

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

**CIVIL REVISION APPLICATION NO.320 OF 2022
WITH
INTERIM APPLICATION NO.16989 OF 2022**

Mrs. Ahmadi wd/o Farid ahmed ..Applicant
Versus
Mr. Baitulla Mohammed Mustafa ..Respondent

Mr. A. H. Khatri a/w Sujay S. Prabhu i/by Khatri Legal Venture, for
the Applicant.
Mr. Javed A. Khan, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 23rd AUGUST, 2022

PC.

1. Non-applicant initiated RAE & R Suit No.781/1258 of 2007 on 3rd August, 2007 praying eviction on the ground amongst other viz. default on the part of applicant/defendant in payment of rent from 1st July, 2004 to 30th June, 2007 and carrying out illegal additions and alterations of permanent nature to the suit premises. The relief of eviction was also sought on the other grounds, however, vide judgment and decree dated 26th April, 2016, the Small Causes Court at Mumbai decreed the aforesaid suit on the ground of non-payment of arrears for a period from 1st April, 2004 to 30th June, 2007 and additions and alterations to the suit structure.

2. The applicant/defendant feeling aggrieved preferred appeal being Appeal No.315 of 2016 which came to be dismissed on 31st March, 2022. As such, this revision.

3. In support of the claim for assailing both these judgments, it is urged that the applicant in compliance with the order passed below Exh.25, so also order dated 7th May, 2009 passed on application No.281 of 2009 has deposited entire arrears. According to him, only because of financial hardship in business, applicant, who unable to deposit arrears within period of 90 days from the date of receipt of notice as contemplated under Sub-Section (2) of Section 15 of the Maharashtra Rent Control Act. In the aforesaid background, his contentions are, once the Small Causes Court has permitted him to deposit the amount, delay caused in depositing arrears cannot be termed adverse to the interest of the applicant. So as to substantiate aforesaid claim, counsel for the applicant has drawn support from the judgment of Apex Court in the matter of ***Kameshwar Singh Srivastava Vs. IV Additional District Judge, Lucknow and Ors.*** reported in ***1987(1) Rent Control Reporter 231***. Further contention of counsel for the applicant are, non-applicant/plaintiff has failed to prove that the applicant has carried out permanent alterations/ construction to the suit property. So as to substantiate his claim, he has invited attention of this Court to the evidence on record. He would further urge that the alleged illegal construction of the mezzanine structure was already in existence in all the shops including the one adjacent

to the shop occupied by the applicant. As such, if such shop already consists of mezzanine floor, it is incorrect on the part of the Court below to record finding of the illegal construction being carried out by the applicant. Further contentions are, the applicant is already paying regular rent as has been directed by the Small Causes Court. Once having cleared arrears and the regular rent is being paid, this Court should set aside both the concurrent findings.

4. While supporting orders impugned, counsel for the non-applicant/plaintiff would urge that though the eviction of the applicant was sought on number of grounds, the applicant's claim was rightly considered by both the Courts below on the ground of arrears of rent and permanent illegal construction. By substantiating his contentions from the provisions of Sub-Sections (1), (2) and (3) of Section 15 of the Act, he would urge that once it is not disputed that the notice demanding arrears was served and the arrears were not cleared within the statutory time of 90 days, the non-applicant was left with no other option but to move an application Exh.25 seeking directions to deposit the rent. According to him, it is only upon directions of the Small Causes Court, applicant has deposited rent which establishes that the applicant was in arrears. In addition, he would draw support from the communication issued by the original landlord i.e. Bombay Port Trust, wherein notice was served about carrying of illegal construction in the suit premises. According to him, claim of the non-applicant/plaintiff was duly admitted by the applicant's witness

i.e. DW-3. Drawing support from the judgment of this Court in the matter of ***Shila Ramchandra Sachdeva Vs. Vinod Harchamal Santani*** reported in ***Laws(BOM) 2017 3 248***, he would urge that once the period prescribed under Sub-Section (3) of Section 15 of the Act is not adhered to by making payment of arrears of rent, the Courts below were justified in directing eviction.

5. I have appreciated aforesaid rival contentions.

6. After the claim put forth by the non-applicant/ plaintiff for eviction before the Small Causes Court, applicant resisted the same by filing written statement at Exh.16. Defence put forth by the applicant/defendant was in relation to dispute with regard to the arrears of rent of Rs.35,000/-.

