

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 22 OF 2018

Dashrath S/o Bapurao Mohite,		
Age : 73 years, Occ : Nil,		
R/o. Flat No. A-2, Balaji Apartment,		Petitioner
Samarth Nagar, Aurangabad.		(Ori. Defendant)

VERSUS

Harishchandra S/o Bhimaji Santre,		
Age : 71 years, Occ : Contractor,		
R/o : New Osmanpura, Gajanan Nagar,		
Taluka and District Aurangabad.		Respondent (Ori. Plaintiff)

**WITH
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.....
Mr. S. V. Adwant, Advocate for the Applicant.
Mr. P. F. Patni, Advocate for the Respondent.
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CORAM : V. K. JADHAV, J.
RESERVED ON : 18.12.2019
PRONOUNCED ON : 27.04.2020

JUDGMENT :-

1. Heard finally with consent at admission stage and decided by this common judgment.

2. **Civil Revision Application No. 22 of 2018.**

The respondent/original plaintiff had filed rent suit no. 48 of 2006 against the applicant/original defendant before the Civil Judge, Senior Division, Aurangabad for recovery of rent from 01.06.2002 to 31.10.2006 along with permitted increases as detailed in para 3 of the plaint.

3. **Civil Revision Application No. 23 of 2018.**

The Respondent/original plaintiff had filed rent suit no. 21 of 2007 against the applicant/original defendant for recovery of rent from 01.11.2006 to 31.03.2007 along with permitted increases and for eviction under Section 15 of the Maharashtra Rent Control Act, 1999 (for short, "the Act of 1999").

4. In both the suits, the applicant/defendant has denied his status as a tenant. It has been specifically denied that the applicant

was inducted as a tenant on 01.06.2002 on monthly rent of Rs.4,500/- and that the applicant had executed a *kabuliyatnama* on the same day. In view of this specific defence, the applicant/defendant has denied each and every averment pertaining to the arrears of rent. It has been contended that the respondent/plaintiff is the owner of flat no. A-2, situated at First Floor, Bajaji Apartment, Samarth Nagar, Aurangabad and the applicant/defendant was residing on the second floor of the said apartment. The respondent/plaintiff had expressed his wish to sell the flat to the applicant/defendant and the applicant had also expressed his willingness to purchase the said flat. It is contended in the additional written statement that the negotiations of purchase of the flat between the plaintiff and the defendant came to be started on 19.05.2002 and the total consideration of Rs.5,00,000/- was finalized on 20.05.2002. It is also contended that though the applicant/defendant was ready to pay the consideration amount on the condition that the respondent/plaintiff to execute a registered sale deed in his favour with vacant possession of the flat, the respondent/plaintiff had expressed his inability to execute registered sale deed on account of some family clashes. In order to overcome the said difficulty, the respondent/plaintiff had agreed to give vacant possession to the

applicant/defendant and requested the applicant/defendant to execute a nominal rent agreement which will not be acted upon at any time. It is the case of the applicant/defendant that he paid Rs.4,25,000/- to the respondent/plaintiff on 20.05.2002 as an earnest amount of the flat and the rest of the amount was agreed to be paid at the time of registration of sale deed. The applicant/defendant when actually started residing in the flat on 01.07.2002, at that time also, he paid certain amount out of the consideration to the respondent/plaintiff in cash. Thus, the applicant/defendant was residing in the said flat on the basis of the agreement to sale and paid most of the consideration amount as per the requirement of the respondent/plaintiff. On the basis of these rival pleadings, the parties went for trial of the suit.

5. By Judgment and decree dated 27.07.2011 in rent suit no. 48 of 2006, the 15th Joint Civil Judge, Junior Division, Aurangabad, partly decreed the suit with costs and directed the applicant/defendant to pay an amount of Rs.1,91,799/- to the respondent/plaintiff with future interest at the rate of 6% per annum till realization of the entire amount along with costs. Being aggrieved by the same, the applicant/defendant preferred rent appeal no. 19 of 2011 and the learned Ad-hoc District Judge-2,

Aurangabad, by judgment and order dated 26.04.2017, dismissed the appeal with costs.

