

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 118 OF 2021

Sk. Chand s/o Sk. Kadar Qureshi @ Sandu
Deceased through LRs

1. Sk. Nayeem s/o Sk. Chand and others ... Applicants

Versus

Syed Moinuddin s/o Syed Fakruddin
@ Mahdmiya and another ... Respondents

....

Mr. Ashutosh S. Kulkarni, Advocate for applicant
Mr. Anand P. Bhandari, Advocate for respondents

....

CORAM : R. G. AVACHAT, J.

DATED : 23rd JUNE, 2022

PER COURT :-

. Heard.

2. The applicant herein is the original defendant in Rent Suit No.04/2009. The suit was decreed directing him to vacate the suit premises. He has been unsuccessful in the appeal preferred against the judgment and decree passed in Rent Suit No.04/2009. He is therefore before this Court in revision application.

3. The learned Advocate for the respondents - landlords would submit that the applicant is defaulter in payment of rent. Not a single rupee was deposited by him towards arrears of rent. The learned Advocate took me through the rozanama of the proceedings of the first appeal, being Rent Appeal No.01/2017 to indicate the appellant herein or his Advocate have consciously remained absent when the appeal came up for hearing. The learned Advocate for the respondents in the said appeal had made his submissions when the appellant was very much present before the appellate Court. According to the learned Advocate, such a litigant doesn't deserve a relief. There may be substance in these submissions.

4. It is a suit for possession of tenanted premises. The ground of eviction is default in payment of rent. The appellant claims to have been running a tea stall in the suit premises. The same is to be the only source of earning for him. Be that as it may.

5. Admittedly, the appellate Court decided the appeal on merits on hearing the learned Advocate for the respondents/ landlord therein. The appellant was not present when the appeal had come up for hearing. The only course open for the appellate Court

was to dismiss the appeal in default. It ought not to have decided the appeal on its own merits. In the case of ***Prabodh Choudhary Das and another vs Mahamaya Das and others – (2020) 18 SCC 701***, it has been observed by the Hon'ble Apex Court, thus :

“Civil Procedure Code, 1908 – S. 100 r/w Or.41 R.17(1) and Expln. Thereto – Second appeal – High Court, held, erred in dismissing second appeal on merits in absence of counsel for appellants – At the most second appeal could have been dismissed for default.”

In view of the above, the Civil Revision Application needs to be allowed, remanding the appeal back to the appellate Court for deciding it on its own merits.

6. There is dispute over quantum of rent. According to the respondents, the same is little over Rs.2,000/- per month. The appellants claim to be the same at Rs.400/- per month. There is a decree for Rs.64,000/- towards arrears of rent. Over six years have passed since passing of the decree by the trial Court. The appellants, shall therefore, deposit a sum of Rs.1,50,000/- with the appellate Court.

7. With this, the civil revision application is allowed in terms of following order:

ORDER

- (i) The decree impugned herein is hereby set aside.
- (ii) The appeal is remanded back to the appellate Court for being decided on its own merits within a time frame of four months from the date of receipt of a copy of this order.
- (iii) The appellant shall deposit with the appellate Court a sum of Rs.1,50,000/- towards arrears of rent within six weeks. The same shall be without prejudice to the rights of the respondents – plaintiffs.
- (iv) The appellants shall pay the respondents the cost of Rs.25,000/-, immediately.

[R. G. AVACHAT, J.]

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