

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

WRIT PETITION NO. 6231 OF 2021

Dr. Smita Ramesh Chogle & Anr.

..Petitioner/s

v/s.

Victor D'Mello & Ors.

..Respondents

Mr. M.M.Sathaye i/b. Hrishikesh Shinde for the Petitioner/s.

Mr. Joshwua D'Sopuza i/b. Gouresh Mogre for the Respondent.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 18th OCTOBER, 2022.**

P.C.

1. The Petitioners have assailed Order dated 29.01.2020, whereby the learned Addl. Chief Judge, Small Causes Court, dismissed the Revision Application and thereby confirmed Order dated 10.10.2012 passed by the Small Causes Court in RAE Suit No.127 /274 of 1995.

2. The Petitioners are the owners of Room Nos. 7 and 8 in Atmaram Building, situated at St. Francis Street, Girgaum, Mumbai. The Petitioners claim that F.X.V. D'Mello (Defendant No.1) was the monthly tenant in respect of the suit premises viz. Room Nos.7 and 8, situated on the ground floor of Atmaram Building. Respondent No.1 is the son of said F.X.D'Mello. The Petitioners filed a suit for eviction on the ground of sub-letting, change of user, non payment of rent and non user of the

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premises for 6 months, immediately before filing of the Suit. During pendency of the suit, the name of Defendant No.1. F.X.D'Mello was deleted.

3. The Petitioners filed application to direct the original tenants Defendant Nos.1 and 2 to pay the arrears and to deposit the monthly rent. By order dated 20.02.2001, the learned Judge directed the Defendant Nos.1 and 2 to deposit the arrears of rent from April 1994 to January 2001 and further to deposit monthly rent of Rs.426.20 on or before 10th day of every month. Leave was granted to the Petitioner to withdraw the amount deposited by the Defendant Nos.1 and 2.

4. The records reveal that the Respondent Nos.2 to 6 had filed an application to implead them as parties to the suit on the ground that they were the tenants of the suit premises. The said application was allowed and accordingly, the Respondent Nos.2 to 6 came to be impleaded as Defendant Nos.3 to 8.

5. The Petitioners filed an application before the Small Causes Court to direct the office of the Court, not to accept the rent from these Respondents (Defendant Nos. 3 to 8) without prior permission and direction of the Court. Vide order dated 9.7.2012 the Small Causes Court observed that the Respondent Nos.2 to 6 were trying to deposit the rent without obtaining leave of the Court and hence allowed the

application. The Respondent Nos.2 to 6 thereafter filed an application seeking leave to deposit the rent. The said application was allowed by Order dated 10.10.2012. The said order was challenged before the Appellate Bench of the Small Causes Court. The Revision came to be dismissed on the ground that the deposit of rent is without prejudice to the rights and contention of the parties and that the said order does not cause any prejudice to the Petitioners. Being aggrieved by this Order, the Petitioners invoked the writ jurisdiction of this Court.

6. Heard learned Counsel for the Petitioners and the learned Counsel for the Respondents. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

7. The records reveal that the Petitioners have filed a suit for eviction, inter alia on the ground that the original tenant has sublet the premises. It is the case of the Petitioners that the Respondent Nos.2 to 6 are not the tenants and that they are the wrongful tress-passers of the suit property, whereas, the Respondents claim to be the statutory tenants. The question whether the Respondent Nos.2 to 6 are the statutory tenants or unauthorized occupants/ trespassers is the issue which will be decided on merits in the eviction proceeding. During the pendency of these proceedings, the Respondent Nos. 2 to 6 have been permitted to deposit the rent without prejudice to the rights and contentions of the respective parties. Hence the apprehension of the

Petitioners that these Respondents will claim tenancy rights on the basis of the receipts issued by the Court is without any merits or basis. The impugned order does not suffer from any infirmity and does not warrant interference. The Petition has no merits and is accordingly dismissed.

8. Learned Counsel for the Petitioners seeks extension of stay. The suit is of the year 1995. Grant of stay will further prolong the suit, Hence, I am not inclined to extend the interim relief under which the proceedings before the Small Causes Court were stayed.

(ANUJA PRABHUDESSAI, J.)