6. By judgment and decree dated 21.07.2011 in rent suit no. 21 of 2007, the 15th Joint Civil Judge, Junior Division, Aurangabad, partly decreed the suit with costs and directed the applicant/defendant to hand over possession of the suit property to the respondent/plaintiff and further directed the applicant/defendant to pay an amount of Rs.38,200/- to the plaintiff along with 6% future interest till the entire amount is realized along with costs. Being aggrieved by the same, the applicant/defendant preferred rent appeal no. 10 of 2012. By judgment and order dated 26.04.2017 in rent appeal no. 10 of 2012, the Ad-hoc District Judge-2, Aurangabad, dismissed the appeal with costs.

7. In both the suits, so also in the appeals preferred against it, the trial court and the appellate court have recorded the finding in the affirmative and held that the respondent/plaintiff has proved the relationship as landlord and tenant between him and the defendant in view of the *kabuliyatnama* executed by the applicant/defendant on 01.06.2002. Hence these two separate Civil Revision Applications filed against the same. Both Civil Revision

Applications are therefore taken together for discussion and decided by this common judgment.

8. Learned counsel for the applicant/defendant submits that the applicant has, in his written statement, categorically denied execution of the rent agreement and further, the terms and conditions thereof. Therefore, the said document ought not to have been admitted and read in evidence in view of the statutory bar engrafted under Section 55(2) of the Act of 1999. Learned counsel submits that the stamp paper on which the alleged rent deed was executed was purchased on 12.06.2002 and the document however shown to have been executed on 01.06.2002. It itself indicates that the said rent deed is bogus and fake document. It is further submitted that the alleged rent agreement bears only the signature of the applicant/defendant and not the respondent/plaintiff. It is not a concluded and executed contract between the parties and as such, the respondent/plaintiff gets no right to stake the claim against the applicant, on the basis of the said fake document. Learned counsel submits that there is no evidence placed on record to prove payment of the alleged rent amount and on the other hand, the witnesses supported the case of the applicant. There is evidence in the form of oral evidence of the branch manager that

the applicant/original defendant withdrew Rs.4,00,000/- from the current account. It is the case of the applicant/defendant that he has paid Rs.4,00,000/- as part of the consideration amount to the respondent/plaintiff. However, the courts below have not considered this important aspect.

9. Learned counsel for the applicant submits that before institution of the suit under Section 15 of the Act of 1999, the respondent/plaintiff has to issue and serve a notice informing therein (a) the arrears of the rent must be legally recoverable, (b) the arrears of rent must be demanded as per Section 15 and (c) the premises be vacated for non- payment of the rental arrears. The notice issued by the respondent/plaintiff on 10.10.2006, before filing the suit, is filed at Exhibit “55-B” which pertains to the demand of rent from 01.06.2002 till 31.10.2006. Thus, the said notice will have to be considered to have been issued for arrears of rent sought to have been recovered under rent suit no. 48 of 2006 filed on 24.11.2006. So far as rent suit no. 21 of 2007 for possession is concerned, it was instituted on 19.06.2007 wherein, after referring the earlier arrears of rent and further rent, in para 6 it is stated that the applicant/defendant is a chronic defaulter and he has no intention to pay rent. Furthermore, reference has been

given to the earlier notice dated 10.10.2006 only. Learned counsel submits that the issue raised and the causes stated in rent suit no. 48 of 2006 and rent suit no. 21 of 2007, are distinct and different and the issues cannot be intermingled and will have to be dealt with separately. It is manifest that the respondent/plaintiff has not issued any demand notice under Section 15 of the Act of 1999 for rent suit no. 21 of 2007 and thus, the suit is premature and should have been dismissed on this ground alone. Furthermore, the court has not framed any specific issue as regards the issuance of statutory notice by the respondent/plaintiff as mandatory under Section 15 of the Act of 1999.

10. Learned counsel for the applicant further submits that the respondent/plaintiff has placed his reliance on the rent agreement which, if termed as a lease or a leave and licence, is chargeable with duty as prescribed in Schedule-I of the Maharashtra Stamp Act, however, the so called agreement is not duly stamped as per Section 2(h) of the said Act and is not admissible in evidence under Section 34 of the said Act. Learned counsel submits that furthermore, the said document is an unregistered document and it can be read only for collateral purposes.

