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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.210 OF 2021**

Rajdeo Bacharam Sharma	..Applicant
Versus	
Haji Mohamed Rashid Jitekar	
Since deceased through legal heirs	
Mohamed Ebrahim Jitekar & Ors.	..Respondents

**WITH
CIVIL REVISION APPLICATION NO.282 OF 2021**

Kapil Bacharam Sharma	
Since deceased through legal heirs	
Smt. Sheiladevi Kapil Sharma	..Applicant
Versus	
Haji Mohamed Rashid Jitekar	
Since deceased through legal heirs	
Mohamed Ebrahim Jitekar & Ors.	..Respondents

Mr. Surel Shah a/w Mitaali Shah i/by Vaibhav Mehta & Associates, for the Petitioner in both the above Civil Revision Applications
Mr. Reshant Shah i/by M/s. Lex Conseiller, for the Respondents in both the above Civil Revision Applications.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 26, 2022

P.C.:-

1] Both these Civil Revision Applications are by the Defendants to RAE Suit No.706 of 1998 which was decreed on 30/1/2013 and the judgment therein was confirmed in Appeal Nos. 7 and 8 of 2013,

which were preferred by Defendant No.2, Defendant Nos. 1(a) to 1(d) respectively.

2] Facts necessary for deciding present Revisions are as under:-

3] The suit property is located at Jitekar Wadi, Thakurdwar, Mumbai, being Room No.88. Claim of the Respondents/Plaintiffs – Non-applicant herein is, Rajaram Sharma was employed for collection of rent for several years who subsequently introduced his son-in-law Ram Bachha Bansidhar Sharma (For short “Ram Baccha”) in 1955-56 to the father of the Plaintiffs who was permitted to work as rent collector and manager. It is claimed that said Ram Bachha was initially on monthly salary of Rs 90/- and was occupying Room No.88-G for which rent of Rs 10/- was deducted per month. It is claimed that in 1982, salary was increased to Rs 550/- of which Rs 50/- were deducted as monthly rent and in 1985 rent of the premises was increased to Rs 87/- as against in 1991, his salary was Rs 700/-.

4] Plaintiffs alleged that said Ram Bachha was service/gratuitous tenant and as such sought his eviction. Said claim for eviction was resisted by Defendant Nos. 1(a) to 1(d) by filing Written Statement at Exhibit-30 and that of Defendant No.2 at Exhibit-48. Both have raised common defence as regards monthly tenancy and as a sequel availability of protection under the then Rent Act.

5] Trial Court while allowing the suit, recorded finding that deceased Ram Bachha was permitted to occupy and reside in the suit premises as an employee and as such Applicants/Defendants are unlawful occupants. Trial Court also recorded finding that present Applicants/Defendants failed to prove that Ram Bachha and after him Defendant No.1 were paying rent to the Plaintiffs. The aforesaid decree was upheld by the Appellate Court. That being so present Revisions.

6] Mr. Surel Shah, learned Counsel appearing for the Applicants would urge that judgments impugned are not sustainable as very decree is without jurisdiction. So as to substantiate his claim, he has

drawn support from the alleged order dated 19/6/2000 passed in Interim Notice dated 4338 of 1998, claim of deduction of rent from salary of deceased Ram Bachha and positive finding recorded by the Appellate Court in favour of the Applicants. So as to further substantiate his claim, he has drawn support from the pleadings and evidence of the respective parties

7] While countering aforesaid submissions, Counsel for Respondents would support the Judgment impugned, as according to him, suit was initiated in 1998 and for last 24 years decree is not permitted to be executed. According to him, once employment is not disputed and Applicants have come out with a case of deduction of rent from salary, burden is on the Applicants to prove the said fact which they have failed to, which rightly has led to passing of decree.

8] I have appreciated aforesaid submissions.

9] The case from record as could be inferred is, present Applicants have admitted that Ram Bachha was in employment of the Plaintiffs

as rent collector. Father-in-law of Ram Bachha viz. Rajaram was working as rent collector prior to tenure of Ram Bachha. It is claimed that Applicants have admitted relationship of landlord and tenant and have raised an issue of payment of rent by way of deduction from salary, whereas Plaintiffs have come out with a case of service/gratuitous tenant.

10] As against the claim of the Plaintiffs/non-applicants of service/gratuitous tenancy, Defendants/Applicants have come out with a case of payment of rent which they have failed to establish by adducing cogent evidence as their pleadings were very specific as regards monthly deduction, rise in rent, rise in salary etc. That being so, Trial Court was justified in framing of issue as regards burden of Defendants to prove the same and failure of the Applicants to discharge the said burden. Similarly, Appellate Court had regard to relationship *inter se* between the parties i.e. employer-employee and gratuitous tenancy.

11] In this backdrop, what can be inferred is , status of Rajaram was

that of a person having personal privilege of occupation granted to him and not alleged gratuitous tenant. Fact remains that Ram Bachha through whom Defendants/Applicants are claiming tenancy has expired on 4/9/1997. As a consequence, his employment automatically ceased. So as to prove general tenancy, as observed hereinabove, Applicants have failed to discharge their burden.

12] In this backdrop, both the Courts below, in my opinion, were justified in recording finding that Applicants have failed to discharge their burden of proving monthly tenancy. In this backdrop, findings recorded by both the Courts below appear to be in tune with the provisions of law. That being so, no case for interference is made out. As such, Both these Revisions Applications fail and same stand dismissed.

(NITIN W. SAMBRE, J.)