

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

CIVIL REVISION APPLICATION NO. 28 OF 2023

Sudhakar Bhimashakar Karande (deceased)
through LRs

...Applicants

Versus

Ram Mahadeo Sarvade and anr.

...Respondents

Mr. V. S. Deokar, for the Applicants.

Mr. Laxman Jain, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATED: 30th JULY, 2025

Order:-

1. Heard the learned Counsel for the parties.
2. This revision application is directed against a judgment and decree dated 22nd November, 2018 passed by the learned District Judge, Solapur, in Regular Civil Appeal No.140 of 2015, whereby the appeal preferred by the predecessor-in-title of the applicants against a decree of eviction passed in the suit being RCS No.435 of 2018, came to be dismissed.
3. A room admeasuring 10 ft. X 20 ft. situated at final plot No.61/8, Murarji Peth, Solapur ("the suit room") was let to the defendant on a monthly rent of Rs.50/-. The plaintiffs purchased the building comprising the suit room from the erstwhile landlord in the year 1999 and the tenancy was duly

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH
SUBHASH
KULKARNI
Date: 2025.07.31
18:55:59 +0530

attorned. The respondents – plaintiffs instituted the suit for recovery of possession of the suit room on the ground that the defendant had carried out unauthorized permanent construction without the consent of the landlord, the plaintiffs required suit room for their personal use and occupation as plaintiff No.1 was to retire from the service, which he was rendering at Kalyan, and the plaintiff No.1's sons required the suit room for their personal occupation, and the default in payment of rent on the part of the defendants.

4. By a judgment and order dated 24th March, 2015 the Trial Court answered the issue of permanent alteration in the negative. However, the issues of default in payment of the rent and personal *bona fide* requirement of the landlord as well as comparative hardship were answered in favour of the plaintiffs. Resultantly, a decree of eviction came to be passed.

5. Being aggrieved, the original defendant preferred appeal before the District Court. By the impugned judgment and order, the learned District Judge dismissed the appeal concurring with the views of the Trial Court.

6. Mr. Deokar, the learned Counsel for the applicants, would submit that the courts below committed a grave error in law in returning the finding that the defendant was a defaulter.

Mr. Deokar laid special emphasis on the fact that in response to the demand notice dated 15th December, 2007, the defendant had remitted a sum of Rs.650/- towards the rent till the month of January, 2008. Thus, the defendant was not in arrears of rent as of the date of the institution of the suit, which was sans cause of action. On the aspect of the personal *bona fide* requirements and the comparative hardship as well, the courts below have not properly appreciated the fact that other rooms were available to the plaintiffs and, in contrast, the defendant had no alternate premises. Thus, the element of comparative hardship was not properly appreciated by the courts below. Resultantly, despite the concurrent findings, interference is warranted by this Court in exercise of the revisional jurisdiction.

7. Mr. Jain, the learned Counsel for the respondents, supported the impugned order.

8. The submissions of Mr. Deokar that since there were no arrears of rent as of the date of the institution of the suit, the cause of action did not survive, does not merit acceptance. To avail the relief against forfeiture, a tenant is required to comply with all the conditions stipulated in Section 15 of the Maharashtra Rent Control Act, 1999, independently. If the

tenant commits default in payment of rent during the pendency of the suit, there would be breach of the latter part of sub-section (3) of Section 15 of the Rent Act, 1999 i.e. default in payment of rent regularly till the final decision of the suit. And that entails the consequence of forfeiture of tenancy.

9. In such a situation, it is not an answer that the tenant had complied with the demand notice.

10. In the case of *Babulal s/o Fakirchand Agarwal vs. Suresh s/o Kedarnath Malpani and ors.*¹ a Full Bench of this Court considered the precise question now sought to be raised by Mr. Deokar and answered the same in the negative. The question that arose for consideration and determination by the Full Bench deserves to be extracted. They read as under:

“If the tenant complies the notice issued by the landlord demanding arrears of rent and pays the entire amount as demanded within the time stipulated under Section 15(2) of the Maharashtra Rent Control Act, then whether the landlord can still file a suit for eviction on the ground of arrears of rent and whether the eviction can be ordered by invoking provisions of Section 15(3) of the Maharashtra Rent Control Act?”

.....

20. On the analysis of the provisions of Section 15 as well as various judgments, it must be concluded that the provisions of sub-sections (1), (2) and (3) of Section 15 shall be read independently. In order to claim relief against forfeiture, the tenant must satisfy all the conditions in respect of payment of rent or tender in Court all the arrears then due on the first day of hearing of the suit or within contemplation of provisions of law and to deposit the rental liability regularly in the Court till the suit is finally decided and there is no extinction of the

1 2017(4) Mh.L.J. 406.

cause of action by reason of payment of existing arrears by the tenant. It is, thus, clear that in order to avoid decree, once the notice is issued within contemplation of sub-section (2) of Section 15 of the Maharashtra Rent Control Act by the landlord, the tenant shall have to fulfill the conditions laid down under sub-section (3) of Section 15 of the Maharashtra Rent Control Act and there is no escape therefrom.

.....

25. To infer that once the tenant pays the amount recorded in the notice or tenders the same, the landlord has no right to institute a suit for recovery of possession for non-payment of those arrears or continue with such proceeding for eviction and no decree for possession can be asked for, is not within contemplation of provisions of Section 15 of the Act. The provision does not interfere with the right of the landlord to initiate proceeding for eviction, however, sub-section (2) of Section 15 prescribes precondition for presentation of suit that is to say that no suit can be initiated without issuing a notice within contemplation of said sub-section (2) of Section 15 and tenant's entitlement to claim relief against forfeiture shall be subject to fulfillment of conditions stipulated under sub-section (1) and (3) of Section 15 of the Rent Act."

11. In view of the aforesaid enunciation of law, the challenge to the impugned judgment premised on the payment of due rent post demand notice, does not merit countenance.

12. On the aspect of the reasonable and *bona fide* requirement of the landlord also, the Trial Court and Appellate Court have correctly appreciated the evidence and material on record. The longing of the plaintiff No.1 to return to his native place at the evening of his life and occupy the suit room cannot be said to be unreasonable. The courts below have applied the correct test in appreciating the reasonableness and *bona fide* of the plaintiff's requirement.

13. On the aspect of the hardship, it is imperative to note that the original defendant conceded in the cross-examination that Mahesh, his son, was residing separately from the original defendant in another premises in Solapur. In fact, the availability of the said premises to Mahesh was arrayed against the original defendant in assessing the comparative hardship. After the demise of the original defendant, Mahesh – applicant No.2 has assailed the impugned judgment and decree. The availability of a separate premises for Mahesh – applicant No.2 can hardly be put in contest.

14. In such circumstances, this Court in exercise of limited revisional jurisdiction does not find any infirmity in the impugned order.

15. The revision application thus stands dismissed.

[N. J. JAMADAR, J.]