11. Learned counsel for the applicant further submits that there is variance between the pleading and the proof. The respondent/plaintiff has sought to adduce evidence extraneous to and unsustainable with his pleading in the suit which is impermissible in evidence. Learned counsel further submits that the admission given by a party in criminal case cannot be considered in civil case. Learned counsel submits that the conclusions drawn by the trial court on issue no. 10 are absurd. The respondent/plaintiff has committed inexcusable and incurable error which is untenable under Section 15 and thus, the claim is unsustainable in law.

12. Learned counsel for the applicant/defendant, in order to substantiate his contentions, placed reliance on the following cases:

1. ***Chimanlal v. Mishrilal***, reported in (1985) 1 SCC 14.
2. ***Shantilal Misrilal Chhajer v. Sadashiv Murlidhar Ratnaparkhi***, reported in (1989) 91 Bom LR 860.
3. ***Sitaram Narayan Shinde and others v. Ibrahim Ismail Rais and others***, reported in 2005 (1) Mh.L.J. 35.

4. *Jitendra s/o Vasantrao Nagarkar v. Mohanlal s/o Maluramji Agrawal*, reported in 2016 (6) Mh.L.J. 797.
 5. *Ranchhod Dharamdas Mali v. Laxman Dharmdas Mali and others*, reported in 2018 (3) Mh.L.J. 775.
 6. *Harmes and another v. Hinkson*, reported in AIR 1946 PC (Privy Council) 146.
 7. *Shivaji Balaram Haibatti v. Avinash Maruthi Pawar*, reported in (2018) 11 SCC 652.
 8. *Vinayak Narayan Deshpande and others v. Deelip Prahlad Shisode*, reported in 2010 (3) Mh.L.J. 807.
 9. *Ganpat v. Motilal Champalal Lunawat and another*, reported in AIR 1977 Bombay 344.
13. Learned counsel for the respondent/plaintiff submits that the respondent/plaintiff had issued notice dated 10.10.2006 terminating the tenancy on the ground of default. The said notice was duly served on the defendant on 11.10.2006. Furthermore, the defendant has also admitted the receipt of the said notice in his written statement. Learned counsel submits that in the earlier suit bearing rent suit no. 48 of 2006, which is the subject matter of Civil Revision Application No. 22 of 2018, recovery of arrears of rent for

the period from 01.06.2002 till 31.10.2006 is claimed and thus, in rent suit no. 21 of 2007, which is the subject matter of Civil Revision Application No. 23 of 2018, rent for the subsequent period is claimed. However, the suit for eviction is based on the suit notice as could be seen from the pleadings of the respondent/plaintiff. Learned counsel submits that for recovery of arrears of rent, no notice is required. Learned counsel submits that till this date, near about 6,75,000/- rent amount is due and outstanding against the applicant/defendant. If at all the applicant/defendant wants to take benefit of Sections 15(2) or 15(3), in that event, the applicant should have paid the rent regularly along with the permitted increase. Furthermore, if any default, subsequent to the appearance of the tenant in the suit, is committed, in that event, the tenant is not entitled for any protection. Admittedly, after filing of the suit, the applicant tenant has neither paid nor deposited any amount in the court towards rent. Under such circumstances, the decree for eviction must follow. The learned counsel, in order to substantiate this preposition, relies upon the following judgments :

1. ***Babulal s/o Fakirchand Agrawal v. Suresh s/o Kedarnath Malpani and others***, reported in 2017 (4) Mh.L.J. 406.

2. *Prabhakar Venkobaji Manekar v. Surendra Dinanath Sharma*, reported in 2015 (4) Mh.L.J. 351.
3. *Rafiq Ahmed Qureshi s/o Bashir Ahmed v. Iqbal Khan s/o Hashmat Ali Khan and others*, reported in 2012 (1) Mh.L.J. 337.

