IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 435 OF 2022

1. Mr. Bhojraj Hasaram Gurunani
   Age : 78 years, Occ : Business,
   R/o. Barak No.12, Room No.8,
   Gandhinagar, Tal.Karveer,
   District Kolhapur.
2. Mr. Ramesh Hasaram Gurunani
   Age : 65 years, Occ : Business,
   R/o. Barak No.12, Room No.8,
   Gandhinagar, Tal.Karveer,
   District Kolhapur and
   C.S. No. 1812, C Ward,
   Chhatrapati Shivaji Maharaj Chowk,
   Bhausingji Road, Kolhapur,
   Tal. Karveer, District Kolhapur } ***....Petitioners***
   (Orig. Appellants)

: Versus :

Mr. Abdul Majid Haji Kadarso Maner,
Age : 80 years, Occ : Business,
R/o. 4825, Gavali Galli,
Guruwar Peth, Miraj,
Tal. Miraj, District Sangli,
Maharashtra State. }***....Respondent***

WITH

WRIT PETITION NO. 11979 OF 2022

Mr. Bhojraj Hasaram Gurunani
Age : 78 years, Occ : Business,
R/o. Barak No.12, Room No.8,
Gandhinagar, Tal.Karveer,
District Kolhapur. } ***....Petitioner***
(Original Applicant)

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

: Versus :

Mr. Abdul Majid Haji Kadarso Maner,
Age : 80 years, Occ : Business,
R/o. 4825, Gavali Galli,
Guruwar Peth, Miraj,
Tal. Miraj, District Sangli,
Maharashtra State. }***….Respondent***
(Ori. Opponent)

WITH

CIVIL REVISION APPLICATION NO. 558 OF 2022

1. Mr. Bhojraj Hasaram Gurunani
   Age : 78 years, Occ : Business,
   R/o. Barak No.12, Room No.8,
   Gandhinagar, Tal.Karveer,
   District Kolhapur.
2. Mr. Ramesh Hasaram Gurunani
   Age : 65 years, Occ : Business,
   R/o. Barak No.12, Room No.8,
   Gandhinagar, Tal.Karveer,
   District Kolhapur and
   C.S. No. 1812, C Ward,
   Chhatrapati Shivaji Maharaj Chowk,
   Bhausingji Road, Kolhapur,
   Tal. Karveer, District Kolhapur **}** ***….Petitioners***
   (Orig. Appellants)

: Versus :

Mr. Abdul Majid Haji Kadarso Maner,
Age : 80 years, Occ : Business,
R/o. 4825, Gavali Galli,
Guruwar Peth, Miraj,
Tal. Miraj, District Sangli,

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

Maharashtra State. ***}….Respondent***

Mr. Surel Shah, Senior Advocate i/b Mr. Rahul P. Kasbekar, *for the Revision Application/Petitioner.*

Mr. Yuvraj Narvankar, *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Reserved On : 25 September 2024.

Pronounced On : 11 October 2024.

JUDGMENT:

A. THE CHALLENGE

1) The Revision Applicant/Petitioner is a tenant in respect of the premises bearing shop admeasuring 372 sq.ft. on ground floor of the building situated at CTS No.1812, C-Ward, Kolhapur **(suit premises)**. The structure, in which the suit premises are located, is owned by Respondent-Plaintiff who initially instituted Regular Civil Suit No.436 of 2006 seeking eviction on the grounds of unlawful subletting by Defendant No.1-Tenant in favour of Defendant No.2 (brother), reasonable and bonafide need of the Plaintiff, nuisance and annoyance. During pendency of Regular Civil Suit No.436 of 2006, Defendant No.1-Tenant filed Civil Miscellaneous Application No. 109 of 2009 on 2 April 2009 for fixation of standard rent @ Rs.25/- per month in respect of suit premises. During pendency of the first suit as well as the application for fixation of standard rent, landlord issued notice dated 16 October 2009 alleging default in payment of rent by Defendant No.1-tenant and thereafter instituted Regular Civil Suit No.239

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

of 2010 seeking recovery of possession of the suit premises on the ground of default in payment of rent.

2) Both the suits for eviction as well as the application for fixation of standard rent have been decided by the Trial Court by common judgment and order dated 3 September 2019. The Trial Court accepted the grounds of unauthorised subletting, bonafide requirement and default in payment of rent and proceeded to decree both Regular Civil Suit Nos. 436 of 2006 and 239 of 2010. The Trial Court however rejected the prayer for recovery of arrears of rent of Rs.70,451/-. The application for fixation of standard rent (Civil Miscellaneous Application No. 109/2009) is rejected on the ground that the decree for eviction has been passed. The Trial Court directed conduct of enquiry into mesne profits under the provisions of Order XX Rule 12(c) of the Code of Civil Procedure, 1908. The common judgment and decree dated 3 September 2019 was subjected to challenge before the Principal District Judge, Kolhapur by filing Regular Civil Appeal No.283 of 2019, Regular Civil Appeal No. 284 of 2019 and Civil Revision Application No.5/2019. Both the Appeals and Revision Application have been dismissed by the Principal District Judge by passing separate judgments and orders dated 10 June 2022.

3) The Defendant No.1-tenant has accordingly filed Civil Revision Application No. 435 of 2022 challenging the decrees passed by the Trial and the Appellate Court arising out of Regular Civil Suit No.436 of 2006. Civil Revision Application No. 558 of 2022 is filed challenging the decrees passed by the Trial and the Appellate Court arising out of Regular Civil Suit No.239 of 2010. Writ Petition No. 11979 of 2022 is filed

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

challenging the orders passed by the Trial and the Appellate Court arising out of Civil Miscellaneous Application No. 109 of 2009. The Two Revision Applications and Writ Petition are being decided by this common judgment.

B. FACTS

4) Plaintiff in Regular Civil Suit Nos. 436 of 2006 and 239 of 2010 is the landlord in respect of the suit premises in which the First Defendant was inducted as a monthly tenant. According to Plaintiff, the suit premises were let out on monthly rent of Rs.100/- and the Defendant No.1 was in arrears of rent since January 1997. The suit premises are located at a prominent locality at Chatrapati Shivaji Maharaj Chowk. It appears that Defendant No.1-tenant, together with other tenants in the structure, had filed Regular Civil Suit No.736 of 1997 against the landlord and others for seeking injunction in which the area of the suit premises were indicated as 12 ft x 33 ft. in the Municipal records pertaining to the year 1997-98, area of the suit premises was reflected as 12 ft x 31 ft and monthly rent was indicated as Rs.100/-.

5) In Regular Civil Suit No.436 of 2006, Plaintiff pleaded that Defendant No.1-tenant was inducted as tenant only for conducting business of readymade garments. That Defendant No.1-tenant was a patient of high blood pressure and suffered from chronic allergies arising out of heavy traffic and noise pollution. That Defendant No.1 therefore completely stopped visiting the suit premises but instead of handing back possession to the landlord, Defendant No.1 transferred the suit premises

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

in favour of Defendant No.2 since 1997-1998. That suit premises were in exclusive possession of Defendant No.2 in absence of consent of the landlord.

6) It was further pleaded in Regular Civil Suit No.436 of 2006 that Plaintiff-landlord was residing at Miraj and was conducting business of sale of oil paints in small and narrow premises located below the staircase of the suit structure. That he travelled from Miraj everyday for conducting his business at Kolhapur. That Plaintiff's son, Mohd. Shafiq then aged 29 years desired opening of hardware and building material business in the suit premises. That Plaintiff's was in family business of hardware retail since several generations and Mohd. Shafiq had necessary experience of the said business. That the suit premises are most conveniently located for Mohd. Shafiq to commence the said business. This is how Plaintiff pleaded bonafide requirement of his son, Mohd. Shafiq in respect of the suit premises. Plaintiff also pleaded that Mohd. Shafiq did not have any other premises to commence his business and on the contrary, Defendant No.1-tenant was himself not using the suit premises and had unauthorisedly let Defendant No.2 possess the same. It appears that the Plaint in Regular Civil Suit No.436 of 2006 was amended by incorporating para-5(a) therein in which it was pleaded that landlord's son-Mohd. Aslam was working as a Professor in Pune and he and his wife were detected with cancer and Mohd. Aslam passed away on 10 November 2016 at Pune and his wife also passed away on 16 January 2017. That after the death of son and daughter-in-law, Plaintiff had the responsibility of looking after their children who were brought to Kolhapur for education. That the grandchildren were aged 18 years and 22

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

years and it was necessary to provide necessary space for grandchildren for commencing their business. This is how further need of grandchildren for commencing business in the suit premises was added by amending the plaint.

