

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

**CIVIL REVISION APPLICATION NO.107 OF 2022
WITH
INTERIM APPLICATION NO.1614 OF 2022**

Shri Rang Maruti & Sons
Kisanrao Shrirang Nalawade, the partner
Since deceased through legal representatives,
1A. Shri Sangram Kisanrao Nalawade
Age:- 38 years, Occu:- Business
1B. Smt Vidya Kisanrao Nalawade
Age:- 57 years, Occ:- Business
R/o: Ajinkya Colony, Dwarika Apartments
11/12, Powai Naka, Satara-415 002

..... Applicant

V/s.

1.Suleman Ahmed Botawala
(died during pendency of Appeal
Hence, deleted)

2. Aiyub Ahmed Botawala,
Aged 77 years, Occ: Business,

3. Yusuf Mohammed Botawala,
Aged 58 years, Occ: Business,
All Trustees of Ahmed Yusuf
Botawala Trust, All at Botawala
Chambers, 4-A, P. M. Road,
Fort, Mumbai- 400 001

4. Mrs. Saira Amin Esmail,
Aged 67 years, Occ: Business,

5. Praveen Rajiv Gupta,
Aged 56 years, Occ: Business,

6. Zubair Suleman Botawala,
Aged 55 years, Occ: Business,

All having address at Botawala
Chambers, 4-A, P. M. Road,
Fort, Mumbai – 400 001

..... Respondents

Mr. Vijaykumar Patil i/b Mr. Ramdas Hake Patil for the Applicant.
Mr. Mihir R. Govilkar i/b Govilkar & Associates for Respondent Nos.2 to 5.

CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : 21st DECEMBER, 2023.

PRONOUNCED ON : 2nd JANUARY, 2024.

JUDGMENT:

1. Rule. Rule made returnable forthwith and taken up for final hearing with the consent of the parties.
2. Revision jurisdiction of this Court has been invoked to challenge the concurrent findings of the Appellate Court as well as Trial Court decreeing RAE & R Suit No.1193/1911 of 2005 directing ejectment of the revision applicant. For the sake of convenience the parties are referred to by their status before the Trial Court.
3. RAE & R Suit No.1193/1911 of 2005 was instituted by the plaintiff seeking ejectment of the defendant on the ground of default in payment of arrears of rent. The suit premises is Shop No.1 situated on the

Ground floor, Botawala Chamber, Sir P. M. Road, Mumbai. The suit premises were let out to the defendant at a monthly rent of Rs.392/-. It is pleaded that the defendant was in arrears of rent and permitted increases for more than 6 months from the period July 2003 to September 2005 amounting to Rs.10,584/-. That a demand notice dated 30/3/2005 was issued to the defendant calling upon the defendant to pay the arrears of rent within 90 days of receipt of letter. That the notice was sent by registered acknowledgment due, which has been received by the defendant as also was posted under certificate of posting. That copy of the notice dated 30/3/2005 was sent for further reference which was received by the defendants. That though notice has been received however defendants have failed and neglected to give any reply nor have paid the arrears of rent as demanded.

4. The defendant contested the suit and the defence in the written statement is that defendant is carrying on the business in the name and style of Shri Rang Maruti and Sons in the suit premises. That one Shrirangrao Nalawade was initially carrying on business of wholesale and retail egg supply and after his death his three sons are carrying on the business in the name and style of “ Shri Rang Maruti & Sons”. It was contended that the defendant is always ready and willing to pay the monthly rent however the

landlord has not accepted the arrears of rent and permitted increases. The defendant also denied receipt of letter dated 30/3/2005.

5. The parties went on trial and the plaintiff No.2 who is one of the trustees of the trust landlord examined himself. Along with oral evidence he has also produced documentary evidence in the form of original rent receipt, office copy of the notice dated 30/3/2005, original postal receipt, office copy of the notice dated 17/5/2005 and original postal receipt and acknowledgment card.