14. Learned counsel for the respondent-plaintiff, by further placing his reliance on the case of *Shashikant s/o Ramrao Kulkarni v. Nirmala w/o Vasantrao Gore*, reported in 2011 (5) Mh.L.J. 251, submits that in view of the pronouncement of this Court, the submissions in respect of registration of agreement are not available to the applicant/defendant. Learned counsel submits that both the courts below have recorded concurrent findings regarding relationship as landlord and tenant. Furthermore, rent suit no.48 of 2006 has been decreed by the trial court and the said decree has been confirmed by the appellate court. Furthermore, there is admission in the cross-examination of the applicant/defendant in S.C.C. No. 4213 of 2004 which has been filed by the present respondent against him under Section 138 of the Negotiable Instruments Act. The applicant/defendant has admitted the relationship as landlord and tenant. Learned counsel submits that there is sufficient evidence on record to establish the relationship

as landlord and tenant between the parties. Furthermore, if the applicant/defendant is denying the relationship, it is for him to prove as to in what capacity he is enjoying possession. The applicant/defendant has failed to substantiate his pleading about agreement of sale and even his suit for specific performance of the agreement was also dismissed by both the courts below. The learned counsel submits that there is no substance in the submissions that the rent agreement is not on the proper stamp paper and thus not admissible in evidence in view of Section 34 of the Maharashtra Stamp Act. This ground has been raised for the first time before this Court. Furthermore, in view of Section 35 of the Maharashtra Stamp Act, The applicant/defendant cannot question admissibility of the document on the ground of insufficiency of stamp. The said document was exhibited before the trial court and at that time the applicant/defendant has not raised any objection. The applicant/defendant has also admitted in his written statement the execution of said document. Learned counsel for the respondent-plaintiff further placing reliance on the two judgments in (1) *Barium Chemicals Limited v. Vishwa Bharati Mining Corporation & another*, reported in (2009) 16 SCC 262 and (2) *Mrudalaben w/o Manoharlal Babria and others v. M/s. Chhallani Ginning and Pressing Factory and others* [First Appeal

No. 3565 of 2017] decided by this Court (Coram : T. V. Nalawade & Sunil K. Kotwal, JJ.) on 03.01.2019, submits that in view of the above two judgments the said document cannot be questioned on the ground of insufficiency of stamp for the first time before the revisional court.

15. Learned counsel for the respondent-plaintiff further submits that the applicant/defendant has changed his version time to time and even denied his earlier statement. He has no regard with the truth. Learned counsel submits that there is no substance in both Civil Revision Applications and the same are thus liable to be dismissed.

16. The respondent/plaintiff has instituted two suits for recovery of arrears of rent and for possession of the tenanted premises solely on the ground of default. So far as the notice dated 10.10.2006 is concerned, issued by the respondent/plaintiff, learned counsel for the applicant has vehemently submitted that the said notice pertains to the demand of rent along with permitted increases from 01.06.2002 till 31.10.2006. It is also submitted that so far as the second suit bearing rent suit no. 21 of 2007 for recovery of possession is concerned, there is no notice as contemplated under Section 15(2) of the Rent Control Act. I do not

find any substance in these submissions. It is clear that the suit for eviction is based on the suit notice dated 10.10.2006. In para 6 of the plaint of rent suit no. 21 of 2007, it has been pleaded that the defendant is a chronic defaulter. He has no intention to pay rent. As such, the plaintiff issued notice through Advocate by Registered Post A.D. and U.P.C. on 10.10.2006 which was duly served on the defendant on 11.10.2006. The defendant neither replied the notice nor paid rent up to 90 days, or say, till today. As such, the defendant is a willful defaulter and liable to be evicted from the suit premises. I do not find any substantive defect about complying with the provisions of Section 15(2) of the Act of 1999. It is also part of record that the receipt of notice is not disputed and the amount of arrears of rent has not been paid within the said period of 90 days, nor the rent amount in both the suits has been tendered in the court within 90 days from the date of service of summons of the suit. It is also part of record that the applicant has not deposited the amount before the court and even in the appellate court towards the arrears of rent in compliance with the provisions of Section 15 Sub-section (3) of the Act of 1999. On the other hand, the applicant/defendant has come with a theory of agreement of sale in respect of the tenanted property and his possession over that property on the strength of said agreement of

sale. The applicant/defendant has miserably failed to prove the same.

