

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL APPLICATION NO.628 OF 2018  
IN  
CIVIL REVISION APPLICATION NO.28 OF 2008

Between:

M/s. Rizvi Builders

...Applicant/Original

Plaintiff

v/s

Kishore H. Powale & Ors

....Respondents/

Org.Defendants

Mr. Ravi Thankaian for the Applicants.

Mr. Prahband A. Sawant for the Respondents.

**CORAM: DAMA SESHADRI NAIDU, J.**

**DATE: 18th December 2019**

**PC :**

The Applicant was the plaintiff and the Respondents were the defendants in T.E. & R Suit No.401/423 of 2001, before the Small Cause Court, Mumbai. The plaintiff sought the defendants' eviction from the suit property. It failed. Aggrieved, it filed the first Appeal before the appellate Bench of the Small Cause Court. The appellate

Bench concurred with the trial Court and dismissed the first Appeal. So, then, the plaintiff has filed this Civil Revision Application against the concurrent findings.

**Facts:**

2. The suit property was originally vacant land. One William Miranda owned it. During his lifetime, William Miranda let out the vacant land to one Bhaskar Powale, through an agreement of Lease, dated 08.08.1972. The monthly rent was Rs.125/-. The original owner allowed the tenant to raise structures on the open land. It was said to be for the tenant's running a car-repair garage and workshop. The tenant did raise structures: a three storied building. The original tenant, while constructing the building is said to have adhered to the building regulations, as prescribed by BMC.

3. William Mirinda died in 1977. On his death, his two sons, that is Errol Miranda and Wulfarn Mindra, succeeded to his estate. In the course of time there arose a dispute between them and the applicant in this CRA. In July 1992, that dispute resulted in a consent decree. As a result, the originally owners' two sons conveyed the suit property to the Applicant. Thus, the Applicant has become the owner. On the other hand, Bhaskar Powle, the original tenant, died in September 1999, leaving behind him his wife and six children—the Respondent Nos. 1 to 7—as his legal heirs.

4. In the course of time, on 17<sup>th</sup> April 2001, the applicant issued a notice to the respondents. It alleged that the tenants had violated the lease conditions and that they put the property to an unauthorised use, besides defaulting on the rent payment. Thus, the applicant wanted the respondents to handover the vacant possession. The respondents replied on 26<sup>th</sup> April 2001, denying all the allegations. In other words, on the respondents' refusal to handover the vacant possession of the leased property, litigation ensued. I will refer to the applicant, a proprietary concern, as the owner and the respondents as the tenants.

5. The Small Cause Court, Mumbai, dismissed the suit, T.E. & R Suit No.401/423 of 2001, through its judgment on 23<sup>rd</sup> February 2006. Later, the appellant Bench, too, dismissed the first Appeal on 15<sup>th</sup> October 2007. So the Civil Revision Application No.28 of 2008. In that CA, the owner has now filed CRA No.628 of 2018.

6. We will take up that CRA for consideration. Succinctly stated, the owner in this CRA pleads that the tenants have not paid the rent regularly, despite this Court's direction. So they have earned a fresh disqualification and disentitled to be in possession of the property. In other words, on the ground of rent default, the owner wanted the Court to direct the tenants to vacate the suit property hand over possession.

**Submissions:**

7. The owner claims that the tenants have been in arrears of the rent since 1995. Pending the suit, in 2005, the tenants applied for permission to deposit the rent in the Court. Through its order, dt.3.8.2005, the trial Court directed the tenants to deposit the arrears @ ₹125/- per month from 01.01.1995 till August 2005, with costs of ₹ 145/-, in 15 days from the date of the Order. The payment should also include interest @6% per year. The trial Court also required the tenants to deposit the rent for the current months “regularly and punctually on or before 10<sup>th</sup> day of each commencing month.”

8. The owner pleads that the trial Court has permitted it to withdraw the rents being deposited. Under the trial Court’s direction, the tenants are said to have deposited the rent arrears till August 2005, and monthly rent till April 2006. The owner alleges that the tenants have not paid any rent thereafter.

9. The owner has maintained that despite the trial Court’s specific direction, the tenants, through the course of litigation, have defaulted in paying the rent. So it contends that the tenants have been guilty of wilful default.