7) Regular Civil Suit No. 436 of 2006 was resisted by the Defendants by filing common Written Statement contending that the rent in respect of the suit premises was never fixed at Rs.100/-. That in the year 1963, larger premises comprising of ground floor and first floor on the western side of the structure was jointly let out to Defendant No.1 and Kanhayalal Suganmal Tindwani who carried out business in partnership by name 'Maharashtra Trading Company' at the rent of Rs.150/-. The Partnership ended in the year 1969 at which time the premises described in para-3 of the plaint were let to Defendant No.1, whereas the balance premises on southern portion was let out to Kanhayalal at monthly rent of Rs.100/-. That Defendant No.1 started new business by name Amarjyoti Dresses, whereas Kanhayalal Tindwani continued in the name of Maharashtra Trading Company. That Plaintiff has filed Regular Civil Suit No.1134 of 1980 against Defendant No.1 on the ground of bonafide requirement. That evidence in the said suit was under way. That similar suit was also filed against Shri. Tindwani for recovery of possession of the premises in his possession. That Plaintiff's suit filed against Shri. Tindwani was dismissed on account of which Plaintiff compromised Regular Civil Suit No. 1134 of 1980 with Defendant No.1 and agreement dated 30 December 1995 was executed between Plaintiff and Defendant No.1 under which Defendant No.1 retained premises admeasuring 12 ft x 33 ft with himself and handed over possession of the balance premises on

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

ground floor as well as entire first floor in favour of the Plaintiff. That Plaintiff thereafter withdrew the suit. Defendant No.1 accused Plaintiff of suppressing these events. On this count, Defendants claimed that the rent in respect of the suit premises was not Rs.100/- and the same was required to be drastically reduced on account of major portion of the premises being handed over to the Plaintiff. Defendants also denied the claim of non-payment of rent and contended that Plaintiff was deliberately avoiding accepting the rent on account of which the same was being sent by money order. That Plaintiff received the rent upto 31 March 2002 sent by money order. However, thereafter Plaintiff deliberately stopped receiving the rent.

8) So far as the ground of subletting is concerned, Defendants denied the allegation and contended that Defendant No.2 is brother of Defendant No.1 and was merely assisting Defendant No.1 in conduct of business of readymade garments of Defendant No1. Defendant No.1 also denied the claim of bonafide requirement of Plaintiff contending that Plaintiffs had several premises at Kolhapur which were lying unused. Defendant No.1 accordingly prayed for dismissal of the suit. Defendant No.1 amended the Written Statement after the plaint was amended contending that Plaintiffs granddaughter was already married and was also residing at Kolhapur with her husband and that the grandson was settled at Pune conducting his own profession in engineering.

9) It appears that Plaintiff filed a rejoinder to the Written Statement filed by Defendant No.1. In Regular Civil Suit No.436 of 2006, Defendant No.1 filed application at Exhibit-12 for fixation of standard rent

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

in respect of the suit premises. The application was opposed by the Plaintiffs. It appears that the said application was rejected by the Court on the ground that Regular Civil Suit No.436 of 2006 was not filed for recovery of possession on the ground of default in payment of rent. Defendant No.1 was therefore advised to file Civil Miscellaneous Application No.109 of 2009 for fixation of standard rent at the rate of Rs.25/- on 2 April 2009.

10) During pendency of Regular Civil Suit No.436 of 2006 and Civil Miscellaneous Application No.109 of 2009, Plaintiff served notice dated 16 October 2009 on Defendant No.1 claiming arrears of rent of Rs.68,901/-. In the notice, it was alleged that Defendant No.1 was liable to pay permitted increases at the rate of Rs.4% p.a. from January 1997 and that the rent got escalated to Rs.152/- by January 2009. Plaintiff accordingly claimed that Defendant No.1 was in arrears of rent of Rs.20,712/- from January 1996 till December 2009 and further demanded interest at the rate of 15% p.a. of Rs.21,390/-. Plaintiff further claimed that Defendant No.1 was liable to pay Education Cess of Rs.2,540/- at the rate of 15% (Rs.180/- per year) from January 1996 to December 2009 and after adding interest at the rate of 15% p.a., the said amounts of Education Cess and Employment Guarantee Cess, Plaintiff demanded total amount of Rs.5,375/- from Defendant No1. Plaintiff also claimed that Defendant No.2 was liable to pay property taxes as per Agreement dated 30 December 1995 and accordingly claimed that property taxes at the rate of Rs.720/- per year (Rs.10,080/-) from January 1996 to December 2009. Plaintiff also claimed interest at the rate of 15% p.a. on the amount of property tax and accordingly demanded total amount of Rs.21,424/- towards property

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

taxes and interest. This is how Plaintiff demanded following amounts from Defendant No.1 :

(i)	Rent alongwith permitted increases at the rate of 4% p.a.	Rs.21,712/-
(ii)	Interest on arrears of rent	Rs.21,390/-
(iii)	Arrears of Education Cass and Employment Guarantee Cess with interest	Rs.5,375/-.
(iv)	Property Tax alongwith interest	Rs.21,424/-
	Total	Rs.68,901/-

11) It appears that despite receipt of notice dated 16 October 2009, Defendant No.1 did not pay the amount of Rs.68,901/- to Plaintiffs and accordingly Plaintiff instituted Regular Civil Suit No.239 of 2010 in the Court of Civil Judge Senior Division, Kolhapur seeking recovery of possession of the suit property on the ground of default in payment of rent. Regular Civil Suit No.239 of 2010 was resisted by Defendant No.1 by filing Written Statement denying the allegations of non-payment of rent. Defendant No.1 also contested the claim for annual increase of rent by 4% as well as demand for education cess and employment guarantee cess. It was contended that Defendant No.1 sent the amount of education cess and employment guarantee cess by money order which was refused by Plaintiff. It was contended that Defendant No.1 had deposited rent in the Court upto December 2010 as well as paid property taxes from 1 April 1996 to 31 March 2010 to the Municipal Corporation. Defendant No.1 accordingly prayed for dismissal of Regular Civil Suit No. 239 of 2010.

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

12) Rival parties led evidence in two suits and application for fixation of standard rent. The Trial Court proceeded to club Regular Civil Suit No.436 of 2006 and Regular Civil Suit No.239 of 2010 with Civil Miscellaneous Application No.109 of 2009 and proceeded to decide all the three proceedings by common judgment. The Trial Court answered the issue of unlawful subletting, reasonable and bonafide requirement of Plaintiff and default in payment of rent in the affirmative. However, the ground of nuisance was rejected. The Trial Court also rejected the prayer for recovery of arrears of rent, permitted increases and interest of Rs.70,451/-. The Trial Court accordingly proceeded to decree Regular Civil Suit Nos. 436 of 2006 and 239 of 2010 directing Defendants to handover possession of the suit premises to the Plaintiff. The application filed by Defendant No.1 for fixation of standard rent was however rejected holding that since eviction decree was passed, it was not necessary to fix the standard rent.

13) Defendants filed Regular Civil Appeal No. 283 of 2009 challenging the decree dated 3 September 2009 passed in Regular Civil Suit No.436 of 2006. Defendants also filed separate appeal bearing Regular Civil Appeal No.284 of 2019 challenging the Decree dated 3 September 2019 passed in Regular Civil Suit No.239 of 2010. Defendant No.1 filed Civil Revision Application No.5 of 2019 challenging the order dated 3 September 2019 dismissing Civil Miscellaneous Application No.109 of 2009 for fixation of standard rent. All the three proceedings filed before the Principal District Judge, Kolhapur have been decided on 10 June 2022 by delivering separate judgments and orders. The two Appeals filed by Defendants and Civil Revision Application filed by Defendant No.2 have

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

been dismissed by the District Court on 10 June 2022. Defendants have accordingly filed the present two Revision Applications and Defendant No.2 has filed Writ Petition challenging decisions of the Appellate Bench dated 10 June 2022.

C. SUBMISSIONS

C.1 SUBMISSIONS ON BEHALF OF REVISION APPLICANT/ PETITIONER

14) Mr. Surel Shah, the learned Senior Advocate would appear on behalf of the Revision Applicants/Petitioner and would submit that the Trial Court has erred in decreeing Regular Civil Suit No.436 of 2006 on the ground of unlawful subletting and bonafide requirement of Plaintiff and in decreeing Regular Civil Suit No.239 of 2010 on the ground of default in payment of rent. So far as ground of default in payment of rent is concerned, he submits that apart from Defendant No.1-tenant sending the rent, property tax, education cess etc. by various money orders to Plaintiff, who was repeatedly refusing to accept the same, two attempts were made by him for getting the standard rent in respect of the suit premises fixed. He would submit that the earlier rent of Rs.100/- got substantially reduced on account of handing back major portion of the suit premises and that therefore payment of Rs.100/- towards rent by Plaintiff was clearly excessive. That therefore Defendant No.1 rightly filed application in Regular Civil Suit No.436 of 2006 for fixation of standard rent. That the said application was rejected by the Trial Court on the ground that the suit was not for recovery of possession on the ground of default. That rejection of said application prompted Defendant No.1 to file Civil Miscellaneous

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

Application No.109 of 2009 for fixation of standard rent so as to prevent Plaintiff from creating a case of artificial default. That there existed genuine dispute about quantum of rent between the parties. That Defendant No.1 went on depositing rent at the rate of Rs.100/- in the Court. Despite such position, Plaintiff served baseless notice dated 16 October 2009 demanding exorbitant and imaginary amount towards increased rent, education cess and property taxes. That Plaintiff had never demanded any increase @ 4% in rent amount from Defendant No.1 and suddenly notice dated 16 October 2019 was addressed making demand of 4% increase in the rent retrospectively from the year 1996, when section 11 of MRC Act came into effect from 31 March 2000. That the Trial Court has erred in decreeing the suit on the ground of arrears of rent by holding that Defendant No.1 did not pay permitted increases at the rate of 4% p.a, when it is proved that Defendant No.1 paid the amounts of education cess as well as property taxes. That in such circumstances, the ground of default in payment of rent ought to have been rejected. Mr. Shah would submit that once application for fixation of standard rent is filed and till the Court decides such application, it becomes difficult for the tenant to ascertain the exact permitted increases and in that case, the ground of default in payment of permitted increases cannot be accepted. That the Trial Court has erred in not deciding the application for fixation of standard rent and without any decision on the said application, has erroneously proceeded to accept the ground of default in payment of rent. Mr. Shah would therefore submit that Regular Civil Suit No. 239 of 2010 ought to have been dismissed by the Trial Court.

