'suit premises') to the respondent-plaintiff within two months from the date of the order.

3. Plaintiff instituted Suit against the defendant for recovery of possession of the suit premises. Initially, monthly rent was Rs.30/-, which was enhanced to Rs.60/- per month, excluding water and electric charges. Plaintiff had issued notice dated 19.01.2007 demanding rent @

Rs.250/- per month from 01.02.2007. Plaintiff thereafter issued another demand notice dated 29.01.2008 calling upon the defendant to pay arrears of rent. Despite repeated demands as the defendant failed to pay the rent, on 29.01.2009, plaintiff issued legal notice and demanded rent from the month of January 2007 to January 2009 @ Rs.250/- per month. Plaintiff also claimed possession of the suit premises on the ground that his family consists of his wife, son, unmarried daughter, widowed daughter and her children.

4. Defendant resisted the Suit by filing written statement, exhibit-9. It was inter alia contended that the monthly rent was Rs.60/- and defendant had paid entire rent till January, 2007 @ Rs.60/- per month. The demand of monthly rent of Rs.250/- made by the plaintiff was unilateral and highly illegal. Plaintiff had claimed exorbitant rent. The defendant also denied that plaintiff's requirement is, both, reasonable and bonafide.

5. On the basis of pleadings of the parties, the learned trial Judge framed the necessary issues. The learned trial Judge held that plaintiff did not establish that defendant is a willful defaulter and that he requires the suit premises reasonably and bonafide. Plaintiff also failed to establish that the defendant is not using the suit premises 6 months preceding the date of the institution of the Suit, as contemplated by Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short 'Maharashtra Rent Act'). Consistent with these findings, the learned trial Judge dismissed the Suit. Aggrieved by this decision, plaintiff preferred Appeal. By the impugned order, the Appellate Court decreed the Suit only under Section 15 of the Maharashtra Rent Act and declined to pass decree under Section 16(1)(g). It is against this order, defendant has instituted the present Civil Revision.

6. In support of this Application, Mr. Joshi strenuously contended that the demand notice, itself, is illegal and vitiated as the plaintiff had claimed exorbitant rent of Rs.250/- per month. He invited my attention to the rent agreement dated 26.02.1981, which records that defendant had paid Rs.4,000/- towards security deposit. He relied upon Section 18 of the Bombay Rents, Hotel and lodging House Rates Control Act, 1947 (for short 'Bombay Rent Act') to contend that the amount of deposit if adjusted towards the alleged arrears of rent then it cannot be said that the defendant is a defaulter. He further submitted that the plaintiff has created artificial defaults only with a view to evicting the defendant by hook or crook. He submitted that pending the Suit, defendant has deposited Rs.2,880/- on 08.03.2011, Rs.720/- on 25.01.2012. He invited my attention to paragraph 17 of the District Court's order. In paragraph 17, the Appellate Court recorded that monthly agreed rent was Rs.60/- and the arrears of rent were for 60 months. As against amount of Rs.3,600/-, defendant deposited Rs.2,880/- on 08.03.2011. Defendant deposited Rs.720/- on 25.01.2012 for the period from January 2012 to December 2012. The learned District Judge held that defendant did not deposit Rs.3,600/- which was arrears of 60 months. Mr. Joshi submitted that the defendant was not in arrears of 60 months and was in arrears of 50 months. He further submitted that plaintiff had tendered amount of Rs.180/- representing 3 months rent by Money Order, which were not accepted. If the calculation is made on the basis that defendant has not paid rent for 50 months then he would be liable to pay Rs.2820/- [Rs.3,000 (50 months x Rs.60) – Rs.180 (being rent of 3 months) = 2820]. As against this, defendant had deposited Rs.2880/- on 08.03.2011. Thus, the defendant deposited excess amount. The learned District Judge was, therefore, not justified in holding that defendant was in arrears of rent of 60 months and is a willful defaulter.

