



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

CIVIL REVISION APPLICATION NO. 245 OF 2007

Shripad Rajaram Kadam (since deceased
through legal heirs) :

Smt. Arundhati Shripad Kadam and ors.

.... Applicants

v/s.

Babubhai Nagjibhai Patel

.... Respondent

Mr. G.H. Keluskar for the Applicants.

None for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 07th SEPTEMBER, 2023.

P. C. :-

. The Applicant – landlord has impugned the order dated 13/06/2006 passed by the Appellate Bench of the Small Causes Court, Mumbai in Appeal No.190/2005. By the impugned order, the Appellate Bench set-aside the judgment and order of eviction dated 03/05/2005 passed by the Small Causes Court in R.A.E. & R. Suit No.2/3 of 2001.

2. The brief facts necessary to decide this application are as under :-

The Applicant-landlord had filed the suit for eviction *inter alia* on

the ground of non-payment of permitted increases, bonafide user and non-user of the premises. The Respondent – tenant contested the suit and claimed that he had cleared the arrears of rent which was inclusive of permitted increases.

3. The Trial Court held that the claim of the Applicant to the extent of non-payment of permitted increase is not at all justified. By judgment dated 03/05/2005, the Trial Court decreed the suit and ordered eviction solely on the ground that the Respondent – tenant was not regular in paying the rent and/or clearing the arrears of rent. Being aggrieved by the order of eviction, the tenant filed an appeal before the Appellate Bench of Small Causes Court, Mumbai. The Appellate Court observed that the Applicant had conceded that the rent paid by the Respondent – tenant under receipt at Exhibit – J and Exhibit -2 was inclusive of permitted increases and hence, the claim of the Applicant – landlord for further permitted increases was not justified. The Appellate Court further held that the Respondent – tenant has paid the arrears of rent and that the Applicant had not sought eviction on the ground of non-payment of monthly rent/contractual rent. The Appellate Court therefore set-aside the order of eviction. Hence, this Revision Application.

4. Learned counsel for the Applicant submits that by notice dated 07/04/1999, the Applicant had called upon the Respondent – tenant to pay permitted increases @ Rs.55/- per month. He submits that on receipt of the said notice, it was incumbent upon the Respondent – tenant to make an application for determination of the permitted increases and thereafter to deposit the same before the Court. He submits that the Respondent – tenant has failed to make such an application and consequently failed to deposit the permitted increases. He therefore contends that the Appellate Court has committed gross error in reversing the decree of eviction.

5. I have perused the records and considered the submissions advanced by the learned counsel for the Applicants.

6. The records reveal that by notice dated 09/11/1998, the Applicant – landlord had called upon the Respondent – tenant to vacate the premises for non-payment of rent and further on the ground of bonafide user of the premises. The Applicant – landlord issued another notice dated 07/04/1999, a perusal of which reveals that on receipt of notice dated 09/11/1998, the Respondent – tenant had paid the

arrears of contractual rent of Rs.70/- per month. By the second notice dated 07/04/1999, the Applicant had called upon the Respondent – tenant to pay permitted increases @ Rs.55/- per month and further called upon the Respondent – tenant to vacate the premises for non payment of arrears of permitted increases, for non-user of the premises for six months and for not allowing the Applicant – landlord to carry out the repairs. The Applicant – landlord thereafter filed a suit for eviction essentially on the ground of non-payment of permitted increases, bonafide user and non-user of the premises by the tenant.

7. Upon considering the evidence adduced by the respective parties, the Trial Court held that the Applicant had failed to prove that he require the premises for his bonafide use. The Trial Court also answered the issue of non-user of the premises against the Applicant – landlord. On the issue of non payment of permitted increases, the Trial Court observed that the claim of the applicant for permitted increases was not justified. The Trial Court held that the Respondent – tenant was not regular in paying the rent and decreed the suit and ordered eviction solely on the ground of non-payment of rent/arrears of rent.

8. By the impugned judgment dated 13/06/2006, the Appellate

Court set-aside the decree of eviction mainly on the ground that the Respondent – tenant had paid arrears of rent and further that the Applicant had not sought eviction for default of or non-payment of contractual rent. The Appellate Court therefore reversed the decree of eviction holding that the Respondent - tenant could not have been evicted on the ground of non-payment of rent.

9. The records clearly indicate that the issue of non-payment of permissible rent was answered against the Applicant – landlord. The Applicant neither filed cross objection against adverse findings nor raised any challenge to these findings before the Appellate Court. This being so, a pure finding of fact which is not based on irrelevant factors but is based on appreciation of evidence cannot be interfered with in exercise of revisional powers.

10. There is no illegality, perversity or jurisdictional error in the impugned order. Hence, the Revision Application has no merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)