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

15) Mr. Shah would further submit that the point of subletting has been erroneously accepted in absence of necessary pleadings. That there is no averment that Defendant No.1 parted with possession of suit premises in favour of Defendant No.2 for profiteering. That in any case, this is an arrangement between real brothers and Defendant No. 2 was merely assisting Defendant No.1 in conduct of business. That adverse inference about non-filing of LBT or GST receipt is entirely misplaced ignoring the fact that in the year 2006 when the suit was lodged, neither LBT nor GST was introduced.

16) So far as the ground of bonafide requirement is concerned, the same was initially pleaded only for Plaintiff's son and subsequently the alleged need of the grandson was added. That Plaintiff-landlord has ample premises in his possession being City Survey No.1812 (suit premises) and two other premises, being City Survey Nos.1651 and 1642 which are jointly held by him with his cousins. That Plaintiff suppressed the fact that the son, for whom bonafide need was set up, runs a shop of hardware and paints in City Survey No.1642 in premises admeasuring 40 ft. x 12 ft. and that another premises in the same building is in possession of Bank of Baroda. That plea of bonafide requirement cannot be set up without landlord disclosing all the premises in his possession. That in cross-examination, Plaintiff admitted availability of premises admeasuring 16 ft x 30 ft on ground floor in City Survey No.1642, as well as partition between his brothers. That adjoining premises admeasuring 10 ft x 60 ft. was vacated by another tenant and neither son nor grandson has been carrying on any business therein. That landlord executed a Gift-Deed in favour of outsider before filing of the suit, who in turn executed a Sale-

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

Deed in favour of Plaintiff's daughter. That this was deliberately done to paint a picture as if no premises are available in City Survey No.1812, where suit premises are situated. That Plaintiff's deceased son was otherwise settled at Pune and therefore there was no reason for the grandson to come over to Kolhapur and commence any business in the suit premises. That the earlier suit was compromised on 30 December 1995, when Plaintiff's son was major showing thereby that the bonafide requirement pleaded for his purposes is not genuine.

17) In support of his contentions, Mr. Shah would rely upon the following judgments:

(i) ***Laxman Jiwaba Baherwade and another Versus. Bapurao Dodappa Tandale***[1]

(ii) ***Babulal s/o Fakirchand Agrawal Versus. Suresh s/o. Kedarnath Malpani and others***[2]

(iii) ***Vasant Mahadev Pandit and another Versus. Zaibunnisa Abdul Sattar and others***[3]

(iv) ***Ram Murti Devi Versus. Pushpa Devi and others***[4]

(v) ***Tarachand Hassaram Shamdasani Versus. Durgashankar G. Shroff and others***[5]

C.2 SUBMISSIONS ON BEHALF OF RESPONDENT

18) The Revision Applications and Writ Petition are opposed by Mr. Narwankar, the learned counsel appearing for the Respondent-

[1] (2002) 7 SCC 618
[2] 2017(4) Mh.L.J. 406
[3] 2001(3) Mh.L.J. 118
[4] (2017) 15 SCC 230
[5] Writ Petition No. 2933 of 1991 decided on 12 August 2002.

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

Plaintiff. He would submit that the grounds of arrears of rent has rightly been accepted concurrently by both the Courts below. That Defendant No.1 mischievously filed two applications for fixation of standard rent only for the purpose of avoiding decree of eviction on the ground of default. That Defendant No.1 had never disputed agreed rent of Rs.100/- and no occasion had arisen for its reduction to Rs.25/-. That the rent of Rs.100/- was agreed in the agreement dated 30 December 1995 and was paid by Defendant No.1 for some time. That interim rent could not have been decided in absence of threat of dispossession on the ground of arrears of rent. That therefore mere filing of such application in Regular Civil Suit No. 436 of 2006, in which possession was not sought on the ground of arrears of rent, Defendant No.1 could not have avoided payment of rent to Plaintiff-landlord. That in the year 2009 as well, no such threat was given by the landlord and therefore unilateral filing of application for standard rent was clearly unwarranted. That there is admitted default on the part of the tenant to pay house tax, which has been concurrently held to be proved by both the Courts below. That during pendency of the entire proceedings including Appeals, there is no deposit of Property Tax. That permitted increases in rent are also not deposited. That the demand notice has admittedly not been met and that therefore eviction on the ground of default in payment of rent was imminent.

19) Mr. Narwankar would further submit that in respect of ground of subletting, concurrent findings of both the Courts are recorded, which do not warrant any interference under revisionary jurisdiction by this Court. That Defendant No.2 also filed common address memo of suit

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

premises. He neither stepped into the witness box nor did he prove conduct of any independent business anywhere else than in suit premises. That none of the money orders bore signature of Defendant No.1-tenant showing that the rent was also being send by Defendant No.2. That Defendant No.1 failed to produce even a single document to show actual conduct business by him in the suit premises. That the conspectus of the entire evidence on record left no other alternative for both the Courts to record the finding of exclusivity of possession by Defendant No.2 and lack of any control by Defendant No.1 on the business carried out in the suit premises.

20) So far as the ground of bonafide requirement is concerned, Mr. Narwankar would submit that Plaintiff's son and daughter-in-law have unfortunately succumbed to serious illness of cancer and genuine bonafide need of his grandson was pleaded in the amended plaint. That sufficient evidence is produced by examining younger son-Mohammad, as well as Humera-granddaughter. That no other suitable properties are available for conduct of business, either by Plaintiff's son or grandson. That properties at Miraj are residential premises. Property at CTS No.1651 is in possession of Shetkari Sena Sangh and the existing adjoining premises are insufficient. That alienation of property at City Survey No.1812 by registered Gift-Deed executed in 1997 and its subsequent purchase by Sale-Deed in the year 2000 are much prior to institution of the suit. That three sons of Defendant No.1 are doing independent business in their own premises thereby showing comparative hardship must be answered against Defendant No.1.

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

21) In support of his submissions, Mr. Narwankar would rely upon following judgments :

(i) ***Shri. Narayan Damodar Thakur and another Versus. Shri. Madanlal Mohanlal Malpani***[6]

(ii) ***Chase Bright Steel Limited Versus. Shantaram Shankar Sawant***[7]

(iii) ***Jethalal Raghunath and another Versus. Dr. K. H. Sojitra***[8]

(iv) ***Kalyaraman Pillai (decd) through heirs Kalpna P. Pillai and others Versus. G.K.Satyanarayan Iyer (decd) through heirs Alamelu S. Iyer and others***[9]

(v) ***Naniben, Wd/o Sukhabhai Revabhai & Ors. Versus. Gamanlal Ishverlal Gandhi & Ors.***[10]

(vi) ***Joginder Singh Sodhi Versus. Amar Kaur***[11]

(vii) ***Kailash Chander Versus. Om Prakash and another***[12]

(viii) ***Kala Niryat (Shop) and ors. Versus. Mahn Singh Bajaj and anr.***[13]

D. REASONS AND ANALYSIS

D.1 FIXATION OF STANDARD RENT

22) Defendant No.1 is the tenant in respect of the suit premises. For the purpose of two suits being Regular Civil Suit No. 436 of 2006 (*on grounds of unlawful subletting and bonafide requirement*) and Regular Civil

[6] Writ Petion No. 343 of 2024 decided on 7 August 2024.
[7] 1995(1) Bom. C.R. 561
[8] AIR 1985 Gujarat 87
[9] 2018 SCC OnLine Bom 1053
[10] 1995 SCC OnLine Guj 456
[11] (2005) 1 SCC 31
[12] 92003) 12 SCC 728
[13] Civil Revision Application No. 586 of 2015 decided on 14 October 2015.