10. Besides that, the owner, in this CRA, filed Civil Application viz. Civil Application No. 491 of 2015. It claimed that the suit property is located in a prime location—at Dadar, Mumbai. Further, the tenants’ predecessor illegally constructed two additional floors; those additional floor are being used for residential purpose.

So, the owner wanted the Court to pay the rent at the prevailing market rate.

11. When this Court took up CA No.491 of 2015 for hearing, the tenants' counsel represented that the tenants would deposit the rent @₹145/- per month, effective from May 2006 till date, in six weeks. So this Court disposed of the Civil Application, through an Order, dated 9.10.2017.

12. Now, the owner asserts that the proprietor verified with the Small Cause Court's Registry and found that the tenants had not deposited any rent, despite this Court's order, dated 9.10.2017. Therefore, the owner maintains that the tenants have continuously defaulted in paying the rent.

13. In the above backdrop, the owner's counsel stresses that the tenants should not be allowed to contest the CRA because of their persistent default. He also wants the Court to direct the tenants to restore the possession to the owner.

**Respondents:**

14. The learned counsel for the tenants, on the other hand, argues that there has been no default. He points out that the owner has earlier made every effort to throw the tenants out but could not succeed. In this regard, he draws my attention to the owner's Writ

Petition No. 1911 of 1999. Then, it wanted the civic authorities to demolish the structure, but this Court dismissed it.

**Discussion:**

15. On 9<sup>th</sup> October 2017, this Court in Civil Application No.491 of 2015 recorded the assurance of the tenants' counsel: "the respondents will deposit the amount at the rate of Rs.145/- per month effective from May 2006 till date within a period of six weeks from today." In the same order, the Court has also noted that "there is no eviction decree as against the respondents. Therefore, it is not possible [for the Court] to issue directions to the respondents to make deposits as per market rates. Relief, as applied for in the Civil Application, therefore, cannot be granted."

16. As seen from this Court's docket order, dt.18.07.2019, the applicant's counsel, then, told the Court that tenants had defaulted on paying the rent despite this Court's order, dated 9<sup>th</sup> October 2017. But the tenants' counsel asserted that the tenants paid the rent as directed by this Court. According to him, the rent was, first, paid through the cheque of the lawyer on record and, now, they are ready with a demand draft for the balance amount. He also clarifies that the cheque, in fact, was encashed immediately, in 2017. At any rate, he would like to file a reply setting out the details of the payment.

17. On 18<sup>th</sup> July 2019, the tenants' counsel did handover the demand draft of Rs.3897/- to the owner's counsel. It was to cover the arrears of rent from January to June 2019. The applicant's

counsel, then, accepted it without prejudice to the applicant's contention.

18. At any rate, from the tenants' reply and their counsel's arguments, I gather that the tenants deposited Rs.20,300/-, @Rs.145/- per month from May 2006 to December 2017. The deposit was made through their counsel's cheque, dt.02.11.2017. The cheque was deposited with the High Court's Registry. The record reveals, according to the tenants, that the cheque was duly encashed.

19. In this context, the tenants claim that they had been regularly paying the rent @Rs.145/- per month along with 6% interest, in compliance with the trial Court's direction in August 2005. But after the dismissal of the suit in February 2006, the trial Court did not accept the deposit. The tenants also plead the owner's alleged efforts to convince the tenants to agree for developing the suit property. According to them, during that period, because of the ongoing compromise talks, the tenants "lost the track and could not approach my advocate to instruct him to deposit the further rent." They nevertheless say that soon thereafter they paid the accumulated arrears at once.

20. I may note that the suit was filed in 2001, and this CRA in 2008. It is ripe for hearing. If there were any default on the tenants' part in paying the rent, earlier, in compliance with this Court's

direction, it might incur a disqualification against the tenants. But a disputed question of fact to be gone into deeper.

21. So I leave this issue open for both the parties. While addressing the issues in the main CRA, both parties may advance their contentions on this issue of rent default, as well.

With these observations, I close the Civil Application No.628 of 2018, without prejudice to the contentions on either side.

(DAMA SESHADRI NAIDU, J)

L.S. Panjwani, P.S.