7. Mr. Joshi further submitted that by letter dated 25.04.2017,

defendant had remitted amount of Rs.3,600/-. In covering letter dated 25.04.2017, defendant specifically asserted that though repeatedly attempts were made to pay the rent, plaintiff refused to accept the rent. That apart, on couple of occasions, rent was remitted by Money Orders. Even those Money Orders were not accepted and they came back. Defendant, therefore, transmitted the Cheque of Rs.3,600/- on 25.04.2017 covering the period from January 2013 to December 2017. Mr. Joshi, therefore, submitted that the learned District Judge was not justified in decreeing the Suit under Section 15 of the Act. Mr. Joshi also relied upon Section 58 of the Maharashtra Rent Act to contend that though there is no provision under the new Act corresponding to Section 18 of the old Act, by virtue of Section 58, he is entitled to claim benefit under Section 18(2) of the old Act. He, therefore submitted that Application requires consideration.

8. On the other hand, Mr. Malpathak supported the impugned order. He relied upon the following decisions:

- a. ***Kulkarni Patterns Private Limited Vs. Vasant Baburao Ashtekar***, AIR 1992 SC 1097 to contend that the tenant is required to pay arrears of rent during the pendency of the appeal;
- b. ***Hari Bhuraji Vs. Rajendra***, 2009 (6) Mh.L.J. 483 to contend that appeal being continuation of the Suit, during the pendency of the appeal, tenant has to deposit the rent regularly;
- c. ***Maganlal Chhotabhai Desai Vs. Chandrakant Motilal***, AIR 1969 SC 37 and Section 18(2) of the Bombay Rent Act to contend that defendant ought to have instituted Suit for recovery of the deposit of Rs.4,000/- within 6 months from the date of the payment or adjusted that amount against the rent payable by him.

As the defendant has not taken any steps within the stipulated period under Section 18(2), he cannot contend that the amount of deposit should be adjusted towards the arrears of rent.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the demand notice was issued on 29.01.2009 claiming rent from the month of January 2007 to January 2009 @ Rs.250/- per month. The plaintiff claimed arrears for the period of 25 months @ Rs.250/- per month. This aspect was considered by the learned District Judge from paragraph 15 onwards. In paragraph 16, the learned District Judge noted that the suit summons was served on the defendant on 28.12.2010. In terms of Section 15 of the Maharashtra Rent Act, within 90 days, defendant was supposed to tender and deposit amount of Rs.2,880/- in the Court. Defendant deposited Rs.2,880/- in the Court on 08.03.2011. On 25.01.2012, he deposited amount of Rs.720/-. In paragraph 17, it was observed that perusal of the deposit receipt, exhibit-42, shows that amount of Rs.2,880/- was deposited in the Court covering the period from January 2007 to December 2011. It revealed that by that receipt, defendant deposited rent for 5 years i.e. for 60 months. On that basis, the learned District Judge found that defendant was supposed to deposit Rs.3,600/- whereas he deposited Rs.2,880/-.

10. In paragraph 19, the learned District Judge noted that defendant transmitted cheque of Rs.3,600/- on 25.04.2017 covering the period from January 2013 to December 2017. This finding is based upon the letter dated 25.04.2017 addressed by the defendant to the plaintiff. A perusal of this letter clearly indicates that defendant remitted cheque of Rs.3,600/- on 25.04.2017 covering the period from January 2013 to December 2017. Thus, during this period, defendant did not deposit any amount of rent for this period. Though in this letter, it was stated that Money Orders sent by the defendant were not accepted by the plaintiff, no evidence was produced to substantiate that claim. Thus, the finding

recorded by the learned District Judge in paragraph 19 is supported by the letter addressed none other than by the defendant himself on 25.04.2017. In the case of **Hari Bhuraji** (*supra*), the learned Single Judge referred to the Full Bench decision of Gujarat High Court in *Lalchand Jematmal Vs. Ramchhodbhai Shankerbhai Patel*, AIR 1968 Gujarat 172, interpreting Section 12(3)(b) of the Bombay Rent Act and it was observed thus,

“13. In *Lalchand Jematmal v. Ramchhodbhai Shankerbhai Patel and Ors.*, AIR 1968 Gujarat 172, the Full Bench of the Gujarat High Court interpreted Section 12(3)(b) of the Bombay Rent Act. The Full Bench of the Gujarat High Court observed as under:

“In the light of the above discussion we hold that Section 12(3)(b) of the Rent Act) applies even at the appellate stage and the words "till the suit is finally decided" occurring in Section 12(3)(b) refer also the decision of the suit in appeal by the Appellate Court when an appeal is preferred by the landlord against a decree passed by the trial Court dismissing his suit and the question arises before the Appellate Court whether the tenant is entitled to the protection of Section 12(3)(b), the Appellate Court would have to consider whether the tenant has, after paying or tendering in Court the arrears of standard rent and permitted increases on the first day of hearing of the suit or, op. or before such other date as might have been fixed by the Court, continued to pay or tender in Court regularly the standard rent and permitted increases till the decision of the appeal.”