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

Suit No. 239 of 2010 (*on the ground of default in payment of rent)*, it is not necessary to go into the history of letting of the suit premises prior to 30 December 1995 when written tenancy agreement was executed between the parties. Copy of the agreement dated 31 December 1995 is placed on record which was executed in pursuance of compromise that took place between the Plaintiff and Defendant No.1 in previous Regular Civil Suit No. 1134 of 1980. As observed above, Defendant No.1 gave up his tenancy claims in respect of the balance premises and was retained as a tenant only in respect of shop admeasuring 12 ft x 18 ft and inside portion of 10 ft x 14.5 ft, which is described by Defendant No.1 in the Written Statement as totally admeasuring 12 ft x 33 ft. The balance premises were taken in possession by the Plaintiff while executing the Agreement dated 30 December 1995. The agreement specifically records that the rent in respect of the tenanted premises retained by Defendant No.1 would be Rs.100/-. In that view of the matter, repeated attempts made by Defendant No.1 to have standard rent of the suit premises determined by the Court were totally unnecessary. As observed above, Defendant No.1 first filed application at Exhibit-12 in Regular Civil Suit No.436 of 2006 seeking fixation of standard rent in respect of the suit premises at a reasonable rate. The said application was rightly rejected by the Trial Court by its order dated 9 March 2009. In this regard, it would be necessary to appreciate the statutory scheme of fixation of standard rent. Section 8 of the Maharashtra Rent Control Act, 1999 **(MRC Act)** empowers the Court to fix standard rent and permitted increases in certain cases and provides thus:

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

8. Court may fix standard rent and permitted increases in certain cases.
(1) Subject to the provisions of section 9 in any of the following cases, the court may, upon an application made to it for the purpose, or in any suit or proceedings, fix the standard rent at such, amount as, having regard to the provisions of this Act and the circumstances of the case, the court, deems just,-

(a) where the court is satisfied that there is no sufficient evidence to ascertain the rent at which the premises were let in any one of the cases mentioned in paragraphs (i) and (ii) of sub-clause (b) of clause (14) of section 7; or

(b) where by reasons of the premises having been let at one time as a whole or in parts and at another time, in parts or as a whole, or for any other reasons; or

(c) where any premises have been or are let rent-free or, at a nominal rent; or for some consideration in addition to rent; or

(d) where there is any dispute between the landlord and the tenant regarding the amount of standard rent.

(2) If there is any dispute between the landlord and the tenant regarding the amount of permitted increase, the court may determine such amount.

(3) If any application for fixing the standard rent or for determining the permitted increase is made by a tenant,-

(a) the court shall forthwith specify the amount of rent, or permitted increase which are to be deposited in court by the tenant, and make an order directing the tenant to deposit such amount in court or, at the option of the tenant, make an order to pay to the landlord such amount thereof as the court may specify pending the final decision of the application. A copy of the order shall be served upon the landlord;

(b) out of any amount deposited in the court under clause (a), the court may make an order for payment of such reasonable sum to the landlord towards payment of the rent or increases due to him as it thinks fit;

(c) if the tenant fails to deposit such amount or, as the case may be, to pay such amount thereof to the landlord, his application shall be dismissed.

(4) (a) Where at any stage of a suit for recovery of rent, whether with or without a claim for possession, of the premises, the court is satisfied that the rent is excessive and standard rent should be fixed, the court may, and in any other case, if it appears to the court that it is just and proper to make such an order, the court may make an order directing the tenant to deposit in court forthwith such amount of the rent as the court considers to be reasonable due to the landlord, or at the option of the tenant, an order directing him to pay to the landlord such amount thereof as the court may specify.

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

(b) The court may further make an order directing the tenant to deposit in court periodically such amount as it considers proper as interim standard rent, or at the option of the tenant, an order to pay to the landlord, such amount thereof as the court may specify, during the pendency of the suit;

(c) The court may also direct that if the tenant fails to comply with any order made as aforesaid, within such time as may be allowed by it, he shall not be entitled to appear in or defend the suit except with leave of the court, which leave may be granted subject to such terms and conditions as the court may specify.

(5) No appeal shall lie from any order of the court under sub-sections (3) and (4).

(6) An application under this section may be made jointly by all or any of the tenants interested in respect of the premises situated in the same building.

23) Thus, under Section 8, the Court can fix the standard rent in the event of following four eventualities:

(a) insufficiency of evidence to ascertain the rent at which the premises were let in circumstances mentioned in para-(i) and (ii) of Section 7(14)(b).

(b)where there is demise of part premises at different times.

(c)where premises are let rent free or at nominal rate,

(d)where there is dispute between the landlord and tenant regarding the amount of standard rent.

24) In the above circumstances, the Court can fix standard rent or permitted increases and can also make an order under sub-section (3) of Section 8 specifying the amount of rent and permitted increases to be deposited in the Court. Thus, for filing of application under Section 8(1) or 8(2), it is not necessary that recovery of suit premises must be sought by landlord on any of the grounds under Sections 15 or 16 of the MRC Act.

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

25) Sub-section (4) of Section 8 deals with an eventuality where the landlord files a suit for recovery of rent with or without claim for possession in which case, the Court is empowered to fix the standard rent if it observes that the rent is excessive and can also make an order directing the tenant to deposit in the Court a reasonable amount towards rent and in the event of failure on the part of the Defendant to comply with the order of deposit, the Court can restrain the Defendant from appearing or defending the suit, except with its leave.

26) Thus, the statutory scheme is such that provisions of sub-sections (1) to (3) of Section 8 applies in a situation where a plain application for fixation of standard rent is filed either by landlord or tenant in absence of any suit for recovery of rent or for recovery of possession. As contradistinct from a plain application for fixation of standard rent under Section 8(1), (2) and (3), sub-section(4) empowers the Court to fix interim rent in a suit filed for recovery of rent or possession.

27) Seen from the statutory scheme of Section 8, the application at Exhibit-12 filed by Defendant No.1 in Regular Civil Suit No.436 of 2006 can be considered under sub-section (4) of Section 8 as the same was filed in a pending suit. However, since the suit was not recovery of rent or for recovery of possession for non-payment of rent, such application was obviously not maintainable and the Court rightly rejected the application at Exhibit-12 filed in Regular Civil Suit No.436 of 2006.

28) Since application for fixation of standard rent in a pending suit for eviction was rejected, Defendant No.1 thought of filing a plain

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

application for fixation of standard rent under Section 8(1) of the MRC Act which obviously he was entitled to do. This is how, Civil Miscellaneous Application No.109 of 2009 came to be filed for fixation of standard rent under the provisions of Section 8(1) of the MRC Act. No doubt, under sub-section (3) of Section 8, the Court can specify the amount of rent and permitted increases to be deposited by the tenant in the Court during pendency of the application for fixation of standard rent. However, such an order specifying the amount to be deposited in the Court has absolutely no effect on suit for recovery of possession on the ground of default in payment of rent under Section 15. It is only the application filed under Section 8(4) in eviction suit filed under Section 15 that the tenant can take benefit of deposits made in the Court in pursuance of interim rent ordered by the Court.

29) In short, in an independent application for fixation of standard rent under the provisions of Section 8(1), (2) and (3), any order that is made by the Court for deposit of any interim amounts, does not have any effect on landlord's right to seek recovery of possession of the suit premises under Section 15. However, if the Court makes any order for deposit of rent under Section 8(4) in an application filed in a suit under Section 15, deposits made by the tenant in pursuance of directions issued under Section 8(4) can have some bearing on landlord's right to seek eviction under Section 15. In the present case, the Defendant No.1-tenant was not in a position to take any benefit for the deposits made by him in the Court due to the following reasons:

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

(i) Application at Exhibit-12 filed in Regular Civil Suit No.436 of 2006 was not under Section 8(4) as the suit was not filed for recovery of rent with claim for possession.

(ii) Civil Miscellaneous Application No.109 of 2008 was filed under the provisions of Section 8(1) and not under Section 8(4).

30) For the above reasons, the Defendant No.1 was not in a position to rely upon deposits made in the Court either in pursuance of application filed in Regular Civil Suit No.436 of 2006 or in pursuance of any deposits made in the Court in Civil Miscellaneous Application No.109 of 2009 for avoiding decree of eviction under Section 15.

D.2 DEFAULT IN PAYMENT OF RENT

31) Section 15 of the MRC Act protects a tenant from eviction so long as he/she pays or is ready and willing to pay the amount of standard rent and permitted increases and observes and performs the other conditions of tenancy. Section 15 provides thus:

> **15. 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 the tenant on the ground of non-payment of the standard rent or

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

> permitted increases due, until the expiration of ninety days 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) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court.
>
> (4) Pending the disposal of any suit, the court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the court thinks fit.

32) Thus, if the landlord believes that the tenant is in arrears of standard rent or permitted increases, it is necessary for the landlord to serve a notice of demand and wait for a period of 90 days for the tenant to make good the default. It is when the tenant fails to make good the demand within the period of 90 days that ordinarily the landlord would file a suit for ejectment. In ***Babulal Fakirchand Agrawal*** (supra) however, Full Bench of this Court has held that even in a case where the amount demanded in the notice is entirely paid, the landlord is still entitled to maintain a suit for ejectment. However, in the present case, it is not necessary to go into the said debate as the entire amount demanded in the notice is admittedly not paid by Defendant No.1.

