

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14327 OF 2022**

Giriya S/o. Guruva Poojari

....Petitioner

Versus

C.K.P.Samaj, Andheri and anr.

....Respondents

Mr. Ashok M. Saraogi, Advocates for the Petitioner.

Mr. Nachiket D. Jaywant, Advocate for Respondent No.1.

Mr. Y. D. Patil, AGP for Respondent No.2-State.

CORAM : SHIVKUMAR DIGE, J.s

DATE : 20th MARCH 2023.

P.C. :

1. Rule. Rule made returnable forthwith. By consent of parties, the matter is heard finally.

2. It is contention of learned counsel for the petitioner that petitioner had filed a suit for declaration of tenancy before the Small Causes Court. During the pendency of suit, petitioner had filed an application for allowing him to deposit rent amount but the said application was rejected by the Trial Court. Thereafter, the petitioner challenged the said order before the Revisional Court. The Revisional Court rejected the revision. Learned counsel for the

petitioner submits that the Trial Court has observed that respondent No.1 herein would not file a suit against the petitioner on the ground of arrears of rent and, on that basis, the application was rejected, which is improper. Hence, requested to allow the petition.

3. Learned counsel for respondent No.1 submits that respondent No.1 is not claiming that the petitioner is his tenant and respondent No.1 would not file any suit on the basis of arrears of rent, hence, no question of deposit of rent arises. The petitioner has to prove his case and for that purpose, deposit of rent is not necessary. The order passed by the Revisional Court is proper and no interference is required in it.

4. Learned AGP submits that appropriate order be passed.

5. I have heard all learned counsel, perused the impugned order dated 20th February, 2021 passed in Revision Application No.81 of 2020. While passing the order, the Revisional Court observed that learned advocate for the defendants made statement that he will not file a suit on the ground of arrears of rent against the plaintiff because he is not a tenant in respect of the suit premises. In

my view, admittedly, the petitioner has filed a suit for declaration of tenancy and, in his suit, there is no objection of the other side that petitioner has not deposited rent. Moreover, learned counsel for respondent No.1 has stated that respondent No.1 would not file suit for eviction on the basis of arrears of rent. Considering these submissions, I do not find any infirmity in order passed by Revisional Court. Accordingly, I pass following order :

O R D E R

1. The petition is dismissed.
2. All contentions of the parties are kept open.

(SHIVKUMAR DIGE, J.)