

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 360 OF 2025

M/s. Bikay Liquors Pvt. Ltd. ...Applicant

Versus

Mr. Abu Sufiyan Rahimullah Shaikh ...Respondent

Mr. Surel Shah, Senior Advocate, a/w Aniesh Jadhav and
Rushikesh Kekane, for the Applicant.

Mr. B. P. Pandey, i/b Shyam Tripathi, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED: 14th JULY, 2025

Order:-

1. This revision application is directed against a judgment and decree passed by the Appellate Bench of the Court of Small Causes in Appeal No.115 of 2024, whereby the appeal preferred by the applicant – appellant against a judgment and decree dated 7th May, 2024 passed in RAE Suit No.18-27 of 2012 directing ejectment of the applicant came to be dismissed affirming the said decree.

2. The respondent – landlord instituted a suit for recovery of possession of the demised premises on the grounds of non-user, unlawful subletting and default in payment of rent. By a judgment and order dated 7th May, 2024, the learned Judge, Court of Small Causes was persuaded to decree the suit

holding, *inter alia*, that there was non-user of the suit premises and the defendant had incurred forfeiture of tenancy on account of default in payment of rent during the pendency of the suit.

3. The applicant carried the matter in appeal. The Appellate Bench affirmed the decree passed by the Trial Court holding, *inter alia*, that the applicant was not ready and willing to pay the standard rent and permitted increases and was thus not entitled to relief against forfeiture under Section 15(3) of the Maharashtra Rent Control Act, 1999 (“the Rent Act, 1999”). Thus, though the ground of non-user of the demised premises was not proved, the plaintiff was entitled to decree of eviction on the ground of default in payment of rent during the pendency of the suit.

4. Mr. Surel Shah, the learned Senior Advocate for the applicant, would submit that both the Courts have committed an error in not correctly appreciating the fact that as of the date of the institution of the suit no rent was in arrears as the applicant had paid the rent alongwith the reply to the notice dated 14th September, 2010. An endeavour was made to urge that since there were no arrears, a suit for recovery of the possession of the demised premises on the ground of default in payment of rent could not have instituted. Reliance was sought

to be placed by Mr. Shah on a decision of this Court in the case of *Dilip Jasaramji Mali vs. Ramesh Ganesh Saxena*¹, wherein, this Court held that a stale notice, which was not acted upon and waived off by conduct by the plaintiff, cannot form the basis of a suit for eviction on the ground of non-payment of rent.

5. The Appellate Bench of Court of Small Causes repelled the aforesaid submission on behalf of the applicant observing, *inter alia*, that the defendant had failed to deposit the standard rent and permitted increases during the pendency of the suit. It was incumbent upon the defendant, to claim relief against forfeiture to continue to regularly pay the standard rent and permitted increases during the pendency of the suit. The defendant, had neither paid the rent and permitted increases during the pendency of the suit nor disputed the amount of rent by filing an appropriate proceeding. Moreover, the defendant had failed to pay the amount of arrears of rent alongwith interest at the rate of 15% p.a. and costs of the suit. Thus, the defendant had incurred forfeiture of tenancy.

6. The aforesaid view of the Appellate Bench is in consonance with settled position in law. A Full Bench of this Court, in the case of *Babulal s/o Fakirchand Agrawal vs. Suresh s/o*

¹ 2024 SCC OnLine Bom 3848.

Kedarnath Malpani and ors.² has enunciated that, 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 the provisions of law and deposit the rental liability regularly in the Court till the suit is finally decided and there is no extinction of the 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 under sub-section (2) of Section 15 of the Rent Act, 1999 by the landlord, the tenant shall have to fulfill the conditions laid down under sub-section (3) of Section 15 of the Rent Act, 1999 and there is no escape from the consequences.

7. The Full Bench approved a Division Bench judgment of this Court in the case of ***Chandiram Dariyanumal Ahuja vs. Akola Zilla Shram Wahtuk Sahakari Sanstha, Akola***³, wherein it was postulated that during pendency of the suit the protection is available to the tenant to claim relief against forfeiture of tenancy provided that the tenant shall continue to be regular in payment of standard rent and permitted increases during the pendency of the suit as also costs of the suit as directed by the

2 2017(4) Mh.L.J. 406.

3 2013(1) Mh.L.J. 28.

Court. The Court cannot be oblivious of landlords who may have to survive only on rental income. Habitual irregular payment of rent and permitted increases by the tenant will prejudice and jeopardize very survival of such landlords, who survive on the rental income only. Therefore, such a tenant, who may be habitually irregular in payment of standard rent and permitted increases can invite eviction under Section 15(1) of the Rent Act, 1999.

8. In the case hand, indisputably, the applicant neither deposited the rent which had fallen due, during the pendency of the suit, nor any proceeding was filed for the determination of standard rent.

9. The Appellate Bench was, thus, fully justified in upholding the decree of eviction on the ground of non-payment of rent as latter part of sub-section(3) of Section 15 of the Rent Act, 1999 was not complied with, by the applicant. Therefore, no interference is warranted in exercise of revisional jurisdiction.

10. The application stands dismissed.

[N. J. JAMADAR, J.]