33) As observed above, Plaintiff served notice dated 16 October 2009 on Defendant No.1 demanding total amount of Rs.68,901/- which comprises of following amounts:

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

(i)	Permitted increases at the rate of 4% p.a. from January 1996 till December 1999	Rs.20,712/-
(ii)	Interest on the amount of permitted increases from January 1996 till September 2009	Rs.21,390/-
(iii)	Arrears of Education Cess and Employment Guarantee Cess	Rs.2,540/-
(iv)	Interest on Education Cess and Employment Guarantee Cess	Rs.2,835/-
(v)	Arrears of property taxes from January 1996 to December 2009	Rs.10,080/-
(vi)	Interest on the amount of Property Tax	Rs.11,344/-.
	Total amount	**Rs.68,901/-**

34) On account of non-payment of amount of Rs.68,901/- Plaintiff filed Regular Civil Suit No. 239 of 2010 seeking recovery of possession of the suit premises on the ground of default in payment of standard rent and permitted increases. Defendant No.1 resisted the said Suit referring to Civil Miscellaneous Application No.109 of 2009 pending for fixation of standard rent, in which he had prayed for fixation of standard rent in the suit premises at Rs.25/-. Defendant No.1 claimed that Plaintiff has accepted the rent from January 1996 till 31 March 2002 and thereafter refused to accept the money orders sent by him. In the light of the pleadings and the evidence, the contest between the parties was with regard to non-payment of (i) basic rent, (ii) permitted increases @ 4%, (iii) education cess and employment guarantee cess and (iv) house tax. After appreciating the evidence on record, the Trial Court held that Plaintiff had failed to accept several money orders sent by Defendant No.1 for payment of rent at the rate of Rs.100/- per month. The Trial Court has relied upon money order receipts at Exhibits-101 to 192 for recording a finding that Plaintiff was repeatedly refusing to accept the rent offered by money orders.

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

35) So far as the education cess and employment guarantee cess is concerned, the Trial Court relied upon money order at Exhibit-193 showing that an amount of Rs. 3,828/- towards permitted increases and Rs.2,540/- towards education cess (total amount of Rs.6368/-) which was sent by Defendant No.1 to Plaintiff by money order but the same was returned on 2 December 2009 as *'not claimed'.* The same was again sent vide money order receipt at Exhibit-194 and was again returned *'unclaimed'.* The Trial Court therefore held that permitted increases and education cess of Rs. 6368/- was offered by Defendant No.1 to the Plaintiff but the same was refused. The Trial Court therefore held that there is no default on the part of Defendant No.1 in paying permitted increases or education cess. However, the Trial Court held that Defendant No.1 guilty of not paying permitted increases @ 4% p.a. from the date of institution of the suit as well as from the date of filing of Civil Miscellaneous Application No. 109 of 2009 and accordingly held Defendant No.1 as defaulter. In this regard, findings recorded by the Trial Court at para-57 of the judgment reads thus:

> 57. Plaintiff specifically admitted in his examination Exh.33 that defendant no.1 sent money order to him since 1996, but he refused to accept the same. All the money orders filed on record show that rent of the suit property as Rs.100/- per month paid, but plaintiff failed to accept the said rent of Rs.100/- per month sent by money orders. So rent of the suit property paid by way of money orders, but plaintiff refused to accept the same as per admission of plaintiff. There is different money order receipts at Exhs. 101 to 192 which that defendant no.1 sent money orders time to time to plaintiff, but said money orders were returned as he refused it. Receipt at Exh. 193 shows that plaintiff paid permitted increase of Rs.3828 and education cess of Rs.2540/- i.e. total amount of Rs. 6368/- paid to plaintiff by money orders, but it was returned as "not claimed" on 02/12/2009. Further, he paid education cess of Rs.6368/- vide receipt No. 194, but it was returned with endorsement "Not claimed" on 04/12/2009. On 16/10/2009 plaintiff issued notice and the money order receipts at Exhs. 101 to 193 show that defendant paid permitted increase and education cess i.e. total amount of Rs.6368/- to plaintiff, but plaintiff

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

> refused to accept it. So rent of the suit property as well as permitted increase of Rs.3828/- and education cess of Rs.2540/- till institution of R.C.S.No.239/2010 paid. But defendant no.1 failed to pay permitted increase at the rate of 4% per annum to plaintiff from the date of institution of the suit R.C.S. No. 239/2010 as well as from the date of filing of Civil Misc. Application No. 109/2009 till today, hence defendant no.1 is willful defaulter in payment of rent of suit property because as per section 15 of the Maharashtra Rent Control Act, 1999 it is liability of the tenant to pay rent, permitted increase as well as interest at the rate of 15% per annum on the arrears of rent. But in the present case as recorded above, defendant no.1 failed to pay permitted increase at the rate of 4% per annum from the date of institution of suit bearing R.C.S.No.239/2010 and Civil Misc. Application No. 109/2009 till today. Hence, defendant no.1 is willful defaulter in payment of rent of suit property as per section 15 (2) of the Maharashtra Rent Control Act, 1999.

36) Thus, the Trial Court has actually rejected the case of the Plaintiff about default in payment of rent upto the date of filing of the suit. However, Defendant No.1 is treated as defaulter only on account of non-payment of permitted increases @ 4% p.a. from the date of institution of Regular Civil Suit No. 239 of 2010. The Appellate Court has also confirmed this position by following findings in para-22 of its judgment:

> 22. On perusal of document it appears that the defendant no.1 ha snot paid permitted increase of suit property from the date of institution of suit till the date of decision and though he has filed the application for fixation of standard rent i.e. Civil M.A.No. 109/2009, non-payment of permitted increase of suit property by defendant no.1 from the date of filing of civil application and from the date of institution of suit, he became willful defaulter in payment of rent of suit property as per Section 15(1) and (3) of Maharashtra Rent Control Act. Therefore, he is willful defaulter in payment of rent of suit property.

37) In my view, both Trial as well as the Appellate Court have not properly appreciated the ground of default pleaded by the Plaintiff. The statutory Scheme of Section 15 is such that standard rent and permitted increases demanded in the notice issued under Section 15(2) needs to be paid to the landlord for avoiding suit for ejectment. As observed above,

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

the total demand made by the Plaintiff in the notice was Rs.68,901/-. The Plaintiff was meticulous in describing each head of the demand. After going through all the heads in the notice, it is seen that except for 4% increase upto the date of coming into effect of the MRC Act (31 March 2000), all other demands made by the Plaintiff were valid. Section 11 of the MRC Act entitles landlords to make increase of 4% p.a. in the rent of premises. Section 11 (1) provides thus:

> **11. Increase in rent annually and on account of improvement, etc. special addition etc. and special or heavy repairs.**
> (1) After the commencement of this Act a landlord shall be entitled to make an increase of 4 per cent per annum in the rent of the premises let for any of the purposes referred to in sub-section (1) of section 2.
>
> Explanation.-For the purposes of this sub-section, the period of one year on completion of which rent shall be so increased shall be computed from the date of commencement of this Act.

38) Thus, annual increase in rent at the rate of 4% p.a. can be done from the date of commencement of the Act. However, in the present case such increase was demanded by the Plaintiff from 1 January 1997, which was obviously erroneous. Therefore, the demand made for increase at the rate of 4% p.a. in the rent during the period January 1997 to March 2000 is required to be ignored. However, the balance notice demanding increase in standard rent, arrears of education cess and employment guarantee cess and property tax was clearly valid. It is doubtful whether Plaintiff could have claimed any interest on the amounts of increase in rent, education cess or property tax as the said demands were never made by Plaintiff on earlier occasions. Thus, the demand raised vide notice issued under Section 15(2) is treated as valid only in respect of the following three heads:

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

(i) 4% increase from April 2000 onwards
(ii) Rs.2,540/- towards arrears of Education Cess and Employment Guarantee Cess.
(iii) Rs.10,080/- towards arrears of Property Tax.

39) As observed above, the Trial Court's order shows offering of two amounts of Rs.3,828/- towards permitted increases and Rs.2,540/- towards education cess (total amount of Rs.6,368/-). The exact difference between increased rent from April 2000 till December 2009 is not indicated in the notice. However, according to the Plaintiff, the increased rent in January 2009 (even if increase is made applicable from January 1997) was Rs.152/-. This means that even as per Plaintiff, the net increase in January 2009 was only Rs.52/- per month and Rs.624/- per year. The Trial Court ought to have conducted exercise of finding out the exact figure of the increase in the rent from April 2000 till service of notice. Thus, if the rent is increased from Rs.100/- to Rs.104/- in April 2000, the same would increase every year. In my view, therefore the figure of Rs.3,828/- offered by Defendant No.1 towards arrears of increase in the rent would suffice the demand made by the Plaintiff in this regard. It therefore cannot be stated that Defendant No.1 was in arrears of increased rent at the rate of 4% at the time of filing of the suit. However, as rightly held by the Trial Court and the Appellate Court while depositing rent in the Court under Section 15(3), Defendant No.1 was required to deposit increased rent, which had increased upto Rs.152/- at the time of filing of the suit.

40) So far as arrears of education cess and employment guarantee cess were concerned, the same were quantified at Rs.2475/- by the Plaintiff and an amount of Rs.2540/- was offered by Defendant No.1 and

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

therefore it cannot be stated that there is a default in payment of education cess and employment guarantee cess.

41) However, so far as the allegation of non-payment of property tax is concerned, the total demand made by the Plaintiff was Rs.10,080/- without interest. There is nothing on record to indicate that this amount of Rs.10,080/- was paid by Defendant No.1 to the Municipal Corporation or to the Plaintiff. In his Written Statement, Defendant No.1 vaguely contended that he had deposited house tax with Kolhapur Municipal Corporation for the period from 1 April 1996 to 31 March 2010. However, the figure of deposit made by him is not disclosed anywhere. Furthermore, the Trial Court has recorded a finding that after institution of Regular Civil Suit No. 239 of 2010, the house tax was not deposited by Defendant No.1.

