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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 144 OF 2022
ALONGWITH
INTERIM APPLICATION NO.1208 OF 2022
IN
CIVIL REVISION APPLICATION NO. 144 OF 2022**

Prakashchandra Ganeshlal Bafna Applicant.

V/s

Naresh Darshanlal Rajpal Respondent.

Mr. Vishal Kanade a/w Mayur Sapkale i/b D.S. Sapkale for the Applicant.

Mr. Chandrakant N. Chavan for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 04, 2022

P.C.:-

1] Heard respective Counsels.

2] Delay condoned for the reasons stated in the Interim Application.

3] On 24th June, 2022, this Revision Application was heard at length. After dictating the order to the extent of submissions made by rival parties, Counsel for Revision Applicant/Tenant has sought time so as to enable him to make submissions whether Applicant intends to surrender possession, provided he is granted sufficient breathing period. Thereafter, on 1st July, 2022, again an adjournment was

sought for today.

4] Today, when the matter is called out, Counsel for the Applicant Mr. Kanade would urge that Applicant has invited order on merit.

5] I have appreciated submissions which are recorded in the order dated 24th June, 2022. The Small Causes Court while dealing with the issues has recorded finding that Applicant is in arrears of rent and has failed and neglected to clear the said arrears despite service of demand notice. So as to substantiate the said finding, service of demand notice dated 20th December, 2010 was established wherein arrears of rent @ Rs 450/- per month were claimed. Fact remains that present Applicant has failed to reply to the said notice. Rather, case of the present Applicant/Defendant was that an amount of Rs 13,800/- was due and receivable from Non-applicant Plaintiff/landlord towards the gold ornaments and as such he has not paid the rent. It is also claimed that the said consideration of gold ornament was agreed to be adjusted towards the rent. The Court below has noticed that the Applicant having come out with such plea was expected to give complete description of such transaction by substantiating the same with oral and documentary evidence which the Applicant has failed to. As such, Trial Court has rightly recorded a finding that the Applicant was in arrears.

6] Having appreciated the contentions, as are canvassed, the Applicant/Defendant as has been observed by the Court below has

failed to demonstrate that Non-applicant has purchased gold ornaments from him and the amount was agreed to be adjusted against such consideration which is receivable by the Applicant from Non-applicant Plaintiff. Rather, for proving such fact, burden shifts on the Applicant which he has failed to discharge.

7] As regards issue of title by virtue of slip issued by the Corporation and also the Power of Attorney is concerned, from the perusal of these documents, it can be inferred that neither such slip was issued by the Corporation Authorities nor the Power of Attorney speaks of conferring any title of the suit premises in favour of the Applicant. It was always open for the Applicant to take out proceedings for specific performance so as to get title in his favour or to take recourse to such other legal proceedings as is permissible and available in law for such relief of title, which the Applicant has failed to. Apart from above, claim that earlier tenant Rasiklal Daga was a necessary party cannot be inferred as it appears that there existed landlord-tenant relationship between the Applicant and the Non-applicant, as the Applicant has tendered rent to the Non-applicant.

8] So far as issue as regards rejection of prayer under Order 41 Rule 27 of the Civil Procedure Code for permission to produce documentary evidence at the appellate stage is concerned, fact remains that the Applicant has failed to satisfy the test as required under the aforesaid provisions. Applicant has failed to demonstrate that documents which he wanted to produce on record were not

within his custody at the relevant time and there was sufficient cause which has impaired him to produce such documents at the appellate stage. Apart from above, claim of the Applicant that suit premises are covered by Slum Act is also not established.

9] That being so, against the concurrent findings recorded by the Court below, no error of jurisdiction could be noticed. Revision as such fails and same stands dismissed.

10] Civil Revision Application and Interim Application taken out therein are accordingly disposed of.

(NITIN W. SAMBRE, J.)