

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

CIVIL REVISION APPLICATION NO. 23 OF 2024

Damayanti Yashwantrao Modi
(since deceased through legal heir)
Vipul Yashwantrao Modi

**....Applicant/
(Appellant/Orig.Defendant)**

: Versus :

Rajan Gulabrao Vanjari

**....Respondent
(Orig. Plaintiff)**

Ms. Prabha Badadare, for the Applicant.

Mr. Vijay D. Patil a/w. Mr. Nikhil Chavan, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 9 September 2024.

P.C. :

1) Revisionary jurisdiction of this Court is invoked to set up a challenge to the decree dated 7 December 2023 passed by the District Court, Pune dismissing Regular Civil Appeal No. 127 of 2017 and confirming the eviction decree dated 17 December 2016 passed by the Small Causes Court, Pune in Civil Suit No.203 of 2013. The Small Causes Court has decreed the suit on the grounds of default in payment of rent and *bonafide* requirement of the landlord.

2) I have heard Ms. Badadare, the learned counsel appearing for the Revision Applicant and Mr. Patil, the learned counsel appearing for the Respondent/Original Plaintiff.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that demand notice dated 18 February 2013 was served by the Plaintiff on the Defendant alleging non-payment of rent from 1 April 2012 till February 2013. In the demand notice, the total amount of rent demanded by the Plaintiff was Rs.13,618/-. It has come on record that after receipt of the demand notice, the Defendant sent three money orders for amounts of Rs.5,000/-, Rs.5,000/- and Rs.3,618/- on 12 March 2013. It has also come in evidence that the total amounts of various money orders sent by the Defendant to the Plaintiff after receipt of demand notice was Rs.14,856/-, as against the demand of rent of Rs.13,618/-. In that view of the matter, it appears that the demand notice issued under the provisions of Section 15(2) of the Maharashtra Rent Control Act, 1999 (**MRC Act**) was clearly met with. The issue is, if the rent demanded in the notice is offered by the tenant, whether suit for recovery of possession can still be filed. The issue is no more *res-integra* and is covered by the judgment of larger Bench of this Court in **Babulal Fakirchand Agarwal V/s. Suresh Kedarnath Malpani & Ors.**¹ The Full Bench of this Court has held that even if demand notice under Section 15(2) of the M.R.C. Act is met, the landlord can still file suit for eviction and if it is observed by the Court that the Defendant does not pay or deposit the rent regularly, eviction decree can be passed. The Full Bench has thus held the ground of eviction under Section 15(3) to be independent of the provisions of Section 15(2) of the M.R.C. Act. In the light of the above settled position of law, the next issue that arises for consideration is whether the Defendant-tenant fulfilled the requirement of regular deposit of rent under the provisions of Section 15(3) of the M.R.C. Act. Perusal of findings recorded by the

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Trial Court in para-12 of its judgment would indicate that the Defendant appeared in the suit on 8 August 2013 and made payment of Rs.23,522/- on 25 October 2013 towards rent for the period from 1 April 2012 to 31 October 2013. Thus, within 90 days of service of suit summons, it appears that the amount of rent then due was paid by the Defendant. The next deposit was apparently made by Defendant No.1 upto August 2014 in regular manner. However, after September 2014, the Defendant failed to deposit the rent regularly in the Court. The rent in respect of September 2014 to August 2015 was not deposited by the Defendant in regular manner and the same was deposited with considerable delay on 15 June 2015. Again there was default in respect of regular payment of rent during September 2015 to December 2015. Lastly and to make the case of the Defendant worse, no deposit of rent was made after April 2016 till the Trial Court passed its decree in December 2016. It is thus conclusively proved that the Defendant did not continue to pay the rent regularly as required under Section 15(3) of the M.R.C. Act. In that view of the matter, no serious flaw can be traced in the concurrent findings recorded by the Trial Court and the Appellate Court in accepting the ground of default in payment of rent.

4) So far as the other ground of *bonafide* requirement of the Plaintiff is concerned, the Defendant has admitted that there are 18 members in the family of the Plaintiff. The Defendant has also admitted in her cross-examination that the Plaintiff was facing shortage of premises for residence of the said 18 family members. So far as comparative hardship is concerned, it has come in evidence that the Defendants' two sons own two flats bearing Flat No.7 in 'Alankar' building and Flat No.301 in 'Abhinav Residency'. The Defendant however sought to raise a defence that both the Flats

were sold on account of inability of her sons to repay the debts. However, Defendant's son admitted in the evidence that he had no documentary evidence to prove sale of such flats. Though Ms. Badadare has attempted to suggest that auction sale notice was produced before the Court, in my view, it was necessary for the Defendant to prove before the Court that such auction actually fructified into the transaction of sale by producing and proving the Sale Certificate. In my view therefore, comparative hardship has rightly been held to be in favour of the Plaintiff.

5) After considering the overall conspectus of the case, I am of the view that no interference is warranted in the concurrent findings recorded by the Trial and the Appellate Court with regard to the grounds of arrears of rent and *bonafide* requirement of Plaintiff. Civil Revision Application is devoid of merits and is accordingly **dismissed**. The Defendants are however granted time of four months to vacate the suit premises subject to the condition that the Applicant shall not create any third party rights in respect of the suit premises.

[SANDEEP V. MARNE, J.]

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