

SHARADA
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WAHULE

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

**SECOND APPEAL NO. 427 OF 2022
WITH
INTERIM APPLICATION NO. 2867 OF 2019**

Smt. Savita Gangadhar Chavan ..Appellant
Versus
Shri. Achyutanand Krishnanand Pandey & Anr. ..Respondents

Shri Vishwanath S. Paradkar, for the Appellant.
None for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 17th November, 2022

PC.

1. Leave to amend the present Second Appeal is permitted to be converted into that of Civil Revision Application.
2. Amendment to be carried out fourth with.
3. The respondents/plaintiffs have initiated Regular Civil Suit No.1021 of 1996 for eviction on the ground of arrears of rent for a period from June, 1995 to December, 1995, so also the alteration of permanent nature to the suit the premises. The said suit was decreed on 19th January, 2015. The appellant feeling aggrieved preferred Regular Civil Suit No.41 of 2015 which was also dismissed vide order dated 21st August, 2019 delivered by Principal

District Judge, Thane. As such, this petition.

4. The contentions of counsel for the appellant/tenant are, that the tenancy was to commence on first of each English calendar month and the rent is payable in advance. Apart from above, he would urge that the respondents/plaintiffs have proved their case based on the evidence of power of attorney who could depose only to the extent of knowledge which he is receiving from the record and not from the personal knowledge of the plaintiffs. As such, according to him, the evidence of the plaintiffs ought to have been discarded.

5. I have appreciated the said submissions and analyzed the same in the backdrop of the concurrent findings recorded by both the Courts below. The fact that the rent payable per month was Rs.231.50 excluding municipal taxes, water bill, electricity bill and education cess is not in dispute. The appellant/tenant was served with the notice thereby demanding rent for a period from June, 1995 to December, 1995. The said notice Exhibit-41, Exhibit-42 reply to the aforesaid notice and Exhibit-45 verified copy of the power of attorney is attached

6. The constituted attorney of the plaintiffs has entered into the witness box and specifically stated that the rent was not received for a period from 1st June, 1995 to December, 1995 whereas against which the attorney of the appellant, namely

Gangadhar Chavan at Exhibit-83 has stated the rent was paid on 1st June, 1995 for the month of June, 1995. The fact remains that both the Courts below have recorded findings against the respondents on the issue of material alteration to the suit premises in favour of the appellant/tenant.

7. As regards the testimony of the power of attorney holder is concerned, on behalf of the plaintiffs, Chartered Accountant has appeared and testified in support of the claim, whereas on behalf of the appellant/tenant, namely Gangadhar Chavan, constituted attorney has deposed. Once the appellant has come out with a case of the payment of the rent for a month on 1st June, 1995 i.e. rent was payable for advance in the beginning of the rental month, it was for the applicant to discharge the said burden, which he has failed to. Rather the theory put forth by the plaintiffs that the rent received on 1st June, 1995 was for a period of May, 1995 was appeared to be logical and based on the factual matrix. As such, the plaintiffs have established that the appellant has failed to pay the rent for a period from 1st June, 1995 to 31st December, 1995. There are concurrent findings of fact recorded by both the Courts below against the appellant on the issue of non-payment of rent for a period from 1st June, 1995 to 31st December, 1995.

8. Apart from above, the fact remains that both the parties were represented through their constituted attorney before the Courts below. The facts which are brought on record for non-

payment of monthly rent are borne out from the record and not from the personal knowledge of the plaintiffs. As such, the constituted attorney of the plaintiffs was justified in deposing to the extent of non receipt of the rent for the period as above mentioned. As such, no error in the order impugned or exercise of jurisdiction could be noticed.

9. The appeal as such stands dismissed.

10. In view of dismissal of appeal, pending interim application also stands dismissed.

[NITIN W. SAMBRE, J.]