

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 901 OF 2013
ALONGWITH
INTERIM APPLICATION NO. 383 OF 2021
AND
INTERIM APPLICATION NO. 8296 OF 2024

Rudaya Narayan alias Hirdaya Narayan
Sankatasingh Thakur (since deceased)
through Legal Representatives
1(a) Raisahab Hridaya Narayan
Sankastasingh Thakur & Ors.

....*Applicants*

: *Versus* :

M/s. Byramjee Jeejeebhoy Pvt. Ltd.
and Ors

....*Respondents*

Ms. Gayatri Singh, Senior Advocate with Mr. Hamza Lakdawala, Ms. Racheeta Chawla i/by. Mr. Pranav More and Mr. Shubham S. , for the Applicant in CRA-901/2013 and for Respondents in CRA-391/2024 and CRA-392/2024.

Mr. Girish Godbole, Senior Advocate and Mr. Sharad Bansal a/w. Mr. Murtuza Federal, Ms. Urali Bodaji and Mr. Aaroah Kulkarni i/by. Federal & Co. for Respondent No.2 in CRA-901/2013 and for Applicants in CRA-391/2024 and CRA-392/2024.

CORAM : SANDEEP V. MARNE, J.

Dated : 11 DECEMBER 2024.

P.C. :

1) The revisionary jurisdiction of this Court is invoked to set up a challenge to the decree dated 13 August 2013 passed by the Appellate Bench of Small Causes Court allowing Appeal No.148/2002 and setting aside the

judgment and order dated 5 June 2002 passed by the Small Causes Court by which R.A.E. & R. Suit No.2534/1981 was dismissed.

2) I have heard Ms. Singh, the learned Senior Advocate appearing for the Applicant and Mr. Godbole, the learned Senior Advocate appearing for the Respondent/Plaintiffs.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it appears that the Appellate Bench of the Small Causes Court has decreed the suit on solitary ground of default in payment of rent under the provisions of Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (**Bombay Rent Act**). Ms. Singh has taken me through the details of payment of rent in respect of the suit premises by the Applicant-tenant from time to time. Mr. Godbole would dispute correctness of dates and figures indicated in the note submitted by Ms. Singh. Even if the dates and figures of payment of rent as reflected in the note submitted by Ms. Singh are taken as correct, there appears to be a clear default on the part of the Defendant-tenant in not regularly depositing the rent in respect of the suit premises in the Court. As per the note submitted by Ms. Singh, the rent in respect of the period from 1 April 1995 to 31 March 2001 was deposited by the Defendant-tenant at one go on 29 May 2000. To make the case of the Defendant-tenant worse, no rent was deposited during pendency of the Appeal. The Appeal remained pending before the Appellate Bench from the year 2002 to 2013 and for 11 long years, the Defendant-tenant admittedly did not deposit rent in respect of the suit premises. The provisions of Section 12 of the Bombay Rent Act, prior to 1987 Amendment read thus :

12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month 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, 1882.

(3) (a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the Court shall pass a decree for eviction in any such suit for recovery of possession.

(b) In any other case, no decree for eviction shall be passed by the Court in any such suit, if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tenders in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court.

(4) Pending the disposal of any such suit, the Court may out of any amount paid or tendered by the tenant pay to the landlord such amount towards payment of rent or permitted increase due to him as the Court thinks fit.

Explanation I - In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under

this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the Court under sub-section (3) of section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court.

Explanation II .- For the purposes of sub-section (2), reference to "standard rent" and "permitted increase" shall include reference to "interim standard rent" and "interim permitted increase" specified under sub-section (3) or (4) of section 11.

4) In the present case, since the rent was payable annually, provisions of Section 12(3)(b) of the Bombay Rent Act would be relevant. Ms. Singh has made strenuous efforts to demonstrate before me that the entire arrears of rent upto the date of framing of issues were paid/deposited by the Defendant-tenant. Though, this contention is sought to be disputed by Mr. Godbole, in my view, what was required was not just deposit of entire arrears of rent on the date of first hearing of the suit but also continuation of payment/tender in the Court 'regularly' the rent till the suit is finally decided. In *Babulal Fakirchand Agarwal V/s. Suresh Kedarnath Malpani*¹, Full Bench of this Court has held, in the context of pari-materia provisions of Section 15 of the Maharashtra Rent Control Act, 1999 that even if the default in payment of rent is made good after receipt of demand notice, the landlord can still file a suit for eviction and in the event, the tenant defaults in regular payment/deposit of rent during pendency of the suit, the Court can pass a decree for reviction. After the issues in the suit were framed on 27 June 1996, there appears to be default on the part of the Defendant-tenant in not regularly depositing the rent from 1 April 1995 to 31 March 2001. Ms. Singh would attempt to salvage the situation by submitting that as on the date of framing of issues on 27 June 1996, an excess of Rs.6,818/- was already

¹ 2017 (4) Mh.L.J. 406

deposited by the Defendant-tenant. Without going into the details of this calculation and even accepting the contention of Ms. Singh as correct, there is no justification as why the rent was not paid/deposited during pendency of the Appeal. It is well established position of law that Appeal is a continuation of a suit. Defendant-tenant, after securing a decree of dismissal from the Trial Court, could not have avoided payment/deposit of rent during pendency of the Appeal. It is thus clearly established that Defendant was not regular in paying/tendering in Court rent in respect of the suit premises on a regular basis. The delay of 11 long years in depositing the rent cannot be condoned nor the Court has jurisdiction to condone such delay.

5) Though the amount of standard rent no longer represents any return for landlord on investment made by him in land and building, the least that is expected from a tenant is payment of such paltry amount of rent to the landlord. Once it is found that the tenant is not regular in paying the rent, the Court is left with no other alternative but to pass a decree of eviction. The Appellate Court in the present case has rightly decreed the suit after noticing that the Defendant-tenant was not only irregular in depositing/paying the rent during pendency of the suit, but failed to make any deposit/payment of rent after delay of 11 long years during pendency of the Appeal. In my view, no case is made out warranting interference in the findings made by the Appellate Court in exercise of revisionary jurisdiction of this Court. The Revision Application is **rejected**. The Interim Applications taken out therein also stand disposed of.

6) Considering the facts and circumstances of the case, the Revision Applicant is granted time upto 28 February 2025 to vacate possession of the

suit premises subject to non-creation of any third party rights and after recording a statement made by Ms. Singh, on instructions of her client, that as of today the Revision Applicant is in possession of the suit premises.

NEETA
SHAILESH
SAWANT

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[SANDEEP V. MARNE, J.]