7. It appears that since original owner of the property i.e. Bombay Port Trust was not joined as defendant to the suit, the objection to the maintainability was raised. This, fact *prima-facie* demonstrates that the applicant admits about the fact that Bombay Port Trust is the owner of the property and the non-applicant as has been claimed is lessee of the same. It appears that in earlier round of litigation since parties hereto through their predecessors have settled the issue of payment of enhanced rent, liability arising out of same to the tune of Rs.35,000/-, since was not cleared, the non-applicant served a notice under Sub-Section (1) of Section 15 of the Act which was duly acknowledged by the present applicant. The demand notice dated 10th July, 2005 was duly proved by the non-

applicant/plaintiff and it was also brought on record that after the service of notice, so also filing of the suit in spite of there being opportunity to the applicant, arrears were not cleared.

8. It appears that though it is claimed by counsel for the applicant that in compliance with notice dated 10th July, 2005 rent was paid. What is to be noticed is, the claim about arrears is based on the admitted liability of Rs.35,000/- as is based on order passed in earlier round of litigation between the parties. The fact that after the notice dated 10th July, 2005, said arrears were cleared which can be noticed from the analysis of the pleadings in paragraph 4 of the plaint, so also Exh.E. As such, contention that before the statutory period prescribed under Section 15 of the Act, entire arrears were cleared, cannot be accepted.

9. I have perused the evidence of DW-3, who in cross-examination in categorical terms has admitted about the applicant/defendant being in arrears of rent.

10. Though it is urged by counsel for the applicant by drawing support from the judgment of this Court in the matter of *Kameshwar Singh Srivastava (cited supra)* that once the applicant has deposited arrears, his eviction cannot be ordered under Section 15 of the Act, however, in the facts of the present case, what can be noticed is after the service of demand notice dated 10th July, 2005, the applicant has failed to clear arrears within the statutory period

of 90 days. Leave apart above statutory compliance, the applicant has failed to conduct himself in accordance with Sub-Section (2) of Section 15 of the Act as he has failed to move before the Small Causes Court seeking permission to deposit arrears of rent. The aforesaid conduct on the part of the applicant has prompted the Small Causes Court to hold that the applicant is in arrears of rent.

11. The findings since are based on the documentary and oral evidence, particularly, admissions given by DW-3, no illegality could be noticed with such findings. As such, contentions of the applicant to the extent of upsetting the order impugned based on the provisions of Section 15 of the Act fails. This leads this Court to the next submission of alterations, though he applicant claimed that he has not carried out any alterations and only repairs were carried out after the fire broke out in the suit premises.

12. It appears that there was inspection of the suit property. Bombay Port Trust i.e. owner of the property has issued a notice to the non-applicant/plaintiff on 16th April, 2005 informing that during inspection, it was noticed that unauthorized construction of a shed consisting of iron poles and iron frame structure with A.C. sheet roofing was constructed. Another notice was preceded on 6th December, 2004 on the aforesaid lines. Both the notices were exhibited as Exh.68. Apart from above, both the parties to the proceedings have relied on Exh.83, Panchanama drawn as regards present status of the said structure.

13. Admissions given by DW-3 in his evidence during cross-examination about construction of illegal structures, documentary evidence on record in the form of Exh.83 and Exh.68 has rightly prompted both the Courts below to hold against the applicant that he has carried out alteration to the existing structure by carrying out additional construction. As such, both the Courts below were justified in holding that applicant deserves to be evicted from the suit premises as he has conducted himself contrary to the provisions of the Act.

14. In the light of observations made herein-above, in my opinion, no case for interference in revisional jurisdiction is made out, as no error of illegality or exercise of jurisdiction could be noticed. That being so, the revision against concurrent findings fails, dismissed.

15. As a sequel of above, pending applications also stand disposed of.

16. At this stage, in response to prayer made by counsel for the applicant, counsel for the non-applicant/decreed-holder states that for a period of six weeks from today, possession warrant shall not be executed against the applicant.

17. In view of above statement, the applicant shall furnish an undertaking to this Court that he shall neither damage the suit premises nor will induct any third party as tenant or create any third party interest.

[NITIN W. SAMBRE, J.]