17. In the case of ***Babulal s/o Fakirchand Agrawal v. Suresh s/o Kedarnath Malpani and*** others (supra), relied upon by learned counsel for the respondent/plaintiff, the Full Bench of this Court in para 16, 17 and 20, has made the following observations:

“16. It is, thus, clear that the tenant who "pays" or "is ready and willing to pay" is only required to be protected on recording findings in that regard. Sub-section (1) of section 15 of the Maharashtra Rent Control Act provides that the landlord shall not be entitled to recovery of possession of any premises so long as tenant pays or is ready and willing to pay the amount of standard rent and permitted increases if any, and observes and performs the other conditions of tenancy in so far as they are consistent with the provisions of the Act. Protection is extended to the tenant who pays or is ready and willing to pay the amount of standard rent and permitted increases. The latter part of the sub-section also mandates the tenant to observe and perform other conditions of tenancy in so far as they are consistent with the provisions of the Act. The term "tenant pays or is ready and willing to pay" read with observance and performance of other conditions of tenancy would surely include observance of the terms of the tenancy and, one of the terms of tenancy which is consistent with the provisions of the Act is regularity

in payment of rent. A tenant who is irregular in payment of rent and pays the amount only under the threat of action of eviction or only after issuance of notice for recovery of rent cannot be considered to have complied with the mandate of sub-section (1) in respect of payment of rent and readiness and willingness on the part of the tenant so as to claim relief against forfeiture cannot be presumed. The only limitation that has been put on the entitlement of the landlord to avail of the remedies for enforcing his right to recover possession is to be found in sub-section (2) of section 15. Sub-section (2) of section 15 mandates that no suit for recovery of possession shall be instituted by the landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until expiration of 90 days next after notice in writing for payment of standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882. A suit by the landlord is thus not entertainable on the ground of recovery of possession for non-payment of the standard rent or permitted increases without transmitting a notice to the tenant 90 days before institution of such suit, in the manner as provided in section 106 of the Transfer of Property Act, 1882. Sub-section (3) of section 15 provides that the Court shall not pass a decree of eviction on the ground of arrears of standard rent and permitted increases if within a period of 90 days from the date of service of summons of the suit, the tenant pays or tenders in the Court standard rent and

permitted increases then due together with simple interest on the amount of arrears at the rate of 15% per annum and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the Court. It is, thus, clear that if the tenant pays the amount demanded within the time stipulated and further continues to pay the amount of standard rent and permitted increase during the pendency of the proceeding regularly, the tenant is not liable to be evicted and no decree shall be passed. There is no whisper in the provisions of section 15 putting an embargo on the entitlement of the landlord to file a suit for eviction against a tenant except subject to compliance of the preconditions specified in sub-section (2) of section 15 of the Maharashtra Rent Control Act.

17. *On consideration of provisions of section 15 of the Maharashtra Rent Control Act which provide for relief against forfeiture to the tenant, it is clear that the tenant has been extended protection from eviction so long as he performs his obligation in respect of payment of rent as well as observance and performance of other conditions of the tenancy. The provisions, thus, protect the tenant who is paying rent or has established his readiness and willingness to pay. Further protection is also provided in sub-section (3) of section 15 if the tenant pays entire arrears of rent on receipt of notice within contemplation of sub-section (2) of section 15 before the period prescribed under sub-section (2) together with interest and cost as may*

be ordered by the Court and continues to pay rent and the permitted increases regularly until the decision in the suit. If the tenant does not pay rent regularly and offers to pay only after issuance of notice within contemplation of sub-section (2) of section 15 and does not observe the other terms and conditions which include regular payment of rent, the landlord is not disabled from proceeding against such tenant. In nutshell, to derive that if tenant offers or pays the amount recorded in the notice issued in pursuance to sub-section (2) of section 15, together with permitted increases, the landlord is disabled from proceeding against the tenant is not within contemplation of section 15 of the Act. The right to seek remedy and claim possession of the premises owned by the landlord is inherent in him however, initiation of such proceedings is subject to fulfilment of certain pre-conditions such as issuance of notice in accordance with section 106 of the Transfer of Property Act as provided under section 15(2). It is, thus, clear that the tenant who disobeys the provisions of section 15(1) can be evicted independently though such tenant may not necessarily pay any arrears of rent on the date of institution of the suit. Sub-section (3) of section 15 shall have to be construed independently and if the tenant does not observe the mandate of sub-section (3) in respect of payment of amount of rent and permitted increases regularly till disposal of the proceedings before the Court, is also liable to be evicted.

18.

19.

