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

**CIVIL REVISION APPLICATION NO. 643 OF 2016
IN
APPEAL NO. 97 OF 2012**

Municipal Corporation of Greater
Mumbai & anr.

... Applicants

v/s.

Roosbeh Mundegar Aga

... Respondent

Mr. R.V.Govilkar a/w. Mr. Oorja Dhond for the applicants.
Mr. V.Y.Sanglikar for respondents.

CORAM : DAMA SESHADRI NAIDU, J.

10th July 2019.

P.C.

The Municipal Corporation of Greater Mumbai is the tenant and the respondent is the landlord. The leased property comprises a cluster of rooms, in which the Corporation had been running a school—a basic public utility of immense importance. But the legal proceedings the Corporation conducted—to be accurate, not conducted—prove an adage to the hilt: if it is a problem of many, it is not the concern of any. Despite facing a suit for eviction, such massive network of administration has paid scant attention to ensure that an essential

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utility called school stands secured. It never defended its interest. In this context I will touch up the facts very briefly.

2. More than five decades ago, the Corporation took the property on lease from the respondent's father and established a school. In September 2008, the landlord filed R.A.E. & R Suit No.1150/1943 of 2008 for eviction on the grounds of arrears of rent and bona fide requirement. The landlord on his part, before instituting the suit, issued a series of notices, but met with no response from the Corporation. Then, he was compelled to file the suit.

3. In the suit, as the record reveals, the Corporation entered its appearance, and filed its defence, too. It has neither cross examined the landlord nor led any evidence on its part, despite its facing an allegation that it had not paid the rents from 1965. So the Trial Court decreed the Suit.

4. Though it is not clear from the record what immediate action the Corporation took, the Counsel on either side inform me that initially the Corporation filed Writ Petition No.9271 of 2012 against what it termed an *ex parte* decree. This Court, it seems, put the Corporation to election--either to challenge the *ex parte* decree under Order 9 Rule 13 or to file a comprehensive appeal before the Appellate Bench of the Small Cause Court. It seems the Corporation has chosen the latter.

5. True, in the course of time, the Corporation has also filed Writ

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Petition No.1065 of 2015. I was told it concerned the removal of the material from the leased property; there too, it met with no success. Even before the Corporation could file its statutory appeal as it chose to, the landlord on 5th July 2012 executed the decree and evicted the Corporation. Anyway, the Corporation cantered along and filed an appeal. And that appeal met a predictable fate. The Appellate Bench of the Small Cause Court dismissed it in May 2016. Aggrieved—if we could use that expression—the Corporation filed this Civil Revision Application.

6. In the above factual background, Shri R. P. Govilkar, the learned Standing Counsel for the Corporation, has submitted that though the landlord alleged in the Suit that the Corporation had been in arrears of rent from 1957, he failed to bring on record any material to sustain that claim. According to him, the Corporation could not pay the rents only from 2007 because of the change in its accounting system. To elaborate, Shri Govilkar has submitted that the Corporation introduced SAP System for its accounting. That means, all payments must be rooted through an electronic mode. So the landlord ought to have opened an account and linked that with the Corporation's SAP system. Then, he could have received the rents through e-payment. As the landlord has not complied with the Corporation's requirement, the Corporation could not pay. At this juncture, I asked Shri Govilkar why the Corporation never replied to the notices the landlord issued it. As

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the statute permits, the Corporation could have responded to the notices, cleared the arrears, and saved the school from closure. I have received no convincing answer, though.

7. Shri Govilar has, in the end, submitted that the landlord could not establish any *bona fide* requirement, too.

8. Shri Sanglikar, the learned counsel for the respondent-landlord, has strenuously contended that the landlord repossessed the property in 2012 and that now nothing remains in this Civil Revision Application. It only burdens the system unless it is dismissed, he concludes thus.

9. Heard Shri Govilkar for the applicant-Corporation and Shri Sanglikar for the respondent-landlord.

10. It paints a very sorry picture about how the Corporation defends itself. In a Suit for eviction, first it faced an allegation not paying rents for decades. Second, it received a series of notices. It has not paid the arrears of notice despite notice, nor has it replied to the notices. If we consider its plea that it had paid the rents until they introduced SAP system, then the Corporation could have produced the proof before the trial Court. It has not even contested the case. That apart, the Corporation's allegedly introducing a new-payment system would not absolve it of its liability to remit the rents—on time.

11. Curious as it seems, the Corporation entered its appearance, filed its written statement, but felt shy of defending itself in a court of

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law. The result is a decree; the causality, perhaps, is public interest. Based on the material available on record, the Trial Court has, rightly, decreed the Suit. Even the Appellate Bench of the Small Causes Court has passed a very detailed order on both the issues: the arrears of rent and the *bonafide* requirement.

12. Though Shri Govilkar has advanced elaborated arguments on both the issues, I reckon they are pure questions of fact. Therefore, I reckon this Court would not venture into adjudicating those questions as if it were an appellate court. Be it Section 115 of Code of Civil Procedure or Article 227 of the Constitution of India, the adjudicatory scope is constricted and affects only question of jurisdictional error. Nothing more.

Under these circumstances, I dismiss the Civil Revision Application. No order on costs.

(DAMA SESHADRI NAIDU, J)

L.S. Panjwani, P.S.