42) Considering the overall conspectus of the case, I am of the view that there are few defaults on the part of Defendant No.1 in payment of increased amount of rent as well as property tax. Section 15 of the MRC Act provides twin opportunities to the tenant to make good the default. It was therefore incumbent for the Defendant to pay to the landlord, the amount demanded in the notice issued under Section 15(2) of the MRC Act. Since the entire amount demanded in the notice was not paid or offered to the landlord, the tenant could have availed second opportunity under Section 15(3) of the Act by depositing in the Court, the entire arrears of the rent and permitted increases then due together with 15% interest thereon and costs of the suit. As observed above, Defendant had not offered the entire amount demanded in the notice (excluding interest) to

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

the Plaintiff-landlord. He therefore ought to have made deposit of such amount in the Court within 90 days of service of suit summons together with 15% interest thereon and costs of the suit. It was further incumbent upon the Defendant to continue to deposit in the Court, the amount of standard rent and permitted increases regularly till final decision of the suit.

43) In the present case, Defendant No.1-tenant relied upon filing of standard rent fixation application and avoided depositing the amount of standard rent and permitted increases during pendency of the suit. Filing of standard rent fixation application by Defendant No.1-tenant was clearly mischievous and unwarranted as no dispute existed between the parties about fixation of standard rent. The standard rent of premises that remained in possession of Defendant No.1-tenant was agreed in the Agreement as Rs.100/- and the said amount was paid by Defendant No.1-tenant to the Plaintiff without any demur. It is only in the year 2006 that Defendant thought of filing application in Regular Civil Suit No.436 of 2006 for fixation of 'reasonable' rent in respect of the premises. By the year 2009, Defendant No.1 grew wiser and filed Civil Miscellaneous Application No.109 of 2009 for fixation of standard rent at Rs.25/- without any basis. It is thus clear that filing and pendency of mischievous and unwarranted application for fixation of standard rent was used by Defendant No.1-tenant for avoiding payment of rent to the landlord or deposit of the same in the Court. Therefore, deposit of Rs.100/- made by Defendant No.1 in the Court towards rent did not satisfy the requirement of Section 15(3) of the MRC Act. Defendant No.1 was aware that Plaintiff had demanded 4% increase in the annual rent as per Section 11 of the

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

MRC Act and took the risk of depositing only Rs.100/- towards rent in the Court. He did not deposit education cess and employment guarantee cess in the Court during pendency of the suit. He also did not deposit property tax during pendency of the suit. In my view, therefore clear case of default on the part of Defendant No.1-tenant is made out for passing decree of eviction against him.

44) Mr. Shah has strenuously contended that the Trial Court ought to have decided Civil Miscellaneous Application No.109 of 2009 and in absence of the decision thereof, it was not possible to ascertain the correct amount of rent to be deposited in the Court. In my view, filing of Civil Miscellaneous Application No.109 of 2009 was itself mischievous and unwarranted. There was no dispute between the parties about quantum of standard rent. Defendant No.1 being a businessman, entered into agreement dated 30 December 1995 in which the rent was agreed at Rs.100/-. It is the case of Defendant No.1 that he used to offer the said rent of Rs.100/- to the Plaintiffs through money orders. Thus, this is not a case where the rent decided between the parties was excessive in any manner. The suit premises are located in one of the prominent location of Kolhapur City. The expectation of Defendant No.1 that the rent ought to have been Rs. 25/- is ludicrous. Defendant No.1 relied upon rent of Rs.100/- fixed in the year 1969 for larger premises of 1398 sq.ft but did not appreciate the fact that period of 40 long years had elapsed after fixation of standard rent of Rs.100/- in the year 1969 and that the parties had consciously agreed to rent of Rs.100/- while executing the Agreement dated 30 December 1995. Therefore, non-decision of fixation of standard rent in Civil Miscellaneous Application No.109 of 2009 has not resulted in any error for this Court to

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

interfere either in revisionary or writ jurisdiction, nor non-decision of the said application gave a license for Defendant No.1-tenant to avoid payment/deposit of standard rent. Mr. Shah's reliance on judgment of Apex Court in ***Laxman Jiwaba Baherwade*** (supra) has no relevance to the fact situation at hand. In that case, the Apex Court had found the tenant depositing extra amount of standard rent and therefore non-deposit of municipal taxes by him was held to be not a valid ground for passing decree of eviction. In the present case, there is nothing to indicate that any extra amount has been paid/offered/deposited by the Defendant towards rent and that therefore there is no question of adjustment of default on his part in the payment of municipal taxes. Mr. Shah has relied upon judgment of Full Bench of this Court in ***Babulal s/o Fakirchand Agrawal*** (supra) which recognizes right of the landlord to file suit for eviction even after amount demanded in the notice under Section 15(2) of the Act is paid by the tenant by holding that default occurred under Section 15(3) in not regularly paying/depositing standard rent constitutes independent ground of eviction. In my view, the said ratio has no relevance to the fact situation at hand.

45) Mr. Narwankar has relied upon judgment of Gujarat High court in ***Jethalal Raghunath*** (supra) in which it is held that in absence of any impending threat of filing eviction suit on the ground of non-payment of rent, application for fixation of standard rent is not maintainable and that the Court cannot pass an *ex-parte* order fixing interim rent. In my view therefore, decree of eviction passed against Defendant No.1-tenant on the ground of unauthorized default in payment of rent in Regular Civil Suit No. 239 of 2010 cannot be seriously faulted.

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

D.3 SUBLETTING

46) One of the grounds on which Regular Civil Suit No.436 of 2006 is decreed is unlawful subletting by Defendant No.1 in favour of Defendant No.2. There is no dispute to the position that Defendant No.2 is the real brother of Defendant No.1. Plaintiff pleaded in the plaint that Defendant No.1-tenant was allergic to traffic noise pollution and had stopped visiting the suit premises since 1997-98 and that Defendant No.2 was exclusively conducting his own business therein. In the Written Statement, it was pleaded by the Defendants that Defendant No.2 was merely helping Defendant No.1 in his business. It was further claimed that Defendant Nos.1 and 2 had joint family but on account of frequent quarrels between the wives, Defendant No.2 was maintaining a separate kitchen. Defendant No.2 did not step into the witness box and this aspect is considered adverse by the Trial and the Appellate Courts. In my view, mere failure on the part of Defendant No. 2 to step into the witness box could not be a reason for drawl of adverse inference of unlawful subletting. The issue therefore is whether Plaintiff produced sufficient evidence for creation of a probability of Defendant No.1 unlawfully subletting the premises to Defendant No.2.

47) On account of complex and clandestine arrangements made in transaction subletting, it becomes quite difficult for the landlord to establish the act of subletting by producing concrete evidence of exclusive possession and proof of payment of consideration. Though earlier the test of payment of consideration was considered important for establishing the act of unlawful subletting, as the law developed with passage of time, it

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

now appears to be a settled position that it is not necessary for the landlord to prove payment of any consideration for establishing the act of subletting. In this regard, reference can be made to the judgment of the Apex Court in ***Prem Prakash Versus. Santosh Kumar Jain & Sons (HUF)***[14] in which the Apex Court has held as under:

> 21. Sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person in possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. **It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case.**
>
> *(emphasis and underlining added)*

48) In ***Joginder Singh Sodhi*** (supra) also, the Apex Court has held that proof of monetary consideration by the sub-tenant to the tenant is not a *sine qua non* to establish subletting. The Apex Court has held in paras-16 to 20 as under :

[14] (2018) 12 SCC 637

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

16. The contention of the learned counsel for the appellant, however, is that even if it is assumed that one of the ingredients of sub-letting was established, the second ingredient, namely, parting of possession with "*monetary consideration*" was not established. The counsel urged that there is no evidence on record that any amount was paid either in cash or in kind by Respondent 2 to Respondent 1. In the absence of such evidence sub-tenancy cannot be said to be established and the landlady was not entitled to get an order of eviction against the tenant.

17. We are unable to appreciate the contention. As observed by this Court in *Bharat Sales Ltd. v. LIC of India* [(1998) 3 SCC 1] sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person in possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let.

18. In *Rajbir Kaur v. S. Chokesiri & Co.* [(1989) 1 SCC 19] this Court, speaking through Venkatachaliah, J. (as His Lordship then was) stated : (SCC p. 43, para 59)

> "If exclusive possession is established, and the version of the respondent as to the particulars and the incidents of the transaction is found acceptable in the particular facts and circumstances of the case, it may not be impermissible for the court to draw an inference that the transaction was entered into with monetary consideration in mind. It is open to the respondent

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

> to rebut this. Such transactions of sub-letting in the guise of licences are, in their very nature, clandestine arrangements between the tenant and the sub-tenant and there cannot be direct evidence got. It is not, unoften, a matter for legitimate inference. The burden of making good a case of sub-letting is, of course, on the appellants. The burden of establishing facts and contentions which support the party's case is on the party who takes the risk of non-persuasion. If at the conclusion of the trial, a party has failed to establish these to the appropriate standard, he will lose. Though the burden of proof as a matter of law remains constant throughout a trial, the evidential burden which rests initially upon a party bearing the legal burden, shifts according as the weight of the evidence adduced by the party during the trial. In the circumstance of the case, we think, that, appellants having been forced by the courts below to have established exclusive possession of the ice cream vendor of a part of the demised premises and the explanation of the transaction offered by the respondent having been found by the courts below to be unsatisfactory and unacceptable, it was not impermissible for the courts to draw an inference, having regard to the ordinary course of human conduct, that the transaction must have been entered into for monetary considerations. There is no explanation forthcoming from the respondent appropriate to the situation as found."
>
> **19.** Again in *Kala v. Madho Parshad Vaidya* [(1998) 6 SCC 573] this Court reiterated the same principle. It was observed that the burden of proof of sub-letting is on the landlord but once he establishes parting of possession by the tenant to a third party, the onus would shift on the tenant to explain his possession. If he is unable to discharge that onus, it is permissible for the court to raise an inference that such possession was for monetary consideration.
>
> **20.** We are in agreement with the observations in the above cases. **In our considered opinion, proof of monetary consideration by the sub-tenant to the tenant is not a *sine qua non* to establish sub-letting.**
>
> *(emphasis added)*

49) Thus, in ***Joginder Singh Sodhi,*** the Apex Court has relied upon its judgment in ***Kala Versus. Madho Parshad Vaidya***[15] in which it is held that the burden of proof of subletting is on the landlord, but once he establishes parting of possession by tenant to a third party, the onus

[15] (1998) 6 SCC 573

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

would shift on the tenant to explain his possession and if the tenant is unable to discharge that onus, it is permissible for the Court to raise inference of subletting.

