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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

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CIVIL REVISION APPLICATION NO.9 OF 2024

WITH

CIVIL REVISION APPLICATION NO.10 OF 2024

1. Sripati Trilochan Patel @ Singh)
Age 75 years, Occ: House Wife,)
)
2. Shyamdhani Trilochan Patel @ Singh)
(Since deceased))
Age 52 years Occ: Business)
)
- 2(a). Jyoti Shyamdhani Patel @ Singh,)
Age : 54 years, Occ: Housewife,)
)
- 2(b). Suraj Shaymdhani Patel @ Singh,)
Age: 24 years, Occ: Study,)
)
- 2(c). Kiran Shyamdhani Patel @ Singh,)
Age: 25 years, Occ: Service,)
)
- All residing at 400 A, Ramzan Manzil,)
Flat No.201, 2nd Floor, Khar Danda,)
Khar (West), Mumbai 400052.)
)
3. Ramdhani Trilochan Patel @ Singh)
Age 60 years, Occ:, Occ: Business)
)
4. Shivdhani Trilochan Patel @ Singh)
Age 57 years, Occ: Business)
)
5. Ramesh Trilochan Singh @ Singh)

Age 48 years, Occ: Business	)	
	)	
6. Vijay Trilochan Singh @ Singh	)	
Age 45 years, Occupation :	)	
Business, residing at Room No.2G	)	
Ground Floor, Nira Villa Building,	)	
13, 1s Road, Opp : Khar Railway	)	
Station, Khar (West), Mumbai 400 052	)	
and carrying on business at Shop	)	
No.1, Ground floor, Nira Villa	)	
Building, 1 st Road, Khar Railway	)	
Station, Khar (W), Mumbai - 400 052.		...Applicants
		...Ori.Defts.

...Versus...

Hemant Bhiku Dalal,	)	
Adult, Indian Inhabitant, aged 58 yrs,	)	
Occupation : Not known, residing at	)	
Pandya House, Sarojini Road,	)	
Vile Parle (West), Mumbai - 400 056	)	
Landlord of Nira Villa Building at	)	
CST No.E/487, Village Bandra (West)	)	
Situated at 1 Road @ Chitrkar	)	
Dhurander Road, S.S. 7, TPS III,	)	
Plot No.3 Khar (W), Mumbai - 400 052.	)	
		...Respondents
		...Ori.Plffs.

Mr.Harinder Toor with Ms.Swati Swant, and Adv.Lubna Shaikh
i/b S.K. Legal Associates LLP for the Applicants in both the
CRAs.

Mr.R.R. Tiwari for the Respondent in both the CRAs.

CORAM : RAJESH S. PATIL, J.
DATE OF RESERVE : 16TH JANUARY, 2024
DATE OF PRONOUNCEMENT : 23RD APRIL, 2024.

JUDGMENT :-

1. These Civil Revision Applications are filed by the tenant challenging the concurrent findings of eviction recorded by the Trial Court and the First Appellate Court.

2. The Respondent is the landlord of the suit premises being Shop No.1 and Shop No.2 G, situated at Ground Floor and First Floor, of Nira Villa Building, Khar, Mumbai - 400 052. The landlord filed two suits for eviction on four grounds viz. Arrears of Rent, Sub-Letting, Permanent Additions and Alterations, and Change of User as per the Maharashtra Rent Control Act. The Defendant appeared in the mater and filed his written statement. The evidence was led by the Plaintiff by examining the Plaintiff himself and on behalf of the Defendant, two witnesses were examined.

3. The Trial Court and the Appellate Court decreed the suits on the ground of “sub-letting” and “arrears of rent”.

4. Mr.Toor appeared for the Defendant / Applicant and

made his submissions on their behalf.

(i). Mr.Toor submitted that the tenant had not sub-letted the premises, but only given his business on conducting basis to the different parties.

(ii). Mr.Toor submitted that even if the clauses of the conducting agreement are taken into consideration, it can be seen that the said clauses does not give any kind of right to the parties, who is allowed to conduct the business on behalf of the tenant. Mr.Toor submitted that it is beyond imagination that there is sub-letting of the suit premises.

(iii). Mr.Toor further submitted that the present proceedings are covered by Section 15(2) of the Maharashtra Rent Control Act. He submitted that it is essential that before filing a suit for eviction under the Rent Act, valid notice should be served on the tenant.

(iv). Mr.Toor submitted that admittedly the tenant had not filed any kind of application before the Trial Court for depositing the rent in the Court. He submitted that it will not make much difference since there was no valid notice, therefore, the suits

itself were not maintainable.

(v). Mr.Toor therefore submitted that the present Civil Revision Applications should be allowed.

