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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 5 OF 2022

IN

CIVIL WRIT PETITION NO. 216 OF 2022

IRSHAD AHMED GURESHI

....PETITIONER

V/s.

**YUSUF T. A. HUSSAIN CONTRACTOR
AND ANR**

.....RESPONDENTS

**Mr. Pratap Singh advocate for the Petitioner
Mr. Sachin P. Shetye for Respondent no. 1**

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 8, 2022.

P.C.:

1) This Review Petition is taken out by the original Petitioner-tenant seeking review of the order dated 11/01/2022 passed by this Court wherein the Court has recorded a statement of counsel for the Petitioner that Petitioner shall be depositing amount of Rs. 30,00,000/- in the Court within period of two weeks from today. This Court in view of above, has accepted the statement of Respondent-Decree holder, that he shall not be executing the Decree.

2) The contentions of Mr. Singh are, eviction Decree which is under challenge in the Writ Petition is Ex-parte Decree. He would claim that tenancy agreement dated 20/03/2020 is suppressed by the Respondent-Landlord from the Court wherein tenancy has commenced from 01/01/2020 and not as per the claim made in the Suit. He would further point out that Respondent-landlord has agreed to receive the rent at Rs. 1350/- per month as Pagadi of Rs. 25,00,000/- was paid by the Petitioner-tenant. My attention is further invited to no objection certificate issued by the Respondent-Landlord in the matter of electric connection installed on the premises. As such, Mr. Singh would claim that order of recording undertaking of deposit of Rs. 30,00,000/- needs to be recalled and claim needs to be appreciated on the merits in the backdrop of documentary evidence.

3) As far as the aforesaid contentions raised by the Review Petitioner is concerned, this Court vide order under review passed on 11/01/2022 recorded an undertaking of the tenant that he shall deposit an amount of Rs. 30,00,000/- within period of two weeks from that day which of course he has failed to. In view of above

statement, interim protection was granted in favour of the Petitioner.

4) The documents which are relied by the Petitioner were never placed on record or argued when the aforesaid order was passed. Petitioner is seeking review of the order on such grounds which were not argued when the order was passed. Apart from above, arguments of Mr. Singh are in the form of defence and cannot be looked into at this stage of the proceedings, particularly keeping in mind the fact that Decree of eviction is under challenge and aforesaid contentions were not canvassed any time before.

5) In the aforesaid background, I hardly see any reason which warrants interference. That being so, Review Petition stands rejected.

6) As the amount is not deposited, this Court is constrained to observe that there is no stay in operation in favour of Petitioner-tenant in the proceedings.

[NITIN W. SAMBRE, J.]