50) In ***Ram Murti Devi*** (supra) relied upon by Mr. Shah, the Apex Court has followed the judgment in ***Joginder Singh Sodhi*** (supra) and has held in paras-21 and 22 as under:

> **21.** From the pronouncements of this Court as noticed above, following statement of law can be culled out:
> **21.1.** In a suit by the landlord for eviction of the tenant on the ground of sub-letting the landlord has to prove by leading evidence that:
> (*a*) A third party was found to be in exclusive possession of the whole or part of rented property.
> (*b*) Parting of possession thereof was for monetary consideration.
> **21.2. The onus to prove sub-letting is on the landlord and if he has established parting of possession in favour of a third party either wholly or partly, the onus would shift to the tenant to explain**.
> **21.3.** In the event, possession of the tenant wholly or partly is proved and the particulars and the instances of the transactions are found acceptable, in particular facts and circumstances of the case, it is not impermissible for the court to draw an inference that the transaction was entered with monetary consideration. **It may not be possible always to give direct evidence of monetary consideration since such transaction of sub-letting are made between the tenant and sub-tenant behind the back of the landlord.**
>
> **22.** In each case, the proof of sub-letting/sub-tenancy thus, has to be established on the parameters of law, as laid down in the above cases. Whether, in particular facts and circumstances the landlord has successfully discharged the burden of proving sub-tenancy depends on pleading and evidence in each case.
>
> *(emphasis added)*

51) In ***Kala Niryat (Shop)*** (supra), Single Judge of this Court held in paras-5 and 6 as under :

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

> 5. Section 16(1)(e) of the Rent Act entitles the landlord to recover the possession of the tenanted premises, where the tenant has unlawfully sublet or given on licence the whole or part of the premises or assigned or transferred in any other manner his interest therein. In order to prove the mischief of subletting as a ground for eviction under the Rent Act Laws, two ingredients have to be established. The first, involves parting with possession of the tenanted premises or part thereof by the tenant in favour of some third party. The second, that such parting with possession has been without the consent of the landlord and in lieu of compensation or rent. Inducting a partner or partners in the business by the tenant, bonafide, does not by itself, amount to subletting. However, if the purpose of this partnership is ostensible and some deed of partnership is drawn out to conceal the real transaction of subletting, the Court may as well tear the veil of partnership to find out the real nature of the transaction entered into by the tenant and such third party or the induction of some third party as partner in the existing firm would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of crossexamination making out a case of subletting or parting with possession of the tenanted premises. **The initial burden of proving subletting or parting with possession is with the landlord. But once the landlord is able to establish that the third party is in exclusive possession of the tenanted premises, onus shifts upon the tenant to prove the nature of occupation of such third party. In other words, the initial burden, which the law casts upon the landlord would stand discharged by adducing prima facie proof of the fact that some third party is found to be in occupation and control of the tenanted premises. In such circumstances, the presumption of subletting may then be raised and would amount to prove, unless rebutted.**
>
> *(emphasis added)*

52) Thus, it is not necessary for the landlord to prove payment of monetary consideration for establishing the act of subletting and the burden of proof in respect of the ground of subletting gets discharged, the moment the Plaintiff proves that the tenant has parted with possession. The burden then lies on the tenant to prove that he continues to be in possession of the premises. Having set out the broad contours of the tests to be applied for establishing the act of unlawful subletting, I proceed to examine whether the Plaintiff made out the case of parting with

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

possession by Defendant No.1-tenant in favour of his brother-Defendant No.2.

53) Defendant No.1-tenant does not dispute presence of Defendant No.2 in the suit premises. However, his presence is sought to be justified by contending that he merely assisted Defendant No.1 in his business. Therefore, possession of the premises by Defendant No.2 is admitted and the only issue that remained is whether such possession was to total exclusion of Defendant No.1-tenant. In ***Narayan Damodar Thakur*** (supra), I have taken a view that in respect of commercial tenancies, the requirement of sub-tenant in exclusive possession need not be established. In ***Narayan Damodar Thakur,*** the case involved tenant letting his brother (who was tenant in adjoining premises) to store his own goods in the tenanted premises. Such an act on the part of the tenant was construed by this Court as an act of unlawful subletting. This Court held in paras-31, 32, 33 and 34 as under:

> 31) Thus, in ***Vasant Mahadev Pandit,*** the issue was with regard to the use of the suit premises for residence by other family members and whether such use amounted to subletting or not. The allegation of subletting to a relative needs to be considered differently in respect of premises let out for business than the one let out for residence. While deciding the issue of subletting, the ratio of a judgment relating to residential premises may not strictly apply to premises let out for conduct of a particular business. In ***Vasant Mahadev Pandit,*** one of the striking features was tenant's mother continued to reside in the suit premises with his relatives (brother and wife of deceased brother). The judgment in my view provides little assistance for deciding the present Revision Application.
>
> 32) The Second Defendant has admitted that it is more convenient to store and take out goods in suit premises by using the outer shutter rather than routing the same through Shop No.2. Despite this admission, Defendants are expecting this Court to believe their false story that Defendant No.1 takes circuitous route for moving his goods in and out of

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

his shop through the Shop of Defendant No.2, rather than opening shutter of his own shop.

33) What really makes the case of Defendant No. 1 worst is the admission given by the second Defendant in his cross examination that at times, he sells goods stored in the suit premises also. Mr. Patil makes an attempt to salvage this situation by contending that such an act on the part of second Defendant would still not make him the exclusive possessor of the suit premises. I once again find myself in total disagreement with Mr. Patil's submission that in every case, unless exclusive possession is proved, subletting cannot be assumed. True it is that in relation to a residential premises, exclusive possession by an outsider to tenant's complete exclusion may be required to assume the act of subletting and mere addition of an outsider in the house to reside along with the tenant may not always lead to presumption of subletting. This however may not apply to every case of commercial tenancy. In case of tenancy in respect of a shop, if tenant permits an outsider (not his employee) to use part of the shop to do business while tenant also continues his own business, even though it is not proved that the outsider is in 'exclusive' possession of the tenanted shop, subtenancy can be presumed in a given case. To illustrate, if a tenant running stationary business in tenanted shop permits an outsider to install a photostat machine in a corner of the shop to service outsider's own customers, subletting needs to be presumed notwithstanding the fact that the outsider may not exclusively possess the tenanted shop. In metropolitan and commercial cities like Mumbai or Pune, where a tiny display space often attracts huge rent/license fees, letting use of small portion of shop of even 10 or 20 sq ft in busy locations can fetch good returns to the tenant, who can profiteer by such activity at the cost of landlord, who is paid pittance towards standard rent by the tenant. There could be cases where the tenant, who is incapable or undesirous of operating his business lets an outsider to take over his business under a clandestine arrangement, keeps all documents, bills, licenses, etc in his own name and occasionally visits the premises to disprove the allegation of subletting. Such clandestine arrangements are required to be inferred by Courts by applying the test of preponderance of probability. In every case, where it is noticed that a third person is actually using the premises, the act must be construed as breach of conditions of tenancy. The principle being, beneficial legislation like Rent Control Act is not to be misused by the tenant to the complete disadvantage of the owner. Again, while construing the rent control legislation as beneficial to tenant, the paradigm shift in the approach with passage of time must also not be completely ignored. Maharashtra Rent Control Act, 1999 offered an 'economic package' to landlords as noticed by the Apex Court in ***Leelabai Gajanan Pansare and others Vs. Oriental Insurance Company Limited and others***. The Act now excludes cash rich entities from its application, permits increase in rent every year, permits charge of premium, etc. which was not the case during Bombay Rent Act, 1947 regime. In my view therefore, in every case, where the tenant is seen

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

> attempting to take disadvantage of tenancy protection by indulging in profiteering by letting a third party actually use the premises, subletting must be inferred.
>
> 34) Thus, especially in cases of commercial tenancies, it is necessary that the tenant alone uses the entire portion of the shop and does not let any other person to use any portion thereof. Second Defendant's relation in the present case as tenant's brother would hardly make any difference as second Defendant is an independent tenant in respect of Shop No. 2 and has absolutely no business to conduct any activity inside Shop No. 1. In fact, this was the exact purpose why the tenancies were split in the year 1996. The object behind splitting the tenancies cannot be permitted to be frustrated by discreet arrangement between Defendants by letting second Defendant make use of the suit premises by accessing the same from internal door by keeping the outside shutter always closed.