There cannot be duality of opinion that the appeal is continuation of the suit. It is imperative, therefore, that cause of action for the suit would continue even during pendency of the appeal. The Appellate Court is entitled to take cognizance of the subsequent developments. It is difficult to countenance the argument, therefore, that nonpayment of the standard rent during pendency of the appeal would give rise to separate cause of action and such an event cannot be taken into account so as to pass decree under Section 12(3)(b) of the Bombay Rent Act.”

11. In the case of **Kulkarni Patterns Private Limited** (*supra*), while

interpreting Section 12(3)(b) of the Bombay Rent Act, the Apex Court held that tenant is required to pay arrears of rent on the first date of hearing and deposit further rent during the pendency of the Appeal. Failure to do both, makes him liable to suffer decree of eviction.

12. Mr. Joshi submitted that basically the demand notice itself was defective. As against the monthly rent of Rs.60/-, plaintiff claimed arrears @ Rs.250/- per month. As the demand notice, itself, is vitiated, the learned District Judge was not justified in decreeing the Suit more so when the learned trial Judge has dismissed the Suit. I do not find any merit in this submission.

13. In the case of ***Purshottam Bhanudas Palse Vs. Shakuntalabai Vishwanath Ayyaswami, Writ Petition No.3658 of 1991*** along with companion Writ Petitions decided on **13.12.1995** by the Division Bench of this Court (Coram : K. G. Shah & N. D. Vyas, JJ.), this issue was considered at length. In that case, three Petitions were referred to the Division Bench on the basis of orders passed by the learned Single Judge (Bhimrao N. Naik, J.). The point involved in those petitions centered round the question of the validity of the demand notice contemplated by Section 12(2) of the Bombay Rent Act. On behalf of the tenants, it was contended before Naik, J. that if the landlord in his notice under Section 12(2) of the Bombay Rent Act makes a demand of the amount which is in excess of what is legally due and payable by the tenant to the landlord on the date of the notice, such a notice would not be a valid notice and the suit for possession filed on the basis of such a notice should fail. In support of that contention, the tenants relied upon the decision of this Court in ***Ramchandra Appaji Manjage (since deceased) by LRs Vs. Mahavir Gajanan Mug, 1992 Mah.L.J. 436.*** Naik, J. found it difficult to agree with the proposition of law contained in the case of *Ramchandra Appaji Manjage* (supra) for in his view the

case was covered by the Division Bench of this Court in the case of ***Chhaganlal Mulchand Jain Vs. Narayan Jagannath Bangh* - 1983 Mah.L.J. 254**. Accordingly the matter was referred to the Division Bench. The Division bench considered following decisions:

- a. ***Raghunath Ravji Dandekar Vs. Anant Narayan Apte***, Civil Appeal No.387 of 1964 decided by the Apex Court on 05.04.1966;
- b. ***Lalshankar Mulji Joshi Vs. Kantilal Mohanlal Parikh***, 1971 **Bom. L.R.241** decided by the learned Single Judge of this Court (Coram : Bhole, J.);
- c. ***Chhaganlal Mulchand Jain*** (*supra*);
- d. ***Ganpat Vs. Motilal Champalal Lunavat***, AIR 1977 Bombay 344;
- e. ***Dnyaneshwar (decd) by LRs Vs. Pandharinath Damodar Khade***, AIR 1983 Bombay 217;
- f. ***Bhagabandas Agarwalla Vs. Bhagwandas Kanu***, AIR 1977 SC 1120;
- g. ***Shantilal M. Chhajed Vs. Sadashiv M. Ratnaparkhi***, 1989 Bom. R. C. 407; and
- h. ***Chimanlal Vs. Mishrilal***, AIR 1985 SC 136.

