

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

CIVIL REVISION APPLICATION NO.436 OF 2024

Cecilia M. D'Souza
V/s.

**....Applicant
(Orig. Defendant)**

Jenie James D'silva

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

Mr. Aniesh Jadhav i/b. *Mr. Nikhil V. Adkine for the Applicant.*

Mr. J.M. D'silva for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 26 August 2024.

JUDGMENT:

1) Revisionary jurisdiction of this Court is invoked by the Applicant to set up a challenge to the judgment and order dated 29 June 2024 passed by the Appellate Bench of the Small Causes Court dismissing A1-Appeal No.49 of 2018 and confirming the decree passed by the Trial Court in R.A.E. & R. Suit No.404/759 of 2009. By decree dated 15 March 2018, the Small Causes Court has accepted the grounds of arrears of rent, unauthorised additions and alterations and *bonafide* requirement and has directed the Defendant to handover possession of the suit premises to Plaintiff.

2) Plaintiff is a landlady and owner of a plot of land with a structure standing thereon situated at House No.52A, Vakola Village, Santacruz (East), Mumbai 400 055. The Defendant was inducted as a

tenant in respect of room on the ground floor, admeasuring 335 sq.ft., which forms the 'suit premises'. Plaintiff alleged that the Defendant failed and neglected to pay rent in respect of the suit premises @ Rs.75/- per month from January -2008 and was in arrears of Rs.1575/-. The Plaintiff therefore addressed notice dated 12 June 2009 to the Defendant terminating the tenancy of the suit premises and also called upon Defendant to pay the arrears of rent for the period from January-2008 to June -2009 of Rs.1,260/- alongwith 15% interest. Upon receipt of notice, Defendant responded alongwith a cheque, which was not encashed by the Plaintiff. Plaintiff thereafter instituted R.A.E. and R. Suit No. 404/759 of 2009 in the Court of Small Causes at Mumbai seeking recovery of possession of the suit premises on the ground of arrears of rent. Plaintiff also alleged that the Defendant made unauthorised additions and alternations as well as structural changes to the suit premises and had unauthorisedly and illegally extended the suit premises on eastern side by encroaching upon the open space. It was alleged that Defendant enclosed the open verandah of suit premises and affixed grills without the permission and consent of the landlady. The Plaintiff also alleged the ground of nuisance and annoyance. Plaintiff also averred that she was in requirement of suit premises for her *bonafide* and reasonable need as she has two grown up sons and premises in her possession of 200 sq.ft. adjoining the suit premises, were not sufficient to cater to the needs of her growing family. Plaintiff averred that Defendant was staying in the suit premises alone as her sons are settled in Pune. Plaintiff therefore set up a case of cause of greater hardship to herself in the event of suit being dismissed than the one caused to the Defendant in the event of decree of the Suit.

3) The Defendant appeared in the Suit and filed written statement contesting the claim of Plaintiff. On 16 January 2010 Defendant applied for permission to deposit the arrears of rent, which application was allowed on 3 July 2010 and the Defendant was permitted to deposit arrears of rent of Rs.1575/- within 15 days. The Defendant was also granted leave to deposit costs of the Suit and interest @ 15% on arrears of rent. On 15 July 2010, Defendant deposited the arrears of rent from January 2008 to August 2010 amounting to Rs.2,400/- and interest @ 15% per annum amounting to Res.330/- as well as Rs.382/- towards costs of the Suit.

4) Both the sides led evidence in support of their respective contentions. After considering the pleadings, documentary and oral evidence, the learned Judge of the Small Causes Court was pleased to decree the Suit on the ground of arrears of rent, unauthorised additions and alterations and *bonafide* requirement. The ground of nuisance and annoyance was however rejected. The Defendant was directed to handover possession of the suit premises to the Plaintiff within one month. The Plaintiff was also permitted to withdraw the deposited amount of rent alongwith interest and costs.

5) The Defendant challenged the decree of the Trial Judge dated 15 March 2018 before the Appellate Bench of Small Causes Court by filing A1-Appeal No.49 of 2018. The Appellate Bench however, proceeded to dismiss the appeal filed by the Defendant by confirming the findings of the Trial Court on the issues of arrears of rent, unauthorised additions and alterations and *bonafide* requirement. Aggrieved by the decrees passed by the Small Causes Court and its Appellate Bench, the Applicant/Defendant has filed the present revision application.