54) Thus, in ***Narayan Damodar Thakur,*** this Court has taken a view that in case of commercial tenancies, it is necessary that the tenant uses the entire portion of the shop and does not let any other person to use any portion thereof. This Court has considered the judgment of this Court in ***Vasant Mahadeo Pandit*** (supra) relied upon by Mr. Shah and has distinguished the same in ***Narayan Damodar Thakur.***

55) Since presence of Defendant No.2 in the suit premises is admitted and since defence of Defendant No.2 merely assisting the tenant in conduct of business was raised, it became incumbent for Defendant No.1-tenant to produce some evidence to show that the entire business conducted in the suit premises exclusively belonged to him. However, Defendant No.1-tenant did not file a single piece of evidence to show that there were any transactions in his name in respect of the goods that were sold from the suit shop. Defendant No.1 did not secure registrations relating to local body tax (LBT) or goods and service tax (GST), in respect of the good produced and sold in the suit premises. It is inconceivable that Defendant No.1 could conduct business of sale of readymade garments

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

without securing LBT or GST registrations. Mr. Shah has attempted to salvage the situation by contending that the provisions relating to LBT were introduced in the Maharashtra Municipal Corporation Act, 1949 w.e.f. 31 August 2009 whereas the suit was instituted in the year 2006. However, what is ignored by Mr. Shah is the fact that the suit had ultimately been decided in the year 2019 and it was easily possible for Defendant No.1-tenant to produce atleast some documentary evidence to prove transactions of purchase and sale of goods in the suit premises. The evidence of parties is recorded in the year 2014 and Defendant No.1 ought to have produced some evidence relating to LBT or GST registration when he led his own evidence.

56) The defence of Defendants about existence of joint family is also proved to be false as the evidence on record shows that Defendant Nos. 1 and 2 have been residing separately and had separate kitchens. There is no explanation as to why the name of Defendant No.2 was not entered in the rent agreement dated 30 December 1995 if the family or business were joint as sought to be suggested.

57) The Trial Court has also noticed the fact that all the money orders sent towards payment of rent or permitted increases are at the instance of Defendant No.2. None of the money order receipts bear signature of Defendant No.1. This is yet another factor which is considered by the Trial Court for drawl of inference of possession of the suit premises by Defendant No.2. The Trial Court has also relied upon report lodged by Defendant No.1 in the Police Station with regard to the attempts made by the Plaintiff for evicting him and his brother. The Trial Court has inferred the act of subletting on account of Defendant No.1

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

complaining to the police about the threats of eviction given not just to him, but also to his brother. If Defendant No.2 was merely assisting the Plaintiff in business at the suit premises, there was no reason for Defendant No.1 to perceive any threat of eviction of Defendant No.2.

58) There is yet another factor which has rightly been taken into consideration by both the Courts relating to lack of any evidence to establish any separate or independent business of Defendant No.2. This is not a case where the two Defendants were carrying on business in partnership. Written Statement pleaded that Defendant No.2 was merely assisting Defendant No.1 in his business, which means that Defendant No.2 was not a partner in profits. If that was the case, some evidence ought to have been produced to show existence of independent business of Defendant No.2 for earning his livelihood. However, as observed above, Defendant No.2 shied away from the proceedings and did not step into the witness box though his presence in the suit premises was admitted by Defendant No.1.

59) As observed above, unlawful subletting is clandestine act between the tenant and his subletee and it is often difficult to decipher the exact arrangement between the parties. This becomes even more difficult when the act of subletting is by tenant in favour of his brother. In such a case, the Court will have to consider the entire material on record and examine whether a case of preponderance of probabilities is made out for inferring the act of subletting. In a case involving allegation of unlawful subletting by tenant to his brother, it becomes necessary to either prove that the tenant and brothers are partners or that the premises are let out

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

for joint business by both the brothers. The brother of the tenant cannot be permitted to exclusively conduct his own business in the suit premises during lifetime of a tenant. The tenant cannot seek to pass on tenancy rights to his family member during his lifetime. If the tenant is not in a position to conduct business in the tenanted premises, he has to return possession thereof to the landlord. The tenant cannot create a subterfuge by allowing his family members to conduct their independent business in the suit premises and then raise a specious plea that the family member merely assisted him in the business. To prove the assertion relating to assistance by family member in the business, it becomes incumbent for the tenant to establish that the entire business is conducted in his own name without any connection with the family member. Therefore, in a case where presence of family member in commercial tenanted premises is proved, the burden becomes heavy on the tenant to prove that the entire business is conducted in his own name. The Defendant in such a case must prove that he visits the suit premises and must produce necessary documentary evidence to prove purchase and sale of goods in his own name by filing copies of necessary returns. In the present case, the Defendant No.1-tenant has thoroughly failed in proving that the entire business in the suit premises is exclusively conducted by him and that his brother was merely assisting him in conduct of his exclusive business. In my view, therefore the act of subletting has correctly been inferred by the Trial and the Appellate Courts by appreciating the evidence on record.

60) In ***Kailash Chander*** (supra), the Apex Court has held that concurrent findings of subletting cannot be disturbed on the ground that the tenant did not part with possession. It is further held that it is for the

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

subtenant to establish that his possession of the premises is not that of sub-tenant and merely because the tenant is father of sub-tenant, the same cannot be a justification for not inferring the case of subletting. The Apex Court held in para-5 as under:

> 5. This Court proceeded to say further that unless the High Court comes to the conclusion that the concurrent findings recorded by the two courts below are wholly perverse and erroneous, which manifestly appear to be unjust, there should be no interference. In the case on hand also the two courts below have appreciated evidence placed on record and on a proper appreciation concluded that the case of sub-letting, as pleaded by the appellant, is proved. In our view, the High Court was not justified in interfering with such concurrent finding. It is not shown on behalf of the respondents herein that the findings recorded by the two courts below were either perverse or not based on evidence. We must also keep in mind that when the appellant established the fact that Respondent 2 was carrying on his activities as UTI agent in the part of the premises exclusively by him, it was for the respondent to establish that his possession on that premises was not as a sub-tenant. Merely because Respondent 1 is the father of Respondent 2 there cannot be any justification to say that it was not a case of sub-letting.

61) Conspectus of the above discussion is that the act of subletting is conclusively proved by Trial and Appellate Court and in absence of any jurisdictional error or material irregularity, this Court would not be in a position to disturb such concurrent findings.

D.4 BONAFIDE REQUIREMENT

62) In the plaint, Plaintiff originally pleaded bonafide requirement of his son, Mohd. Shafiq for commencing business. During pendency of the suit, Plaintiff's other son, Mohd. Aslam, who was serving in Pune as Professor, passed away on 10 November 2016 after having detected with cancer. His wife also passed away on 16 January 2017. The

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

suit was therefore amended by incorporating bonafide need of Plaintiff's grandson for commencing business. The Trial Court has held that Plaintiff's original case of bonafide requirement of his son, Mohd. Shafiq is believable and trustworthy. It appears that Mohd. Shafiq was examined as P.W.2 who reiterated his need in respect of the suit premises. The Trial Court further considered the need of grandson in the amended plaint. After considering the entire evidence on record, the Trial Court has arrived at the conclusion that no other commercial premises were available for conduct of business by Plaintiff's son or grandson. It is held that the properties at Miraj are residential properties. That property at C.T.S. No. 1651 at Kolhapur was in possession of Shetkari Seva Sangh and that the adjoining property admeasuring 6 ft x 40 ft was grossly insufficient for conduct of business by son or grandson. So far as gifting of property at C.S. No.1812 by Plaintiff is concerned, the Trial Court has refused to accept the defence of the said transaction being sham or bogus. In any case, the said transaction of gift and sale have taken place before institution of the suit. On the issue of comparative hardship, the Trial Court has arrived at the finding that sons of Defendant No.1 were doing their own business in their own premises. These findings are upheld by the Appellate Court. In exercise of revisionary jurisdiction, it is impermissible for this Court to reassess the evidence on record and arrive at a different conclusion than the one concurrently arrived by both the Courts below. I am therefore not inclined to interfere in the concurrent findings recorded by the Trial and the Appellate Court on the issue of bonafide requirement.

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::

E. CONCLUSION

63) After considering the entire conspectus of the case, I am of the view that the findings recorded by the Trial and the Appellate Court in both the suits as well as the application for fixation of standard rent do not suffer from palpable error for this Court to exercise either revisionary jurisdiction under Section 115 of the Code or writ jurisdiction under Section 227 of the Constitution of India. The impugned judgments and orders, to my mind, appear to be unexceptionable.

F. ORDER

64) Consequently, both the Civil Revision Applications as well as Writ Petition are **dismissed**. Considering the facts and circumstances of the present case, Defendants are granted time upto 31 December 2024 to vacate possession of the suit premises.

[SANDEEP V. MARNE, J.]

::: Uploaded on - 11/10/2024 ::: Downloaded on - 15/10/2024 11:45:05 :::