6. The Suit proceeded ex-parte against the defendant and there was no cross examination. In support of the documentary evidence, additional examination in chief was recorded. The Trial Court by its order dated 10/7/2014 exhibited documents produced by the plaintiff. It appears that subsequently the defendant appeared and PW-1 was cross examined. In the cross examination, the case put by the plaintiff that the demand notice was sent on 30/3/2005 by RPAD as well as certificate of posting was not shaken. It is admitted by PW-1 in cross examination that in respect of notice dated 30/3/2005 sent by RPAD, acknowledgment has not been produced. The suggestion was given to PW-1 that along with letter dated 17/5/2005

xerox copy of letter dated 30/3/2005 was sent.

7. On behalf of defendant Kisan Rao, Shrirangrao stepped into the box and deposed that he had not received the notice dated 30/3/2005 and denied that they are in arrears of rent. He has further deposed that reminder letter dated 17/5/2005 was not received and the signature on the acknowledgment is not signed by the defendant. In the cross examination, DW-1 has admitted that he cannot state the exact month up to which he has paid rent and that he cannot produce rent receipt in respect of the suit premises for the year 2004-2005 as the plaintiffs have not issued the same in spite of collecting rent. He has further admitted that the seal of Rang Maruti & Sons was kept in the cash box. He has deposed that he has filed an Application to deposit rent of the suit premises in the Court and that he had handed over Demand Draft of Rs.65,000/- to his Advocate to be paid to the plaintiff and as the plaintiff refused to accept the same after three months the Demand Draft was returned to him. He has further admitted that he is not aware that his advocate has filed any Application in the Court to deposit rent in the Court. He has further admitted that after filing of the Suit he has not paid rent to the plaintiff as plaintiff has refused to accept the rent.

8. The Trial Court *vide* judgment dated 20/11/2014 considered the defence of the defendant that the plaintiff have not produced acknowledgment and relied upon Section 27 of the General Clauses Act 1897 and accepted that demand notice was served as the same was sent by RPAD on proper address of the defendant and even postal receipt to that effect is produced on record. The Trial Court also considered the reminder letter dated 17/5/2005 and the postal receipts produced. The Trial Court held that the plaintiffs have averred that the notice was sent by RPAD as also xerox copy of the notice was sent to the defendant and even though the specific date i.e. 17/5/2005 is not mentioned, it cannot be said that there is no pleading about reminder notice. The Trial Court further considered that as regards the reminder letter dated 17/5/2005, the acknowledgment bears rubber stamp of Shri Rang Maruti & Sons and it is admitted by the defendant that he used to keep the seal of Shri Rang Maruti & Sons in the cash box. The Trial Court further considered that in spite of receipt of demand notice, defendant failed to pay arrears of rent and even after service of suit summons the defendant has not paid arrears of rent and permitted increases within 90 days as contemplated under sub-section (3) of Section 15 of the Maharashtra Rent Control Act. The Trial Court decreed the Suit, as against which appeal was preferred which came to be dismissed

confirming the findings of the Trial Court.

9. Heard Mr. Vijaykumar Patil for the Applicant and Mr. Mihir R. Govilkar for Respondent Nos.2 to 5.

10. Mr. Patil, learned counsel appearing for the revision applicant submitted that specific case of the defendant was that the rent receipts in respect of the suit premises for the year 2004-05 could not be produced as the plaintiffs have not issued the same. He submits that the case of the defendant stands established by the documents produced by the plaintiff i.e. the original rent receipt. He further submits that there is no acknowledgment which was produced in respect of the demand notice dated 30/3/2005 and only the acknowledgment of the reminder was produced on record, which cannot be considered as there is no pleading to that effect in the plaint.

11. *Per contra*, Mr. Govilkar, learned counsel appearing for the respondent has supported the concurrent findings of the Court below. He would submit that there is non compliance of the provisions of Section 15 of the Maharashtra Rent Control Act and in spite of receipt of demand notice as well as reminder neither the arrears of rent was paid to the plaintiff

neither was it tendered in the Court.

