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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.453 OF 2022

WITH

CIVIL REVISION APPLICATION NO.454 OF 2022

Shri Prithviraj Vardichand Jain

..... Applicant.
(Original Defendant)

V/s

M/s. Sitaram Enterprises

..... Respondent
(Original Plaintiff)

Mr. Vishal Kanade i/b Haresh J. Lulia for the Applicant in both the Civil Revision Applications.

Mr. Simil Purohit a/w Mr. Amey C. Sawant a/w Mr. Vikram N. Walawalkar.

CORAM: NITIN W. SAMBRE, J.

DATE: 12th OCTOBER, 2022

P.C.:-

1] Both these Revisions are by tenant who suffered concurrent findings viz order of eviction of the Applicant under the provisions of the Maharashtra Rent Control Act, 1999.

2] By consent, both the Revisions are heard and disposed of together as parties are same and only difference in relation to the properties is, commercial and residential. Mr. Kanade, learned Counsel for the Applicant has informed this Court that CRA No.453 of 2022 pertains to residential room whereas CRA No.454 of 2022 pertains to shop.

3] Respondent/Plaintiff initiated suit for eviction on three counts viz (i) bonafide need (ii) arrears of rent and (iii) material alterations to the suit premises. On all these counts, suit came to be decreed against the Applicant. In appeal, findings in favour of Respondent were upset to the extent of bonafide need and there is modification of findings as regards change of user to that of non-user. So far as findings on arrears of rent are concerned, same have been maintained by both the courts below. As such, feeling aggrieved by both these judgments, two different Revisions, one pertaining to commercial premises i.e. shop and other in respect of residential premises.

4] Mr. Kanade, learned Counsel for the Applicants while inviting my attention to the grounds raised in the present Applications would

urge that Appellate Court has failed to consider that once decree was passed by the Small Causes Court on the issue of change of user, same ought not to have been altered and modified to that of non-user without there being any proper notice to the Applicant. So as to substantiate his contention, he has drawn support from the pleadings in the plaint, written statement and also findings which are recorded by the Trial Court on the issues framed. In addition, his contentions are, findings recorded on the issue of arrears of rent are factually incorrect. He would urge that relationship between the Applicant and non-applicant/landlord was cordial. Rent was paid on demand and that being so, Courts below committed an error in relying on mandate of Section 15 of the Maharashtra Rent Control Act and decreeing the suit.

5] Learned Counsel for the Respondent/landlord would support the order impugned. According to him, even if claim of the Applicant on modification of findings from change of user to non-user is accepted for the sake of arguments still decree for eviction is maintainable on the ground of failure to pay rent. Counsel would invite my attention to the relevant period for which rent was not paid. In spite of there

being notice, rent amount was not deposited and after suit was filed even though arrears were deposited, interest as provided under Section 15 was not deposited. As such, according to him, Appellate Court was justified in drawing support from the provisions of Section 15 of the Maharashtra Rent Control Act.

6] I have appreciated the said submissions.

7] In both these matters, arrears of rent appears to be for period from 1st July, 2001 to 31st March, 2003. Rent for the said period appears to have been paid on 4th April, 2003 and even if entire rent was paid on 4th April, 2003, fact remains that Applicant was served with notice, demanding arrears about which acknowledgment was produced at Exhibit-55 which was received by the Applicant on 21st October, 2002 and the amount of arrears was cleared on 4th April, 2003 i.e. after expiry of period of 90 days. As such, consequences provided under Section 15(1) were attracted. Apart from above, fact remains that interest on arrears as provided under Section 15 also was not honoured. That being so, both the Courts below were justified in recording finding that Applicant was in arrears of rent for period from

1st July 2001 to 31st March, 2003. Even though the said rent was cleared by the Applicant on 4th April, 2003, Applicant is unable to come out of the clutches of provisions of Section 15 of the Maharashtra Rent Control Act. Both the courts below in detail have considered the rent paid by the Applicant from time to time and have recorded findings that Applicant has not acted in tune with requirement of sub-section (3) of Section 15 of the Maharashtra Rent Control Act. Apart from above, even if the case of the Applicant to the extent of not getting opportunity on the findings recorded by the Appellate Court on the issue of non-user is appreciated still decree is maintainable on the issue of failure to pay rent. That being so, no illegality could be noticed in the order impugned so as to infer any error of jurisdiction or failure to exercise jurisdiction.

8] Both these Civil Revision Applications are rejected.

9] At this stage, learned Counsel for the Applicant/Tenant Mr. Kanade submits that non-applicant be directed not to execute the decree for a period of 12 weeks from today which prayer is opposed by the Counsel for the non-applicant. However, having regard to the

period of tenancy which the Applicant was enjoying, prayer is granted for a period of eight weeks from today, subject to Applicant furnishing usual undertaking that premises shall be maintained in good condition and third party interest shall not be created. Affidavit to that effect be placed on record within one week.

(NITIN W. SAMBRE, J.)