

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD  
REVIEW APPLICATION NO.37 OF 2018 IN  
CIVIL REVISION APPLICATION NO.220 OF 2015

Shrilal Ramkishan Agrawal & others Applicants

Versus

Hiralal Motilal Joshi,  
since deceased through L.Rs. & others Respondents

Mr.S.S.Bora, advocate for applicants.  
Mr.Ameya N. Sabnis, advocate for Respondents No.1-A and 1B.

WITH  
REVIEW APPLICATION NO.38 OF 2018 IN  
CIVIL REVISION APPLICATION NO.210 OF 2018

M/s Satkar Hotel, through  
its partners & others Applicants

Versus

Bajranglal Hiralal Joshi & others Respondents  
Mr.S.S.Bora, advocate for applicants.  
Mr.Ameya N. Sabnis, advocate for Respondent No.1.

**CORAM : NITIN W. SAMBRE, J.**  
**DATE : 26<sup>th</sup> April, 2019.**

**P.C. :**

In 1986, the non applicant-landlord initiated proceedings for eviction pursuant to the provisions of Section 15 of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 (for the sake of brevity, hereinafter referred to as “the Act of

1954”). The Rent Controller rejected the application of the present non applicant-landlord, whereas, the learned District Judge, allowed the same, which has resulted into filing of Revision before this Court. This Court, by the judgment under review, rejected the Revision of which tenant has sought review. The ground raised by the tenant in the Review Application is, this Court has failed to record a finding as regards willful default.

2           Learned Counsel for the applicant-tenant has invited attention of this Court to the proviso to Section 15 (2) (i) of the Act of 1954. He would also rely upon the judgment of this Court in the matter of **Shrikrishna Oil Mill, Latur Vs. Radhakishan Ramchandra**, reported in AIR 2000 (2) SC 562, so as to claim that in the absence of a specific finding by this Court, while dismissing the Revision on the issue of willful default, a case for review is made out.

3           Learned Counsel for the applicant-tenant would also invite attention of this Court to the judgment delivered in Rent Appeal so as to canvass that while allowing the appeal, the appellate Court has committed an error by relying upon the judgment in the matter of **Shrikrishna** (cited *supra*) of this Court, which was subsequently set aside by the Apex Court.

4           *Per contra*, Shri Sabnis, learned Counsel for the non applicant-landlord submits that neither the point, which was sought to be argued at the relevant time, nor the said issue, which is sought to be raised herein, was raised before the learned appellate Court. According to him, the appellate Court has framed

a specific point to be answered *qua* the willful default and the said judgment is upheld by this Court. According to him, there is no error of law or such error which causes substantial prejudice to the applicant-tenant which prompts exercise of powers of review. According to him, the application is liable to be rejected.

5           Having bestowed my thoughts to the submissions made in the Rent Appeal preferred by the landlord, a specific point for consideration was framed by the appellate court i.e. learned District Judge and the said point of willful default was answered against the tenant-present applicant.

6           This Court thereafter proceeded to evaluate the said finding in the backdrop of the arguments made by the learned Senior Counsel, appearing at the relevant time, and after considering the scope of revision, has proceeded to dismiss the same.

7           This Court has observed that the lawful claim of landlord for possession of his own property agitated since 1986, is sought to be frustrated by the applicant-tenant by taking recourse to various means such as non payment of rent, etc., same was resulted into filing of suit for recovery, execution thereof, etc., by the landlord.

8           This Court, while dealing with the claim in the judgment under review has specifically recorded conduct of the applicant-tenant of non payment of rent, filing of various suits for recovery of the same. Merely because the appellate Court has

relied upon the judgment in the matter of **Shrikrishna** (cited *supra*), which was subsequently set aside by the Apex Court, that itself cannot be a ground for seeking review before this Court, particularly when the aforesaid issue was never argued before this Court. The judgment under review has considered all the aspects of the matter and as such, in my opinion, no case is made out for review.

9 Both the Applications for review fail and stand rejected. Civil Applications No.2796 of 2019 and 2803 of 2019 also do not survive and stand disposed of.

10 The executing court is directed to forthwith proceed with the execution.

**NITIN W. SAMBRE**  
**JUDGE**