14. In paragraph 4, the Division Bench reproduced observations of the Apex Court in ***Raghunath Ravji Dandekar*** (*supra*), which is to the following effect:

“We have not been able to understand as to how the notice to quit under the Transfer of Property Act would be bad because by mistake or oversight more rent was demanded in the notice under S.12(2) of the Act than was due. All that S.12(2) requires is notice by the lessor for payment of arrears of rent. It is true that such a notice generally contains the amount due as arrears of rent. But if there is a mistake in the amount specified in the notice that does not in our opinion make the notice under s.12(2) bad or because of that make the notice to quit under the Transfer of Property Act bad. We may add that the mistake might have arisen because three years according to the British Calendar would have 37 months according to the

Hindu calendar because there is an intercalary month in the Hindu calendar once in there years of the British calendar. The argument that the notice to quit in this case was bad on this ground must therefore fail.”

15. The Division Bench thereafter observed that what is important from the Supreme Court judgment is that even if there is a mistake in the amount specified in the notice, that does not make the notice under Section 12(2) of the Bombay Rent Act bad. The Division Bench emphasized that merely because there is a mistake in the amount specified in the notice by which the arrears of rent or the permitted increases are demanded, the notice would not be rendered bad in law.

16. The Division Bench thereafter extracted observations made by the learned Single Judge (Bhole, J.) in **Lalshankar Mulji Joshi's case** (*supra*), which is to the following effect:

“It is now well settled that a liberal construction is put upon a notice to quit in order that it should not be defeated by inaccuracies either in the description of the premises or the name of the tenant or the date of the expiry of the notice; and that the test of its sufficiency is not what its contents would mean to a stranger ignorant of all the facts and circumstances touching the premises to which the notice purports to refer, but what they would mean to tenants presumably conversant with all those facts and circumstances and the mistakes, if any, should not be construed with desire to find faults, but they should be construed liberally. In the instant case it appears that the petitioner - landlord was under a mistaken belief while asking for rent for the period from August 15, 1965 to September 15, 1965. It is not that he meant that the rent would not be due to him on September 15, 1965. It may be that he remained under a wrong impression and thought that he could demand such rent since he was terminating the tenancy on and from September 15, 1965. In my view, therefore, this appears to be a mistake on the part of the petitioner committed while giving the notice.”

The learned Single Judge referred to the decision of the Apex Court in the case of **Raghunath Ravji Dandekar** (*supra*).

17. The Division Bench thereafter considered decision of another Division Bench in **Chhaganlal Mulchand Jain** (*supra*) and extracted paragraph 10 of the Division Bench judgment, which is to the following effect:

“In our opinion, it will not be possible to accept this contention of a strict construction of the notice in favour of the tenant. The notice is a communication between the landlord and the tenant and both the parties know their right and liabilities about the payment of rent. The notice is a communication between the landlord and the tenant and both the parties know their rights and liabilities about the payment or rent. Hence any mistake in making a demand for the larger amount would not render the notice invalid. This has been so held by the Supreme Court in an unreported decision of the case of Raghunath Ravji Dandekar v. Anant Narayan Apte. Similarly this Court in the case of Lalshankar Mulji v. Kantilal has held that a notice is not invalid simply because by mistake or oversight the landlord has demanded the rent more than it was due. It was further held that a liberal construction should be put upon the notice to quit in order that it should not be defeated by inaccuracies.”

18. The Division Bench has referred to the judgment of the learned Single Judge in **Ganpat** (*supra*) and observed that in paragraph 11 of the judgment in the case of **Chhaganlal** (*supra*), the Division Bench has considered decision of **Ganpat** (*supra*) and found that in the case of Ganpat, a grossly untenable claim of permitted increases and municipal taxes amounting to over Rs.500/- was made in the notice and the question had arisen as to whether such a notice was bad. In the case of **Ganpat** (*supra*), certain observations made by the learned Single Judge showed that notice must not be construed liberally. The Division bench observed that that would not be correct position. The Division Bench posited that the normal rule is that the notice exchanged between the landlord and the tenant should be construed liberally and not for the purpose of finding any fault as held by the Supreme Court in the case of