20. *On the analysis of the provisions of section 15 as well as various judgments, it must be concluded that the provisions of sub-sections (1), (2) and (3) of section 15 shall be read independently. In order to claim relief against forfeiture, the tenant must satisfy all the conditions in respect of payment of rent or tender in Court all the arrears then due on the first day of hearing of the suit or within contemplation of provisions of law and to deposit the rental liability regularly in the Court till the suit is finally decided and there is no extinction of the cause of action by reason of payment of existing arrears by the tenant. It is, thus, clear that in order to avoid decree, once the notice is issued within contemplation of sub-section (2) of section 15 of the Maharashtra Rent Control Act by the landlord, the tenant shall have to fulfil the conditions laid down under sub-section (3) of section 15 of the Maharashtra Rent Control Act and there is no escape therefrom.”*

18. In the case of ***Prabhakar Venkobaji Manekar v. Surendra Dinanath Sharma*** (supra), relied upon by learned counsel for the respondent/plaintiff, this Court (Coram: A.S. Chandurkar, J.) in para 11 to 13 has made the following observations:

“11. *Under provisions of Section 15(1) of the said Act as long as tenant pays, or is ready and willing to pay amount of standard rent and permitted increases, the landlord would not be entitled to recover possession of*

the premises on the ground of arrears of rent. It is well settled that under Rent Control legislation if the tenant wishes to take advantage of the beneficial provisions of the statute then he must strictly comply with requirement of said statute. In Atmaram vs. Shakuntala Rani, (2005) 7 SCC 211 in para 19 it was observed as under:

"19. It will thus appear that this Court has consistently taken the view that in the Rent Control legislations if the tenant wishes to take advantage of the beneficial provisions of the Act, he must strictly comply with the requirements of the Act. If any condition precedent is to be fulfilled before the benefit can be claimed, he must strictly comply with that condition. If he fails to do so he cannot take advantage of the benefit conferred by such a provision."

According to learned counsel for the petitioner the tenant having paid the amount of arrears that were lawfully payable, it could not be said that he was in arrears of rent after such payment. According to him if the arrears prior to period of three years were not legally recoverable then tenant could not be evicted on the ground that he had not paid arrears for such period. As recovery for said period was barred by the law of limitation, same would not give a cause of action to the landlord to seek eviction on that count.

It is to be noted that the expression used in section 15(3) of the said Act is arrears "then due". In the decision relied upon by the learned counsel for the petitioner in Bhimsen Gupta (supra), the expression "lawfully payable" as used in Section 11(1)(d) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1983 was considered. Similarly in Kamala Bakshi (supra) the expression "arrears of rent legally recoverable, as appearing in Section 14(1) of the Delhi Rent Control Act, 1958 were under consideration.

12. *The expression "then due" was used in the provisions of Section 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which stood repealed as a result of said Act coming into force. Considering similar arguments as advanced that if the amounts that were claimed to be due could not be recovered on account of bar of limitation, then the tenant could not be evicted for being in arrears of such dues, learned Single Judge in Karamchand Deoji Sanghavi vs. Tulshiram Kalu Kumawat, 1992 Mh.L.J. 560, held that if the tenant intended to seek protection from eviction then the entire amount of arrears even if time barred were required to be paid. It was held that the provisions of Section 12 of the Bombay Rent Act did not alter the entitlement of the landlord in the light of law of limitation.*

In Srinivas Babulal (supra) relied upon by the learned counsel for the respondent it was held that the demand of time barred rent in a notice issued under Section 15 of the said Act was not fatal and it was

incumbent on the tenant to pay even time barred arrears. It is, therefore, clear that the expression "then due" will have to be construed to include amount of arrears that were due and payable disregarding the fact that part thereof had become time barred. In Khadi Gram Udyog Trust vs. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur (1978) 1 S.C.C. 44, it was held by the Supreme Court that even if the remedy was barred, the debt was not extinguished and if the tenant wanted to seek benefit of the statute then for avoiding the decree of eviction, the amounts due were required to be paid. Hence, the expression "then due" in Section 15(3) of the said Act would include the amount of arrears even prior to three years of such notice.

