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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.261 OF 2016**

Prabhakar Daulat Phatkar Applicant.
V/s
Mr. Anil Bhiwaji Worlikar and Ors. Respondents.

Mr. Chetan C. Agrawal for the Applicant.
None for the Respondents.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 17, 2022

P.C.:-

1] Heard.

2] RAE Suit No. 4051 of 1968 came to be initiated against the Applicant, which was withdrawn on 15/10/1967. It appears that another suit viz RAE Suit No.2320 of 1977 was initiated on the ground of arrears of rent, subletting and alterations to the suit premises alongwith the pleadings of nuisance. RAE Suit No.2320 of 1977 came to be decreed on 5.5.2010 with directions to deposit arrears of rent of Rs 11,374.68.

3] Revision Applicant/Tenant preferred an appeal being A-1 Appeal

No.302 of 2010 before Division Bench of Small Causes Court. Said appeal came to be dismissed vide judgment and order dated 19/11/2015. As such, this Revision.

4] Counsel for the Applicant while questioning concurrent findings would urge that both the Courts below have committed an error in recording finding that Applicant was in arrears. He would urge that Courts below further committed an error in failing to appreciate very scheme of Order 1 Rule 8 as the suit was initiated in representative capacity. Apart from above, contentions are, courts below have failed to appreciate evidence while recording finding of unlawful subletting and accordingly profiteering from the suit premises. An issue of limitation is also sought to be raised.

5] At the out set, it is required to be noted that Revision is pending before this Court since 2016 and same is being adjourned as the parties were trying to amicably settle the issue. Accordingly, by way of last chance on 11th October, 2022, matter was adjourned for today.

6] Counsel for the Applicant has informed that settlement is not

arrived at as the meeting is further postponed.

7] Be that as it may, fact remains that concurrent findings are recorded by both the courts below against the Applicant not only on the issue of limitation but also on the issue of arrears of rent, subletting.

8] Trial Court while appreciating the case has specifically noted that Applicant was served with notice dated 5/2/1977 to clear the arrears of rent from 1/5/1968 @ Rs 60/- per month, which he has failed to. Apart from above, while recording satisfaction as to the competency of Respondent/Plaintiff to file suit in representative capacity, Trial Court has noted satisfaction as to the ingredients as contemplated under Order 1 Rule 8 of the Civil Procedure Code. The Court thereafter proceeded to note that permission to file suit in representative capacity was granted on 3/8/1977 and public notice was duly issued vide Exhibit-11.

9] It is also established that in spite of notice having been served on the present Applicant, he has failed to clear the arrears which were

due and payable since 1968.

10] Apart from above, Defendant Nos. 4 to 8 having come out with a case of being lawful sub-tenants, sought to identify themselves accordingly. As such, from the respective pleadings and evidence, case put-forth by the Respondent/Plaintiff was duly established having regard to the requirement under Section 12 of the Maharashtra Rent Control Act.

11] Appellate Court thereafter re-appreciated entire evidence and vide impugned judgment dated 19/11/2015 has recorded finding against the Applicant as Applicant has failed to demonstrate any efforts of depositing arrears of rent as required under sub-section (3) of Section 12 of the Maharashtra Rent Control Act, whereas it is established that notice demanding rent was duly served and rent was not paid within the period prescribed. The Courts below were justified in recording finding of arrears of rent. Exhibit-99 which is an Extract of Ledger whereby rent was deposited sufficiently speaks of case of the Plaintiff of non-deposit of arrears of rent within time. Apart from above, rival pleadings inter se between Defendant Nos. 1

to 3 and Defendant Nos. 4 to 8 established that Defendant Nos. 5 to 7 were subtenants of Defendant Nos. 1 to 3. Defendant Nos. 1 to 3 who are the tenants have sublet the suit premises is apparently proved.

12] In view of above, in my opinion, no illegality or error of jurisdiction could be noticed in the impugned orders. Civil Revision Application as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)