Bhagabandas Agarwalla (*supra*). The Division Bench proceeded further to say that it is possible that in a particular case the landlord may make a false and untenable demand of certain amount along with the claim about which there will not be any dispute. In such a case the tenant will have an option to pay the undisputed amount of rent and to give a reply that the rest of the claim was a false one. If in due course of time at the stage of the suit the claim is proved to be false, the tenant obviously would be protected as he has made the payment of the amount that was actually due. But he will not be able to resist the same if within one month from the notice he has not paid even the arrears to which the landlord was entitled. The Division Bench observed that the view expressed in the case of **Ganpat** (*supra*) that the notice would be bad if the notice includes untenable claim is too general a statement and disagreed with it. Even in such a case the tenant is under an obligation to remit within the prescribed time the permissible amount payable by him. Of course, he will have to take the risk if ultimately the Court finds that such payment would not cover all the arrears. In case of such a finding the landlord would be entitled to a decree for possession. But there would not be such a decree if the payment was sufficient to clear off all the arrears which were payable to the landlord. Thus everything will depend upon the fact of each case, but primarily one has to proceed on the basis that the notice should be construed liberally and not with a view to finding fault in it.

19. In paragraph 8, the Division Bench reproduced observations of the Apex Court in **Bhagabandas Agarwalla** (*supra*), which are to the following effect:

“Now it is settled law that a notice to quit must be construed not with a desire to find faults in it, which would render it defective, but it must be construed ut res magis valeat quam pereat. The validity of a notice to quit, as pointed out by Lord Justice Lindley, L.J. in *Sidebotham v. Holland*(1), ought not

to turn on the splitting of a straw. It must not be read in a hyper-critical manner, nor must its interpretation be affected by pedagogic pendantism or overrefined subtlety, but it must be construed in a common sense way. See *Harihar Banerji v. Ramsashi Roy*, 45 Ind. App. 222 = (AIR 1918 PC 102). The notice to quit in the present case must be judged for its validity in the light of this well recognised principle of interpretation.”

20. The Division Bench thereafter considered decision in **Shantilal M. Chhajed** (*supra*). In that case, as against the amount of Rs.195/- which was due from the tenant, the landlord in the notice under Section 12(2) of the Act demanded Rs.1180/-. The learned Single Judge held that it was not a marginal error which could be condoned. The error was colossal and on that account also the demand notice was bad. In paragraph 12, Division Bench referred to the decision of the Apex Court in **Chimanlal's case** (*supra*). In the plaint therein it was recited that tenant had taken a portion of a shop and a Varandah on the ground floor on rent at Rs.150/- per month for the purpose of his cloth business and that the tenant had not paid the arrears of rent totalling Rs.2550/- for the period 26.06.1968 to 11.10.1969 and that the tenant was therefore, liable to eviction on the ground set forth in Section 12(1)(a) of the Madhya Pradesh Accommodation Control Act, 1961. In the written statement, the tenant pleaded that the landlord had described the tenanted premises incorrectly. In fact the premises consisted of an entire shop, a kotha behind the shop and a varandah in front of the shop. The trial Court dismissed the Suit for possession on the ground that landlord had not correctly described the extent of the premises in the notice terminating the tenancy and therefore, the tenancy had not been validly terminated. The landlord's appeal also failed. In the second appeal filed by the landlord, the High Court permitted the landlord to amend the plaint so that reference to the tenanted premises then included the entire accommodation claimed by the tenant and after the amendment the suit

related to the accommodation which, according to the tenant was the subject matter of the demise. After allowing the amendment, the High Court allowed the second appeal and held that no notice under Section 106 of the Transfer of Property Act, 1882 terminating the tenancy was required in view of the decision of the Supreme Court in *V. Dhanapal Chettiar Vs. Yesodai Ammal*, **AIR 1979 SC 1745**. The matter was carried to the Supreme Court. In paragraph 8, the Supreme Court observed thus,

“To our mind, that is not sufficient. The notice referred to in S.12(1)(a) must be a notice demanding the rental arrears in respect of accommodation actually let to the tenant. It must be a notice (a) demanding the arrears of rent in respect of the accommodation let to the tenant and (b) the arrears of rent must be legally recoverable from the tenant. There can be no admission by a tenant that arrears of rent are due unless they relate to the accommodation let to him. A valid notice demanding arrears of rent relatable to the accommodation let to the tenant from which he is sought to be evicted is a vital ingredient of the conditions which govern the maintainability of the suit, for unless a valid demand is made no complaint can be laid of non-compliance with it. and consequently no Suit for ejectment of the tenant in respect of the accommodation will lie on that ground.”

21. In paragraph 13, the Division Bench noted that heavy reliance was placed by the learned Counsel for the tenants on the portion extracted hereinbelow:

“(b) the arrears of rent must be legally recoverable from the tenant.”