(vi). Mr.Toor relied upon the following judgments :-

- (a). Chimanlal vs. Mishrilal, reported in (1985) 1 SCC 14.
- (b). Babulal Agrawal vs. Suresh Malpani, reported in 2017 (4) Mh.L.J. 406,
- (c). Sitaram vs. Ibrahim reported in 2005(1) Mh.L.J. 35.
- (d). Jamanal vs. Rex., reported in AIR (37) 1950, Ajmer 17(1).
- (e). Vasumatibenn vs. Bai Kashiben, reported in 1977 Bom. R.C. 152, and
- (f). Commissioner of Income Tax vs. Neyveli Lignite Corporation Limited, reported in Income Tax Reports (2000) 459.

5. Mr.Tiwari, appeared for the Respondent and made his submission on behalf of the landlord.

6.(i) Mr.Tiwari, submitted by well reasoned judgment and order, both the Courts have concurrently held that ground of 'sub-letting' and 'arrears of rent' are proved, therefore, this Court should not entertain the present civil Revision Applications, and

the same be dismissed with costs.

Analysis and Conclusion :-

7. Two major grounds on which the Trial Court and the first Appellate Court have passed the eviction decree are : “Sub-letting” and “arrears of rent”.

a). **Sub-letting :-**

8. It is the case of the Plaintiff that the tenant had parted with possession and is being profiteering by receiving huge amount from the sub-tenant.

9. On behalf of the tenant, it has been argued that in fact there is no sub-letting, tenant had entered into an agreement titled as ‘Conducting Agreement’ with various parties.

10. I have considered the documents on record and clauses therein. There is no doubt that the tenant was earlier receiving a sum of Rs.8,000/- per month from the person, to whom they had allowed to run the business and thereafter a sum of Rs.12,000/- per month. The agreed rent of the suit premises is much low i.e. Rs.50/- per month. The fact that the tenant has admitted that the premises is given to the third party and he is

receiving the sum much higher than the agreed rent, according to me the premises is sub-letted, by the tenant and the same is fancifully titled as 'Conducting Agreement' to come out of the clutches of Maharashtra Rent Control Act. Therefore, I am of the view that the ground of sub-letting has been duly proved by the landlord. There is no perversity in the concurrent findings recorded by the Trial Court and the First Appellate Court, on the ground of 'sub-letting'.

The Applicants' counsel relied upon the judgment of Madras High Court, in an Income Tax, reference matter. The said Judgment dealt with Section 9 of Income Tax Act. In Explanation 2 of Section 9(1)(vi) "royalty" has been defined. According to me the findings recorded in this judgment under Income Tax Act, are not helpful to Applicants in the present proceeding which arises out of Rent Act.

b) **Arrears of rent :-**

11. Since, I have already confirmed the eviction decree on the ground of sub-letting, I need not further discuss other grounds of eviction. However, since the ground of 'arrears of

rent' was also argued, I am also analysing the said ground of eviction. As regards the arrears of rent, it is an admitted fact that the tenant did not prefer any kind of application before the Trial Court for depositing the agreed rent. The only submission on behalf of the tenant was that the notice of eviction itself was not a valid notice, as there was no demand. In the notice dated 8 December 2001 paragraph No.1 specifically mentioned that from June 1998 till date, there is arrears of rent payable by the tenant. Even if the figures are not mentioned, the tenant could have on his own come forward and as per the demand made in the notice paid the rent from June 1998 till the date of the notice without prejudice to his right and contentions. However, no such exercise was made by the tenant. Neither did the tenant thought it proper to deposit the rent in the Trial Court. In such a situation, even the ground of 'arrears of rent' is proved. Both the suits are also decreed on the ground of 'arrears of rent'.

12. In the judgment of **Chimanlal** (supra) the issue was that the accommodation mentioned in notice and accommodation actually let were different. In **Sitaram** (supra), it

was held that there was no demand at all. In the present proceedings, the notice mentions about the arrears of rent payable by tenant from June 1998 till date. In **Babulal** (supra) the Bombay High Court, has dealt with issuance of notice on ground of arrears of rent, and also that the demand made in the notice has to be paid along with interest. This judgment does not help the Applicants in the present proceedings, as the Applicants admittedly did not file application in Trial Court for depositing the rent. The other judgments of Gujarat High Court, only clarifies that demand should be specific. The judgment of **Jamna Lal** (supra), under Delhi Rent Act, deals with demand made in notice. The said findings does not help the Applicants in present proceedings.

13. There is no merit in both the Civil Revision Applications and the same are dismissed. There shall be no order as to costs.

(RAJESH S. PATIL, J.)

14. Ms.Shaikh appearing for the Applicants seeks extension of *ad-interim* relief granted by this Court on 4 January

2024. Mr.Hemant B. Dalal, Respondent appearing in person objects to any *ad-interim* relief to be continued.

15. The protection granted by this Court on 4 January 2024 is further extended for a period of eight weeks from today.

(RAJESH S. PATIL, J.)