

Pallavi

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

WRIT PETITION NO.7245 OF 2023

Ashok Nilamber Das	...Petitioner
Versus	
Sudhir Kantilal Doshi and Anr.	...Respondents

**WITH
WRIT PETITION NO.7287 OF 2023**

Ashok Nilamber Das	...Petitioner
Versus	
Sudhir Kantilal Doshi and Anr.	...Respondents

**WITH
WRIT PETITION NO.7262 OF 2023**

Ashok Nilamber Das	...Petitioner
Versus	
Sudhir Kantilal Doshi	...Respondent

- Mr. M.S. Adenwala, for the Petitioner.

**CORAM : MADHAV J. JAMDAR, J.
DATE : 23rd JUNE, 2023**

P.C.:

1. Heard Mr. Adenwala, learned counsel appearing for the Petitioner.
2. The Respondent No.1 is the owner of Motiwala Building, Dhanji Street, Agiary Lane, Bhuleshwar Division, Mumbai – 400 003. It is *inter alia*, the contention of the Respondent No.1 that the Petitioner is the

tenant of the suit premises. The Respondent No.1 filed three separate suits for eviction with respect to three separate suit premises situated in said Motiwala Building, *inter alia*, against the Petitioner seeking eviction. The said suits were filed on the ground of arrears of rent under section 15(2) of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as "said Act") and for non-user and additions and alterations of permanent nature in the suit premises under section 16 of the said Act.

3. The Petitioner who is the defendant in all the three Suits filed application for dismissal of the respective suits under Order VII Rule 11 of the Code of Civil Procedure, 1908 and also for non-compliance of Section 15(2) of the said Act. The learned Trial Court dismissed the application by observing that although there is no dispute that the suit filed under section 15(2) of the said Act is filed without giving mandatory notice, however, it has been observed that the suit is not only on the ground of arrears of rent but on the aforesaid additional grounds namely non-user and alterations of the permanent nature. Therefore, the said application was rejected.

4. The order of the learned Trial Court is challenged in Civil Revision Application. The said Civil Revision Application was also dismissed. It has been observed by the Revisional Court that the suit was not only filed for arrears of rent under section 15(2) of the said Act

but it has also been filed on the ground of non-user and additions and alterations of the permanent nature under section 16 of said Act. The Revisional Court further observed that for eviction of tenant and possession of the premises on the ground of non-user and additions and alterations of permanent nature in the suit premises, no notice is required under the said Act. It has been rightly observed that the ground of non-user and additions and alterations of permanent nature in the suit premises by the defendant is matter of trial. It has been also further held that for non-compliance of Section 15(2) of the said Act, entire suit cannot be dismissed or plaint cannot be rejected at this stage by exercising power under Order VII Rule 11 of Code of Civil Procedure.

5. It is settled legal position as reiterated by the Supreme Court in the decision of *Madhav Prasad Aggarwal Vs. Axis Bank Limited*¹ that plaint has to be rejected as a whole or not at all. It is settled position that by exercising power under Order VII Rule 11(d) of CPC, plaint can be entirely rejected and if it cannot be rejected entirely then it cannot be rejected. Both the Courts have concurrently held that the plaint cannot be rejected as apart from the ground of arrears of rent other two grounds enumerated herein-above are also the grounds of eviction.

6. Mr. Adenwala, learned counsel appearing for the Petitioner relied on the judgment of the Supreme Court in the matter of *Rajendra*

1. 2019 (7) SCC 158

*Bajoria and Ors. Vs. Hemant Kumar Jalan and Ors.*², wherein the Supreme Court has held that the purpose of conferment of powers under Order VII Rule 11(a) is to ensure that a litigation which is a meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the Respondent and unnecessarily litigation need not be kept pending. It has been also further observed that power conferred on the Court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to. On this background, it is significant to note that Order VII Rule 11(a) provides that the plaint shall be rejected where it does not disclose a cause of action. In the present case, learned counsel of the Petitioner is right with respect to the ground of arrears of rent as the mandatory notice under section 15(2) of the said Act is not issued, however the same will not apply to the other grounds of eviction.

7. Other provision which is relied by learned counsel of the Petitioner is Order VII Rule 11(d). Order VII Rule 11(d) contemplates rejection of the plaint where the suit appears from the statement in the plaint to be barred by any law. The same applies only where the statement as made in the plaint undisputedly shows that the suit is barred by any law. It is also settled position as held in *Popat Kotecha Vs.*

2. AIR 2021 SC 4594

State Bank of India Staff Association³, that order VII Rule 11(d) applies only where the statement is made in the plaint without any doubt or dispute shows that the suit is barred by any law in force.

8. Mr. Adenwala, learned counsel appearing for the Petitioner submitted that as far as the ground of non-user is concerned, the suit summons has been served on the Petitioner in the suit premises and therefore, judicial notice be taken that the Petitioner is occupying the suit premises. As far as ground of additions and alterations of permanent nature is concerned, it is the submission of Mr. Adenwala that the alleged erection of permanent structure is covered by the explanation to Section 16(1)(b) of the said Act. He therefore submitted that by exercising power under Order VII Rule 11(a) or (d), the plaint be rejected. However, both the Courts have rightly observed that the said grounds can be decided only after full fledged trial. The observations in **Rajendra Bajoria** (supra) are not applicable to the present case.

9. Therefore, there is no substance in the Writ Petitions and the Writ Petitions are dismissed with costs.

[MADHAV J. JAMDAR, J.]

3. 2005(7) SCC 510