12. Considered the submissions and perused the record.

13. The ground on which decree of eviction was sought was default in payment of arrears of rent for the period from July 2003 to September 2005. Section 15 of the Maharashtra Rent Control Act provides that the landlord shall not be entitled to recovery of possession as long as the tenant is ready and willing to pay the amount of standard rent and permitted increases and performs the other conditions of tenancy. By sub-section 2 of Section 15 further protection is given to the tenant by prescribing a restriction on filing of the suit for eviction for a period of 90 days after the issuance of demand notice to enable the tenant to make payment of rent within period of 90 days. Sub-section 3 of section 15 provides another layer of protection to the tenant to tender in Court standard rent and permitted increases within a period of 90 days from the date of service of summons and thereafter to continue to pay and tender in Court, the rent and permitted increases till the suit is finally decided. In the present case, demand notice was issued on 30/5/2005 and it is not the case of the defendant that upon receipt of demand notice he has made the payment of

the rent. Defendant has come with the case that demand notice dated 30/3/2005 was not received by him. The documentary evidence in the form of the office copy of the notice as well as the postal receipts produced by the plaintiff indicates that the notice was sent at the correct address of the suit premises. The Trial Court has therefore rightly relied upon the provisions of Section 27 of the General Clauses Act to accept the service of demand notice. The non production of the acknowledgment cannot be said to be fatal to the case of the landlord. Considering the demand notice being sent to the correct address.

14. In addition there is a reminder notice which has been sent on 17/5/2005. In that respect the acknowledgment is also on record. In the cross examination of PW-1 the suggestion was given by defendant that along with the letter dated 17/5/2008 xerox copy of letter dated 30/3/2005 was sent. This suggestion confirms the case of the plaintiff. The suit has been filed on 10/11/2005 much beyond the period of 90 days prescribed by subsection 2 of Section 15 and even if it is assumed that the first notice dated 30/3/2005 was not received by the defendant, there is an acknowledgment as regards the second notice dated 17/5/2005 demanding the arrears of rent. As regards the second notice the objection which has been taken is that there

is no pleadings in the plaint and as such the evidence in that respect cannot be considered. If we peruse the plaint, in paragraph No.4 it is pleaded that the notice of 30/3/2005 was sent by RPAD which has been received by the defendant and also the copy of the notice was sent for further reference to the defendant. Along with documentary evidence, the office copy of the notice dated 17/5/2005 has also been produced.

15. The Trial Court considered the pleadings in the plaint and held that although specific date of 17/5/2005 is not mentioned there are pleadings to that effect in the plaint and as such considered the said notice.

16. In my view, despite the acknowledgment not having been produced the first notice dated 30/3/2005 having been sent to the correct address of the suit premises, the presumption under Section 27 of the General Clauses Act arises and then the burden shifts upon the defendant to show that the document was not delivered. In the present case, the defendant has not produced any document to discharge the burden placed upon him. In the written statement, the case of the defendant is that the defendant made an attempt to pay arrears of rent but the same was not accepted by the plaintiff. It is not the case of the defendant in the written

statement that although the rent was paid as the plaintiff have not issued the rent receipts, the same cannot be produced in evidence. Admitted position is that even after the service of summons, there is non compliance of sub-section 3 of Section 15 and the defendant has failed to deposit the arrears of rent and permitted increases in Court within a period of 90 days.

17. In light of above, there is no warrant for interference with the well reasoned orders of the Appellate Court and the Trial Court. Revision Application is devoid of merits and stands dismissed.

18. In view of dismissal of the revision application, the Interim Application does not survive and stands disposed of. Rule is discharged.

(SHARMILA U. DESHMUKH, J.)

19. At this stage request is made for extension of stay which was granted by this Court *vide* order dated 12th July 2019. As the stay has been operating in favour of the applicant since 2019, I am inclined to extend the stay for further period of 8 weeks subject to an undertaking being filed by the applicant within a period of 2 weeks in this Court that if appropriate orders are not obtained from the Apex Court within a period of 8 weeks,

the applicant shall handover vacant and peaceful possession of the premises to the respondent.

(SHARMILA U. DESHMUKH, J.)

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by
RAJESHWARI
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