6) I have heard Mr. Jadhav, the learned counsel appearing for the Revision Applicant. So far as the ground of arrears of rent is concerned, he would invite my attention to the findings recorded by the Trial Court in paragraph 55 of the judgment dated 15 March 2018 to demonstrate that requirements under Section 15(3) of the Maharashtra Rent Control Act, 1999 (**MRC Act**) were fully complied with. He would submit that the Trial Court itself has held that Defendant deposited the entire arrears of rent, costs as well as interest as per Section 15(3) of the MRC Act within 90 days from the receipt of suit summons. He further contended that Trial Court also recorded findings of readiness and willingness on the part of the Defendant to pay rent to the Plaintiff. He would submit that in the light of said emphatic findings recorded by the Trial Court, the decree is unsustainable on the ground of arrears of rent. That the error committed by the Trial Court has not been corrected by the Appellate Bench, which has proceeded to ignore the aspect of deposit of rent and interest and costs under Section 15(3) of the MRC Act by the Defendant.

7) So far as ground of unauthorised additions and alterations are concerned, Mr. Jadhav would submit that mere enclosure of verandah cannot be construed as an addition or alteration of permanent nature to the suit premises. In support, he would rely upon judgment of the Supreme Court in **Om Prakash V/s. Amar Singh and Others**¹. That verandah has been enclosed merely by erection of grill. That the Plaintiff herself had undertaken unauthorised construction by adding a floor above the suit premises. That no evidence of any Architect or expert was led to prove that

¹ (1987) 1 SCC 458

additions /alterations are of permanent nature. That there is no pleadings /evidence to demonstrate permanency of structure or degree of annexation or the material change. That in any case, alleged additions /alterations did not diminish / decrease the value of the suit premises or the structure in which they are situated. So far as the ground of *bonafide* requirement is concerned, Mr. Jadhav would submit that the pleaded case of the Plaintiff in the plaint was that she was occupying area of only 200 sq.ft. adjoining suit premises, which was insufficient, however, it has come on record that the Plaintiff subsequently constructed equivalent area as that of Defendant on the first floor. Thus, it is conclusively proved that in addition to the adjoining premises in her possession, Plaintiff secured an additional area of 335 sq.ft. on the first floor above the suit premises. That Plaintiff admitted during her cross-examination that she had 350 sq.ft. above the house of Defendant, in which she had not kept any tenant. He would therefore submit that the alleged need for additional space of 335 sq.ft. was thus fully met. Mr. Jadhav would additionally submit that the two sons of Plaintiff were no longer residing in the suit premises. That both the sons have been residing out of India. He would therefore submit that the ground of *bonafide* requirement is erroneously accepted by the learned Trial Court and the Appellate Bench. Mr. Jadhav would therefore submit that none of the grounds raised by Plaintiff could have been accepted for decreeing the Suit. He would pray for setting aside the decrees passed by the Trial Court and its Appellate Bench.

8) The Revision Application is opposed by Mr. D'silva, the learned counsel appearing for Respondent No.1, who would support the concurrent findings recorded by the Trial Court and its Appellate Bench. He would submit that the three grounds viz. arrears of rent,

unauthorised additions and alterations and *bonafide* requirement have rightly been accepted by both the Courts after appreciating the evidence on record. That given the limited jurisdiction of this Court, which is corrective in nature, in absence of any palpable error being noticed in the order, no interference is warranted in the concurrent findings supported by evidence on record. He would pray for dismissal of the revision application.

9) Having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the Suit is decreed by concurrently accepting the grounds of arrears of rent, *bonafide* requirement, and unauthorised additions and alterations.

10) So far as the ground of arrears of rent is concerned, I am not fully convinced that the Suit could have been decreed on that ground. No doubt the Defendant was in arrears of rent after January 2008, before filing of the Suit, which required the Plaintiff to serve legal notice on 12 June 2009. However, after receipt of notice Defendant tendered cheque of Rs.1,260/- representing the demanded amount towards arrears of rent. However, Plaintiff disputed that the said cheque towards arrears was actually appended to the reply of Defendant and accordingly a rejoinder to that effect was addressed to the Defendant. The Defendant sent money orders on 25 July 2009 and 19 August 2009 however, she did not produce postal receipts of the said money orders. Considering the above evidence on record, the Trial Court arrived at a finding that no evidence was produced to prove payment of rent by Defendant after receipt of notice. These findings are confirmed by the Appellate Bench. While I do not propose to interfere in the said findings of fact recorded after appreciation of evidence, the Trial Court clearly erred in not examining the issue of

deposit of rent by Defendant under Section 15(3) of the MRC Act while answering issue No.1. The aspect of deposit of arrears of rent, costs and interest under Section 15(3) of the MRC Act, has been discussed by the Trial Court towards the end of its judgment while deciding issue Nos.6, 7 and 8 relating to Plaintiff's entitlement for recovery of possession of suit premises. While answering the said issues, the Trial Court held in paragraph 55 of its judgment as under:

55. The record shows that writ of suit summons was served on the defendant on 21st November, 2009. The defendant appeared in the court on 4th December 2009 through advocate. Thereafter, on 16th January 2010, the defendant applied for permission to deposit the arrears of rent and further directions to deposit the future rent at the rate of Rs.75/- per month vide Exhibit 9. This shows that the defendant had shown readiness to pay the arrears of rent and future rent in the court. The application Exhibit 9 was allowed on 3rd July 2010 and the defendant was allowed to deposit the arrears of rent of Rs.1,575/- (Rs. One thousand five hundred seventy five only) within 15 days from the date of said order. The defendant was given liberty to deposit cost of the suit and interest at the rate of 15% per annum on the arrears of rent. On 15th July, 2010, the defendant has deposited the arrears of rent for the period from January 2008 to August 2010 amounting to Rs.2,400/- (Rs. Two thousand four hundred only) and interest at the rate of 15% per annum amounting to Rs.338/- (Rs. Three hundred thirty eight only). On the same day the defendant also deposited Rs.380/- (Rs. Three hundred eighty only) on the costs of the suit. These facts on record established that the defendant has tendered and paid the arrears of rent within 90 days from receipt of the writ of suit summons. Therefore, the defendant has shown ready and willingness to pay the rent. Hence, though the defendant was in arrears of rent since January 2008, she has proved that she is ready and willing to pay the rent.

11) Thus, the Trial Court has recorded an emphatic finding of deposit of rent by Defendant within 90 days of service of suit summons. That being the case, it is unfathomable as to how decree for eviction could have been passed against the Defendant on the ground of arrears of rent. The Appellate Court has completely glossed over this vital aspect and proceeded to accept the ground of arrears of rent by ignoring the compliance with provisions of Section 15(3) of the MRC Act. In my view, findings recorded by the Trial Court and its

Appellate Bench on the issue of arrears of rent are thus clearly unsustainable.

12) Coming to the issue of unauthorised additions and alterations to the suit premises, the evidence on record indicates that Defendant had extended the suit premises on eastern side by enclosing open verandah of the suit premises and by affixing grills. The Plaintiff led evidence that the enclosure of the verandah was made out of brick masonry structure. The cross-examination of the Defendant was full of inconsistencies, where she initially sought to deny existence of verandah but later admitted its existence. She has specifically admitted that there are two windows in the walls constructed at the verandah, one being a big sliding window and the other being small window of WC. She also admitted construction of grill door at the door of the verandah. Thus, enclosure of verandah by use of brick masonry structure and grills is clearly admitted by Defendant. Mr. Jadhav has relied upon judgment of the Apex Court in ***Om Prakash*** (supra) in which it is held in paragraph 6 as under:

6. In determining the question the Court must address itself to the **nature, character of the constructions and the extent to which they make changes in the front and structure of the accommodation**, having regard to the purpose for which the accommodation may have been let out to the tenant. The Legislature intended that **only those constructions** which bring about substantial change in the front and structure of the building should provide a ground for tenants' eviction, it took care to use the word 'materially altered the accommodation.' The material alterations contemplate change of substantial nature affecting the form and character of the building. Many a time tenants make **minor** constructions and alterations for the convenient use of the tenanted accommodation. The legislature does not provide for their eviction instead the construction so made would furnish ground for eviction only when they bring about substantial change in the front and structure of the building. Construction of a **Chabutra, Almirah, opening a window or closing a verandah by temporary structure or replacing** of a damaged roof which may be leaking or placing partition in a room or making similar minor alterations for the convenient use of the accommodation do not materially alter 'the building as in spite of such constructions the front and structure of the building may remain unaffected. The essential element which needs