22. The Division Bench thereafter considered the observations made by the Apex Court in **Chimanlal's case** (*supra*) and observed thus,

“If we read all these these propositions together, it would become clear that what Their Lordships of the Supreme Court meant was that the arrears of rent, which must be legally recoverable from the tenant, must be the arrears of rent in respect of the accommodation let to the tenant. In other words, if something is claimed by way of arrears of rent for

the premises which is not let to the tenant, then the demand certainly cannot be said to be a demand for arrears of rent legally recoverable from the tenant in respect of the accommodation let to the tenant. In that case, the quantum of demand was not in dispute. What was in dispute was the extent of demised premises. In the notice, the landlord stated that the tenant had been given a portion of the shop and a varandah on the ground floor by way of a lease. The tenant contended that it was not correct and according to the tenant, as a matter of fact of the entire premises consisting of the entire shop, a kotha behind the shop and a varandah in front of the shop formed part of the demise. The courts below on facts found the Court tenant's contention to be correct. The Supreme Court found that the two versions, one given by the landlord and the other by the tenant, were incongruent with each other. The difference between the two was not marginal or insubstantial. It was not the case of misdescription of the accommodation. It was in that context of the facts of the case that while dealing with the contention of the landlord that there was no dispute that the rent was Rs.150/- per month that Their Lordships of the Supreme Court said that the notice must be a notice demanding the arrears of rent in respect of the accommodation let to the tenant and that the arrears of rent in respect of the accommodation let to the tenant must be legally recoverable from the tenant. This is the only way in which, in our opinion, the judgment of the Supreme Court in the case of *Chimanlal* has to be understood. As said above, in that case, the quantum of rent demanded in the notice was not in dispute. The mistake in the notice was in relation to the description of the demised premises. The mistake was substantial. In our opinion, this judgment of the Supreme Court in *Chimanlal's* case cannot be pressed into service while deciding the question whether a notice under Section 12(2) of the Rent Act would be bad if there is some mistake in the amount of rent demanded by the landlord from the tenant.”

23. In paragraph 14, the Division Bench considered the decision of the learned Single Judge in **Ramchandra's** case (*supra*) and observed that **Chimanlal's** case was the one in which in the notice terminating the tenancy, the landlord had described only the part of the premises as the demised premises and had demanded rent in respect thereof at the rate of Rs.150/- per month. The tenant's contention that the demised premises were much more in extent than what the landlord contended was found

correct. The decision of the Supreme Court in **Chaimanlal's** case has no application to the facts of the present case where the Division Bench was required to consider whether a notice under Section 12(2) of the Act would ipso facto be bad in law merely on the ground of inaccuracy in the amount demanded by the landlord from the tenant.

24. The Division Bench ultimately held as under:

“The court shall have to make an attempt to find out whether the inaccuracy in the demand of arrears of rent and permitted increases in the notice under Section 12(2) of the Act is traceable to any malafide or dishonesty on the part of the landlord. If a positive finding of malafides or dishonesty is recorded, then, in our opinion, the notice could be faulted as bad on that ground alone. Otherwise on the mere inaccuracy, the notice could not be faulted. Even if the inaccuracy is of large measure, that also would be no ground to fault the notice unless of course the magnitude of inaccuracy coupled with other facts and circumstances appearing on record is capable of leading to a finding of malafides or dishonesty on the part of the landlord.”

25. In the present case, defendant did not come with the case that the demand notice issued under Section 15 of the Maharashtra Rent Act is traceable to any malafide or dishonesty on the part of the landlord. Applying the test laid down by the Division Bench in **Purushottam Bhanudas Palse's case** (*supra*), the notice dated 29.01.2009 issued by the landlord - plaintiff cannot be held as a faulty notice.

26. A perusal of the impugned order shows that the learned District Judge has calculated the arrears on the basis of monthly rent of Rs.60/- and not Rs.250/- per month. For the reasons recorded from paragraphs 15 to 21, I do not find that the learned District Judge committed any error in decreeing the Suit.

