

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

CIVIL REVISION APPLICATION NO.301 OF 2021

Bhagwati Prasad alias Bhagwat
S/o Sardarilal through LRs.
1(a) Manoj Bhagwat Prasad
Rajput and Ors.

...Applicants

Versus

Rambabu Harprasad Ruhela and
Ors.

...Respondents

WITH

CIVIL REVISION APPLICATION NO.302 OF 2021

Bhagwati Prasad alias Bhagwat
S/o Sardarilal through LRs.
1(a) Manoj Bhagwat Prasad
Rajput and Ors.

...Applicants

Versus

Rambabu Harprasad Ruhela and
Ors.

...Respondents

WITH

CIVIL REVISION APPLICATION NO.303 OF 2021

Bhagwati Prasad alias Bhagwat
S/o Sardarilal through LRs.
1(a) Manoj Bhagwat Prasad
Rajput and Ors.

...Applicants

Versus

Rambabu Harprasad Ruhela and
Ors.

...Respondents

WITH

INTERIM APPLICATION NO.2038 OF 2022

IN

CIVIL REVISION APPLICATION NO.301 OF 2021

Gopal Harprasad Ruhela
in the matter between

Bhagwati Prasad alias Bhagwat
S/o Sardarilal through LR.
1(a) Manoj Bhagwat Prasad
Rajput and Ors.

...Applicants

Versus

Rambabu Harprasad Ruhela and
Ors.

...Respondents

....

Mr. Ranjit Thorat with Ms Pratibha Shelake for the Applicants.
Ms Shweta Shrama for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 30th AUGUST, 2023.

P.C.:-

1. The Applicant-tenant has challenged the judgments dated 17/05/2019 passed by the Appellate Bench of the Small Causes Court, Bandra in (i) Appeal Nos.83 of 2019 in R.A.E. & R. Suit of 135/282 of 2004, (ii) Appeal No.84 of 2019 in R.A.E. Suit No.16 of 2004 and (iii) Appeal No.27 of 2014 in R.A.E. Suit No.321/732 of 2003. By the impugned judgments the Appellate Bench dismissed the appeals filed by the Applicant-Tenant and confirmed the eviction decree dated 09/09/2014 passed by the Small Causes Court in the aforesaid eviction proceedings.

2. The Respondents were the Plaintiffs and the Applicant

was the Defendant in the eviction proceedings filed before the Small Causes Court and shall be hereinafter referred to as 'the Plaintiffs' and 'the Defendant' respectively.

3. The Plaintiffs are the owners of the plot No.7, alongwith the structures situated therein, surveyed under CTS No.813, Malad (west), Mumbai. The father of the Plaintiffs had allowed the Defendant to use the suit premises on leave and license basis. The Plaintiffs filed three different suits for eviction viz. (i) R.A.E. Suit 321/732 of 2003, on the ground of bonafide requirement, additions and alterations, nuisance and annoyance, (ii) R.A.E. & R Suit No.16 of 2004 for carrying out additions and alterations, nuisance and annoyance and denial of title and (iii) R.A.E. & R Suit No.135/282 of 2004 for non-payment of arrears of rent, carrying out additions and alterations and causing nuisance and annoyance. The Trial Court decreed the said suits on the ground of unauthorised addition, alteration and nuisance, annoyance, bonafide user and non-payment of arrears of rent and directed the Defendant to handover vacant and peaceful possession of the suit premises to the Plaintiffs. Being aggrieved by the eviction order passed in the above suits, the

Defendant filed three separate appeals before the Appellate Bench of the Small Causes Court. The dismissal of the said appeals has led to filing of these applications under Section 115 of the Civil Procedure Code.

4. Shri Thorat, learned senior counsel for the Appellant has challenged the legality of the findings recorded by the Trial Court as well as the Appellate Court on the issue of bonafide users, nuisance and annoyance and permanent alteration.

5. The Trial Court as well as the Appellate Court has observed that the Defendant has constructed several illegal structures in view of which notice under Section 351 of the BMC Act was issued to him. Both the courts below have observed that despite demolition of the unauthorised construction, the Defendant has re-erected the structures/sheds of permanent nature. It is pertinent to note that the Defendant is also ordered to be evicted on the ground of non-payment of arrears of rent. The Defendant had claimed that in the previous suit (S.C. Suit No.8131 of 1968) this Court had directed him to deposit rent @ Rs.60/- per month before the City

Civil Court. Both the Courts below have observed that the Defendant has admitted that he has not paid the rent after dismissal of the said suit. Both the courts have taken note of the admission of the Defendant that he has not paid the rent as well as municipal taxes of the suit premises since 1967 till the date of his evidence. The Plaintiffs had issued demand notice to the Defendant and he has admitted his signature on acknowledgment card at Exhibit-21. The Defendant has admitted that he neither replied to the notice nor sent the rent to the Plaintiff. He has also admitted that he had not made any attempt to deposit the rent in the Court even after receipt of summons. He has admitted that he never made an application before the Court showing his readiness and willingness to deposit the rent. Relying upon these admissions the Courts below have passed/confirmed the decree for eviction on the ground of non-payment of arrears of rent.

6. It would be relevant to refer to Section 15 of the Maharashtra Rent Control Act, 1999, which provides for relief against forfeiture to tenant. Section 15(1) of the Maharashtra Rent Control Act, 1999 stipulates that a landlord shall not be entitled to

recover possession of the premises so long as the tenant pays the rent or is ready and willing to pay the amount of the standard rent and permitted increases, if, any. Sub-section (2) of Section 15 creates a bar for institution of the suit for recovery of possession by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of 90 days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act. Sub-section 3 of Section 15 provides that no decree for eviction shall be passed on the ground of arrears of standard rent and permitted increases if (i) within a period of 90 days from the date of service of the summons, the tenant pays or tenders in the Court the standard rent and permitted increases together with simple interest on the amount of arrears at the rate of 15% p.a., (ii) that the tenant thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and (iii) that the tenant also pays the cost of the suit, as directed by the Court.

7. A plain reading of Section 15(1) would indicate that a statutory obligation is cast on the landlord intending to evict the tenant on the ground of default in payment of rent, to serve upon the tenant a demand notice as prescribed in Section 106 of the Transfer of Property Act. Sub-section (2) of Section 15 creates a bar for institution of the suit for recovery of possession on the ground of default in payment of rent, until the expiry of 90 days from the date of service of demand notice. Whereas, sub-section (3) creates a bar on passing a decree for eviction if the tenant pays or deposits the arrears of rent together with interest @ 15% p.a. and continues to pay the rent till disposal of the suit. The protection extended to the tenant is not absolute but conditional depending upon tenant paying or tendering in court standard rent and permitted increases with interest.

8. In the instant case, it is not in dispute that the Plaintiff had served a demand notice on the Defendant. The Defendant having failed to pay the rent, the Plaintiff filed a suit for execution after expiry of 90 days from the date of receipt of the notice. The Defendant was admittedly in arrears of rent prior to the filing of the

suit and the default continued during the pendency of the suit. The Defendant has admittedly failed to comply with the essential requirement of Sub-section (3) of Section 15 in view of which the Plaintiff acquired a right to get a decree for eviction on the ground of non-payment of arrears of rent. In the result, the decree of eviction does not warrant any interference.

9. Under the circumstances and in view of discussion supra, the Civil Revision Applications stand dismissed.

10. Interim application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)