13. *In this background if the response of the tenant to the notice dated 29-04-2008 is considered, he has taken a stand that demand as made was barred by limitation and hence he had restricted the payment of arrears only for the preceding three years. It is to be noted that in his cross-examination he had stated that there was no evidence to show payment of rent from 1-7-2000 to 30-4-2008. Hence, even without going into the aspect whether rent was payable at Rs.5000/- as urged by the landlord or Rs.500/- as urged by the tenant, on the own showing of the tenant he had not paid the entire arrears as demanded for period of about eight years even at the rate of Rs.500/- per month. It is, therefore, clear that there is failure to comply with the demand as made by the notice issued under Section 15(2) of the said Act. Hence, the finding recorded that tenant was*

liable to be evicted on the ground of arrears of rent cannot be faulted with.”

19. It is clear that in terms of the provisions of Section 15(1) of the Act of 1999, as long as the tenant is ready and willing to pay the amount of standard rent and permitted increases, the landlord would not be entitled to recover possession of the premises on the ground of arrears of rent. In the instant case, the courts below in both the suits have categorically recorded the finding to the effect that the applicant/defendant did not pay or was never ready and willing to pay the amount of standard rent and permitted increases. It is to be repeated here that in view of the provisions of the Act of 1999, if the tenant wishes to take advantage of the provisions of Section 15 or some other provision of the said Act, he must strictly comply with the requirements of the Act, and if he fails to do so, he cannot take advantage of the said provisions. It is clear that the applicant also found to be in arrears of rent in terms of Section 15(3) of the Act of 1999. The applicant is liable to be evicted even on the said ground alone.

20. In the case of ***Vinayak Narayan Deshpande and others v. Deelip Prahlad Shisode*** (supra), relied upon by learned counsel for the applicant, this Court (Coram: Smt. Nishita Mhatre,J.) in the

given set of facts held that the notice of demand itself was not issued in accordance with law because it was for an untenable amount and therefore, the suit seeking a decree for recovery of possession on the ground of non-payment of rent was not maintainable. In the facts of the cited case, the tenant contended that he was not a defaulter as he had, in fact, paid the rent to the erstwhile landlord up to August, 2000. Even the appellate court has also observed as on the money order coupons which were on record that rent was paid to the erstwhile landlord up to August, 2000 for each month and accordingly held that the tenant was not in arrears of rent at the time when the notice of demand was issued as he had already paid the rent to the erstwhile landlord. The appellate court further held that there was a failure on the tenant's part to deposit rent into the Court as required under Section 15(3) of the Act of 1999, however, since there was no compliance of the requirement of Section 15(2) of the Act of 1999, the appellate court held that the tenant could not be labelled as a defaulter. In the backdrop of these facts, while confirming the findings recorded by the appellate court, this Court has held that the notice of demand itself was not issued in accordance with law because it was for an untenable amount and as such, the suit seeking a decree for recovery of possession on the ground of non-payment of rent was

not maintainable. In the instant case, the facts are altogether different. The respondent/plaintiff has proved non-payment of rent in terms of Section 15(2) of the Act of 1999. Furthermore, the applicant/defendant has not deposited any amount towards arrears of rent before the courts below or even before this Court and as such, there is no compliance of the provisions of Section 15(3) of the Act of 1999.

21. In the case of *Ganpat v. Motilal Champalal Lunawat and another* (supra) relied upon by learned counsel for the applicant/defendant, wherein this Court (Coram: R.L.Aggarwal, J.) has also dealt with a fictitious or untenable demand of arrears of rent in terms of the provisions of Section 12(2) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act (57 of 1947). In the facts of this case, the observations and the ratio laid down in the cited case cannot be made applicable.

22. Learned counsel for the applicant/defendant has assailed the rent agreement on two counts. Firstly, it is not a registered document and secondly, the said rent agreement is not duly stamped. In the case of *Barium Chemicals Limited v. Vishwa Bharati Mining Corporation & another* (supra), relied upon by

learned counsel for the respondent-plaintiff, in para 3 and 4, the Supreme Court has made the following observations:

- “3. *The order of the High Court does not conform to the requirements of Section 35 and 36 of the Stamp Act. A document which is not duly stamped and is also not registered though required to be registered can be admitted in evidence for collateral purposes under proviso to Section 49 of the Registration Act but so far as the stamp duty is concerned, if the document is not duly stamped it has to be dealt with under Section 35 of the Stamp Act before it is admitted in evidence failing which, by virtue of Section 36, admission of document in evidence cannot be questioned at any later stage.*
4. *The appeal is allowed. The impugned order of the High Court is set aside and that of the trial court is restored.”*

23. It is held by the Supreme Court that if the document is not duly stamped, it is necessary to be dealt with under Section 35 before it is admitted in evidence, failing which, its admission in evidence cannot be questioned at any later stage.

