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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 125 OF 2021**

Vivek Dattatray Shinde and Ors. Applicants.

V/s

Dropadi Shankarrao Astagaonkar
and Ors. Respondents.

Mr. Vishal Kanade @ Janhavee Joshi i/b Sanjay S. Gawde for the
Applicants.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 18, 2022

P.C.:-

1] Heard.

2] This Revision is by the Defendants to Civil Suit No.404 of 2009 initiated under Section 33 of the Maharashtra Rent Control Act. The said suit for restoration of possession came to be decreed on 18/3/2016. Revision Applicants' Appeal being Appeal No. 545 of 2016 came to be dismissed by affirming the aforesaid judgment on 13/3/2020. As such, this Revision.

3] Facts necessary for deciding present Revision are as under:-

4] Respondents/Plaintiffs initiated aforesaid Suit being Suit No.404 of 2009 alleging dispossession, as according to them, they were licensees of the suit premises. Suit claim was resisted by the Applicants/Defendants vide Written Statement Exhibit-26. According to the Applicants, Respondents/Plaintiffs went for pilgrimage during the period from 24/5/2009 to 2/6/2009 before which they have surrendered possession of the suit premises. Based on rival claims, issues were framed at Exhibit-34. Accordingly, suit of the Respondents came to be decreed and also appeal preferred by the Applicants was dismissed.

5] Contentions of Counsel for the Applicants are, relationship as that of landlord and tenant is not in dispute. However, according to him, claim of the Respondents/Plaintiffs is decreed solely on the ground that there was electric meter and outstanding dues were paid. He would urge that both the parties have examined their respective witnesses and Court below committed an error in relying on the

evidence of Respondents/Plaintiffs. He would further urge that in view of tenancy being surrendered by the Respondents, both the Courts below ought to have recorded finding that possession of the suit premises was validly and lawfully delivered to the Applicants.

6] I have appreciated the aforesaid submissions in the light of the evidence which has been looked into by both the Courts below of that of Respondent/Plaintiff No.2 at Exhibit-50. The evidence of present Applicants/Defendant No.1 at Exhibit-89 and of D.W. 2 Sagar Suresh Shinde at Exhibit-105. The aforesaid evidence is considered in the light of issues which were framed at Exhibit-34. The said issues with findings thereon read as under:-

<u>ISSUES</u>	<u>FINDINGS</u>
1] Whether plaintiffs prove that, defendants dispossessed them from the suit premises without following the due process of law, as contended?	In the affirmative.
1A] Does plaintiffs prove that, landlord-tenant relationship exists between plaintiffs and defendants?	In the affirmative
1B] Whether suit is bad for non-joinder of necessary parties?	In the negative.

1C] Whether suit is within limitation?	In the affirmative
1D] Whether this Court has jurisdiction to try and entertain the present suit?	In the affirmative.
2] Whether plaintiffs are entitled for the restoration of possession of the suit premises, as contended?	In the affirmative.
3] Whether plaintiffs are entitled for the relief of possession etc. against the defendants, as prayed for?	In the affirmative.
4] What order and decree?	Suit is decreed with costs.

7] The Trial Court on appreciation of evidence has noticed that Respondents/Plaintiffs have got electric connection in their name and have produced communication at Exhibit 59 issued to the Electric Supply Company not to disconnect their supply in the absence of any express prayer from their side. In addition, electricity bill which is cleared by the Respondents for the period from February 2009 to March, 2009 is also relied upon. The said electricity bill at Exhibit-57 is duly appreciated by the Courts below.

8] In the aforesaid backdrop, having regard to the fact that non-applicants/Plaintiffs have established their relationship of landlord

and tenant which in fact is not in dispute in the present proceedings, burden shifts on the Applicants to prove that Respondents/Plaintiffs have lawfully surrendered possession.

9] The evidence of Defendants' witnesses if appreciated as is reflected in the orders impugned, it can be noticed that evidence of Applicants' witnesses has not established the said fact of receiving lawful possession from the Respondents/Plaintiffs of the suit property.

10] Apart from above, the lower Appellate Court has re-appreciated entire evidence and has reached to a conclusion that there exists landlord-tenant relationship and the Applicants have failed to establish that they have received possession of the suit property lawfully.

11] In this backdrop, in my opinion, against the concurrent findings, no illegality of jurisdiction or failure to exercise jurisdiction is noticed. Revision as such lacks merits and same stands dismissed.

(NITIN W. SAMBRE, J.)