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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 68 OF 2022**

Dr. Ashok Rajmal Mehta Applicant.
V/s
M/s Shree Tirthankar Co. Respondent.

Ms. Shweta Sharma for the Applicant.
Mr. Sameer R. Bhalekar for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 01, 2022

P.C.:-

- 1] This Revision is by the Defendant to T.E. Suit No.105 of 2007.
- 2] Respondent/Plaintiff initiated aforesaid suit for recovery of possession of the suit property. The said suit came to be decreed on 4/1/2016. Present Applicant feeling aggrieved preferred an appeal being Appeal No.154 of 2017 which was also dismissed on 29/11/2021. As such, this Revision.
- 3] Facts necessary for deciding this Revision are as under:-
- 4] Plaintiff, a registered Firm claims to be landlord of the suit property. It is claimed that same was let out to Tarabai, a deceased mother of the present Applicant. Tenancy was terminated on

13/12/1975. Defendant since failed to pay monthly rent for the period from 1/4/1998 to 31/3/2002 at the rate of Rs 42.50 per month so also neglected to pay municipal taxes and other incidental dues for a period from 1/4/1998 to 31/3/2002, N.A. taxes etc has resulted into initiation of the suit.

5] Present Applicant resisted the said claim by filing Written Statement at Exhibit-11 and denied the claim. It was the contention of the present Applicant/Defendant that suit being R.A.E. Suit No.3483 of 1976 against Tarabai was dismissed and therefore present suit was not maintainable. Further contentions are, lease deed was suppressed and as such it is claimed that it was the duty of the Plaintiff to pay taxes and other outgoings in respect of the suit property.

6] Having regard to rival submissions, issues were framed at Exhibit-18 as to whether plaintiff has validly terminated the tenancy of the defendant and whether plaintiff is entitled to vacant possession of the suit premises. Both the issues were answered against the present Applicant.

7] While questioning both these judgments, Counsel for the Applicant/tenant would urge that there was failure on the part of the Respondent/Plaintiff to establish that Plaintiff has title to the property and there exists landlord-tenant relationship. Additional contentions are, attempt on the part of the Applicant to amend the Written

Statement was rejected by the revisional court which has led to Applicant losing an opportunity of leading evidence in the matter. Counsel would urge that even from the appreciation of evidence of Plaintiff, it can be inferred that Respondent/Plaintiff has failed to establish their title over the suit property and that being so, concurrent findings recorded by the courts below warrant interference by remanding the matter with direction to the Trial Court to give an opportunity to the Applicant to lead evidence thereby permitting amendment to the Written Statement.

8] Aforesaid contentions are resisted by the Counsel for Respondent/Plaintiff. He would urge that execution proceedings are pending and some of the part of the encroachments/small structures is subject matter of said execution proceedings. His contentions are, sufficient opportunity was offered to the Applicant at the time of conducting suit which the Applicant has failed to avail and that being so, claim that Applicant was denied the opportunity to amend the suit, particularly to lead evidence is without any basis. It is further claimed by the Counsel for the non-applicant that issue as regards denial of landlord-tenant relationship was never raised before the courts below.

9] I have appreciated the said submissions.

10] Perusal of the findings recorded by the Trial Court in categorical terms reflect that non-applicant has examined P.W.1-Harshavardhan and also placed on record documents in support of the claim put-

forth, such as notice dated 30/6/2007, reply to the same, copy of partnership deed, certified copy of registration of the Firm, Rent Receipts for 1976 and 1978, Property Card of CTS No.187 alongwith City Survey Plan and Tax Receipts.

11] Through oral evidence of non-applicant, aforesaid documents were duly exhibited. Rent Receipts which are at Exhibit-29 collectively, prima facie demonstrate that mother of the Applicant was tenant in the suit premises and has paid rent to the Respondent/Plaintiff. Property Card and the City Survey Plan at Exhibits-33 and 34 prima facie identify the suit property. Property Card is sufficient to infer lawful title of the non-applicant to the suit property. As against above, though it is claimed by the Counsel for the Applicant that oral evidence does not reflect that property was duly owned by the non-applicant, however once the aforesaid burden was discharged by the non-applicant/Plaintiff, it was for the Applicant/Defendant to discharge his burden and prove the aforesaid fact. Applicant/Defendant has failed to adduce any evidence in the matter. Though it is claimed that no opportunity was given to lead evidence, however fact remains that after recording of evidence in the matter has commenced, 'No evidence order' against the Applicant came to be passed on 12/11/2014. However, his prayer for permission to file on record evidence came to be allowed on 11/02/2015 subject to costs. Prayer of the Applicant for amendment of the Written Statement was rejected by order dated 21/09/2015. In spite of above, fact remains that Applicant has failed to lead any

evidence in the matter. As such, claim put-forth by the Applicant that Applicant was not given an opportunity to lead evidence is contrary to the record. Rather opportunity which was made available that too at the behest of the Applicant by showing indulgence by the Court below was not availed by the Applicant by his own conduct.

12] In the backdrop of the aforesaid findings, it cannot be inferred that Applicant was not given an opportunity to lead evidence or there was denial of opportunity of hearing in the matter.

13] The notice issued to the Applicant by the landlord viz. Exhibit-23 and its reply at Exhibit-24 sufficiently speaks of failure of the Applicant to pay arrears and also municipal taxes and other dues. Rather, Applicant has come out with a case that the amount was not quantified or in the alternative it was for the non-applicant landlord to pay the municipal taxes. So as to establish the said fact, no sufficient evidence was brought on record. As such, concurrent findings recorded by both the courts below appear to be in tune with the pleadings and appreciation of documentary and oral evidence on record.

14] In this backdrop, I hardly see any reason which warrants interference with the orders impugned. Revision Application as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)