24. The Division Bench of this Court in ***Mrudalaben w/o Manoharlal Babaria*** (supra), relied upon by learned counsel for the respondent/plaintiff, by referring the cases of [1] ***Javer Chand and***

others v. Pukhraj Surana (AIR 1961 SC 1655), [2] *Shamlal v. Sushil* (AIR 2007 SC 637) and the judgment delivered by Division Bench of this Court in the case of [3] *Shree Chaitanya Constructions v. Poonamchand Dalichand Parakh and others* (2018 (2) ABR 537), held that once a document has been marked as an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial court itself or to a court of appeal or revision to go behind that order. The Division Bench of this Court has therefore, in the case of *Mrudalaben w/o Manoharlal Babaria* (supra), rejected the objection raised by the senior counsel regarding admissibility of the document on the ground of insufficient stamp duty.

25. In the case of *Shashikant s/o Ramrao Kulkarni v. Nirmala w/o Vasantrao Gore* (supra), relied upon by learned counsel for the respondent/plaintiff, this Court held that the consequences of failure of reducing the tenancy agreement in writing and securing its registration are prescribed in Sub-sections (2) and (3) of Section 55. In absence of written and registered agreement, the contention as regards the terms and conditions, subject to which the premises

have been given to the tenant, as contended by the tenant, shall have to be accepted. Section 55 nowhere provides for "any other consequence" for failure on the part of the landlord to get the agreement drawn in writing or getting the same registered, except those provided in Sub-section (3) of Section 55. It nowhere puts an embargo in respect of entertainability of any civil action by the landlord either for recovery of rent or for recovery of possession of the tenanted premises on account of his failure to secure an agreement of tenancy in the form, as contemplated by Section 55(1) of the Act. Thus, I find no substance in the submissions made by the learned counsel for the applicant on these two counts and the same are hereby rejected.

26. So far as the oral and documentary evidence led by the parties in respect of their rival submissions, I have carefully gone through the copy of the rent deed which has been duly proved before the trial court. All the terms and conditions of the rent agreement are incorporated in the document which runs into four pages. It appears that the rent was agreed to be Rs.4,500/- per month to be paid on 7th day of each month. There is escalation of rent clause after every one year. Even both the courts below have given importance to the admissions given by the

applicant/defendant in the earlier suit bearing Special Civil Suit No. 523 of 2007 pertaining to his signature on the rent deed and also to the fact that the applicant/defendant, being a highly educated person, it is very unlikely on his part to sign any such document without going through its contents. According to the applicant/defendant, his signature on the said document is as purchaser and not as a tenant. The said rent deed was nominal and it was never to be acted upon. Thus, the courts below have rightly observed that one Tarachand has signed the said document of rent deed as a witness and the applicant/defendant could have substantiated his pleading by examining the said witness Tarachand. So far as the defence raised by the applicant/defendant about the agreement of sale and payment of substantial amount as part of the consideration, both the courts below have expressed their doubts about payment of such huge amount of Rs.4,00,000/- without any insistence about execution of any proper document. It is also observed by the courts below that if the amount is paid in presence of certain persons, then they would have been most natural witnesses to depose about the same. However, the applicant/defendant has not examined them as witnesses. In view of the same, I find no fault in the concurrent findings recorded by the courts below. I do not find that their judgment and orders

suffer from any perversity. There is no substance in these two Civil Revision Applications. Hence, I proceed to pass the following order:

ORDER

Both the Civil Revision Applications i.e. Civil Revision Application No. 22 of 2018 [Dashrath S/o Bapurao Mohite v. Harishchandra S/o bhimaji Santre] and Civil Revision Application No. 23 of 2018 [Dashrath S/o Bapurao Mohite v. Harishchandra S/o Bhimaji Santre] are hereby dismissed.

(V. K. JADHAV, J.)

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