27. In so far as contention of Mr. Joshi that as the defendant has given

deposit of Rs.4,000/- to the plaintiff when the tenancy was created in the year 1981, in view of Section 18 of the Bombay Rent Act, the said amount is required to be adjusted is concerned, I do not find any merit in this submission. Sections 18(1) and (2) of the Bombay Rent Act read thus,

“18. Unlawful charges by landlord.-(1) If any landlord either himself or through any person acting or purporting to act on his behalf or if any person acting or purporting to act on behalf of the landlord receives any fine, premium or other like sum or deposit or any consideration other than the standard rent or the permitted increases, in respect of the grant, renewal or continuance of a lease of any premises, or for giving his consent to the transfer of a lease by sub-lease or otherwise, such landlord or person shall, on conviction, be punished with imprisonment for a term which may extend to six months, and shall also be punished with fine which shall not be less than the amount of the fine, premium or sum or deposit or the value of the consideration received by him, and further where the offence is committed by a landlord in respect of premises which were of his ownership on the date of the offence such premises shall be liable to confiscation.

(2) Where any fine, premium or other like sum or deposit or any consideration referred to in sub-section (1) is paid by any person, the amount or value thereof shall be recoverable by him from the landlord to whom it was paid or on whose behalf it was received or from his legal representative at any time within a period of six months from the date of payment and may, if such person is a tenant, without prejudice to any other remedy for recovery, be deducted by him from any rent payable by him to such landlord.”

28. A perusal of sub-section (2) of Section 18 shows that if any person has had paid any fine, premium or other like sum or deposit or any consideration referred to in sub-section (1), he can recover the said amount from the landlord at any time, within a period of 6 months from the date of payment. If such person is a tenant, without prejudice to any other remedy for recovery, that amount has to be deducted by him from any rent payable to the landlord. In the case of ***Maganlal Chhotabhai Desai Vs. Chandrakant Motilal***, AIR 1969 SC 37, the Apex Court has

considered this aspect from paragraph 5 onwards. In paragraph 7, the Apex Court observed thus,

“7. The section gives 'the tenant a general right of recovery of the overpaid rent within six months from the date of payment. Without prejudice to any other mode of recovery, he may deduct the overpayment from any rent payable by him to the landlord. Deduction is one mode of recovery. If the amount is incapable of recovery because of the bar of limitation, it cannot be recovered by deduction. In other words, the right of recovery by deduction is barred at the same time as the right of recovery by suit. If the tenant seeks recovery of the overpaid amount he must bring the suit or make the deduction within six months.”

29. In the present case, admittedly, defendant did not take any steps within the stipulated period under Section 18(2) of the Bombay Rent Act by instituting Suit within 6 months from the date of payment for recovery of the amount of the deposit of Rs.4,000/-. Defendant also did not deduct the amount from any rent payable by him to the landlord. In view thereof as also in view of the decision in **Maganlal Chhotabhai Desai** (*supra*), it is not open for the defendant, now, to contend that the amount of deposit is liable to be adjusted against the arrears of rent. In view thereof, no case is made out for invocation of powers under Section 115 of C.P.C. Defendant was not in a position to demonstrate that on the basis of the evidence on record, no reasonable or prudent person would have reached conclusions arrived at by the learned District Judge. Merely because on the basis of evidence on record, another view is possible that by itself is no ground for exercising powers under Section 115 of the C.P.C. In the result, the Civil Revision Application fails and the same is dismissed.

30. At this stage, Mr. Joshi orally prays for stay of the eviction decree for a period of 12 weeks from today. He assures that the defendant and all the adult family members residing with him will file usual undertaking in this Court within one week 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) they will deposit the entire arrears, if any, within three weeks from today in this Court under due intimation to the Advocate for the respondent;
- (e) in case they are unable to obtain suitable orders from the higher Court within twelve weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondent;

31. In view thereof, notwithstanding dismissal of C.R.A., subject to the defendant and all adult family members residing with him filing the undertaking in the aforesaid terms within one week from today, the eviction decree shall not be executed for a period of twelve weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within one week from today and/or in case defendant commits breach of any of the conditions of the undertaking, respondent will be at liberty to proceed with the matter in accordance with law. In case, defendant is unable to obtain suitable orders from higher Court within a period of twelve weeks and does not hand over possession of the suit premises to the plaintiff, the plaintiff will be at liberty to proceed with the matter in accordance with law. Order accordingly.

32. List the Application for reporting compliance on 04.05.2018.

(R. G. KETKAR, J.)