consideration is as to whether the constructions are substantial in nature and they alter, the form, front and structure of the accommodation. It is not possible to give exhaustive list of constructions which do not constitute material alterations, as the determination of this question depends on the facts of each case. **In S.B. Mathur v. K.P. Gupta, [1961] Allahabad Law Journal 136 construction of temporary wail enclosing verandah and putting up an iron jungala and placing a partition wall, temporary in nature was held not to constitute material alteration of the accommodation.** In Dr. J.G. Gupta v. Bodh Mal. [1969] Allahabad Law Journal 477 a Division Bench of the High Court held that temporary construction made by a tenant in the shape of kitchen and bathroom did not constitute material alterations as the same were temporary and they could be removed without causing any damage to the accommodation. In Sita Ram Sharan and Anr. v. Johri Mal & Anr., [1972] Allahabad Law Journal 301 a Full Bench held that construction which converted the tenanted premises into double storey structure, materially altered the accommodation. Another Division Bench of the High Court in Baldev Dass v. Ram Khilawan, [1979] Allahabad Law Reports 44 held that a partition wall in a shop converting the same into two portions for the convenient use of the same did not amount to material alteration. These decisions were rendered on the facts available on the record of those cases. In deciding this question the Court has to consider whether the constructions have been made with the consent of the land- lord and if so, whether those constructions are of such substantial nature which make material alterations in the accommodation. The findings of the court regarding constructions would be findings of fact, but the question whether the constructions materially alter the accommodation is a mixed question of fact and law, which should be determined on the application of the correct principles.

(emphasis supplied)

13) Relying on judgment of ***Om Prakash*** (supra) Mr. Jadhav has contended that mere enclosure of verandah does not constitute material alterations in the premises. However, in ***Om Prakash*** findings relating to enclosure of verandah are with reference to the enclosure by use of temporary structure. In the present case it has come in evidence that Defendant used not just iron grills but also brick masonry walls for enclosing verandah. It therefore cannot be contended by any stretch of imagination that the enclosure of verandah by Defendant is either a temporary structure or that the same does not amount to addition of a permanent structure. Material change to the form of property and degree of annexation is thus clearly established. The judgment of the Apex Court in ***Om Prakash*** (supra) therefore would have no application to the facts and circumstances of

the present case. In my view therefore, the Trial Court and its Appellate Bench have rightly accepted the ground of erection of unauthorised additions and alternations in the suit premises.

14) So far as the ground of *bonafide* requirement of the landlady is concerned, she pleaded in her plaint that she was occupying area of only 200 sq.ft. adjoining the suit premises, in which she was residing with her two sons. The Defendant raised two defences to repel the ground of *bonafide* requirement of landlady. Firstly, she contended that Plaintiff's sons were taking education abroad and therefore she no longer needed any additional premises. Secondly, Defendant contended that Plaintiff constructed an additional floor over the suit premises and therefore her requirement for additional space was satisfied.

15) The Trial Court however, proceeded to reject both the defences by holding that sons of the Plaintiff had travelled abroad only for educational purpose and took note of Plaintiff's statement in the evidence that they were contemplating return to India after completion of their education. The Trial Court also took note of the fact that the sons were of marriageable age and proceeded to accept the need pleaded by Plaintiff holding that she is the best judge of her own requirement. I do not find any reason to interfere in the said findings recorded by the Trial Court and which has been upheld by the Appellate Bench. So far as the availability of additional area for Plaintiff is concerned, it is Defendant's own case that additional construction is of unauthorised nature and at one point of time the Defendant herself had got the same demolished through the Municipal Corporation. In my view therefore, availability of such additional space for Plaintiff, which according to the Defendant herself is

unauthorised, cannot be a ground for rejecting the plea for reasonable and *bonafide* requirement of the Plaintiff. It has come in evidence that Defendant is residing alone in the suit premises and her sons are residing in Pune and doing the business in oil and are earning well. This is how the cause of greater hardship to the Plaintiff is concurrently accepted by the Trial Court and its Appellate Bench. In my view therefore, findings recorded on the issue of *bonafide* requirement do not warrant any interference by this Court.

16) After considering the overall conspectus of the case, I am of the view that even though the Trial Court and its Appellate Bench have erred in accepting the ground of arrears of rent, their decrees can still be sustained on the grounds of unauthorised additions and alterations and *bonafide* requirement. I therefore, do not find any reason to interfere in the concurrent decrees passed by the Trial Court and its Appellate Bench.

17) Civil Revision Application is accordingly dismissed. There shall be no orders as to costs. Considering the facts and circumstances of the present case, the Defendant is granted time till 31 October 2024 to vacate the suit premises, subject to the condition of non-creation of any third party rights.

[SANDEEP V. MARNE, J.]