

**ORDER BELOW EXH. 134 IN R.C.S. NO. 104/2005**  
**CNR-No-MH-SI-06-000134-2003**

Defendant Nos. 1(a) to 1(d), 2(b) to 2(d) and 2(a)(1) to 2(a)(3) have filed this application for depositing rent of the suit property from the year 2003 to 2019 alongwith interest @ 15% p.a. amounting to Rs. 1,496/- under protest keeping open their objections and pleadings raised in the written statement . It is averred that plaintiff filed this suit for possession against defendants on the basis of notice dated 14/02/2003 issued through their legal counsel and the reasons mentioned therein. In this notice, plaintiff never relied upon the reason of non payment of rent of the suit property by defendants.It is further averred that earlier plaintiff issued notice on 01/07/2002 to defendant Nos. 1 and 2 on the ground of need of suit premises for the business of their doctor son. Defendants by their reply never denied to pay the rent of the suit property to the plaintiff. However, plaintiff refused to accept the rent and to issue it's receipt also. The defendant Nos. 1 and 2 alongwith their reply sent a cheque of Rs.1,120/- towards the rent due and plaintiff accepted this cheque.

02. It is further averred that this suit is based upon the notice given on 14/02/2003 wherein plaintiff accepted regarding acceptance of cheque of Rs.1,120/- given by these defendants. Despite these facts, during cross-examination of the defendants, the Ld. Counsel for the plaintiff asked question that since the year 2002 to 2018 he did not wish to deposit the rent in the Court. It is alleged that plaintiff accepted rent upto the year 2002 and they never sought possession of the suit property on the ground of defaulter. But by asking such question they are likely to misguide in this case. So in order to avoid technical lacuna, these defendants have prayed for the permission to deposit the rent for the said period alongwith the interest thereon.

03. Plaintiff by his say vide Exh. 135 strongly objected this application. According to them despite calling themselves as a tenant of the suit property, it reveals from the cross-examination of defendants' that they never wish to deposit the rent for the period since the year 2002 to 2018. They contended that by this application, defendants are trying to wipe out the admission given in the cross-examination. It is their contention that defendants have specifically admitted in the cross-examination that Dubhashi Swamil is not residing in the suit property and shifted from this property .Saying that out of greed , defendants have kept the possession of the suit property and this application is filed to prolong the matter, they prayed to reject the same.

04. Heard Ld. Counsel of both the parties at length.

05. This is a suit for possession of the suit property alongwith the relief of mesne profit and compensation. I have perused the plaint. The plaintiff nowhere stated about default by defendants in paying the rent of the suit property. Moreover, the default in paying rent is also not a ground for seeking possession of the suit property in this suit . I have perused the cross - examination of defendants' witness on Exh. 96 on page No.9. The witness of defendants stated in the cross-examination that he did not wish to deposit the rent in the Court for the period from the year 2002 to 2018. It is also pertinent to mention that this witness further clarified saying that his father was looking after .

06. In view of the pleading in the plaint and the question of payment of rent raised by the plaintiff for the first time in the cross examination of defendants' witness, I found substance in the contention of Defendants' regarding the issue of non-payment of rent raised by the plaintiffs at the time of cross-examination of their witness. Plaintiffs in their say did not dispute the amount of rent and the interest sought to be deposited by defendants as

well as the period for which the rent is sought to be deposited. In view of these facts and circumstances of this case, if the defendants are allowed to deposit the rent in the Court, no prejudice seems to be caused to plaintiffs as default in payment of rent is not made a ground of seeking possession of the suit property and for filing this suit. In the result I pass the following order.

**-: ORDER :-**

1. The application at Exh. 134 is allowed .
2. Defendant Nos.1(a) to 1(d), 2(b) to 2(d) and 2(a)(1) to 2(a)(3) are permitted to deposit the rent for the period from the year 2003 to 2019 alongwith interest @ 15% p.a. amounting to Rs. 1,496/- under protest without prejudice to the right of plaintiffs if any.

Date :20/06/2019.

Sd/-  
(R.R.Bedagkar)  
Civil Judge (Junior Division),  
Sawantwadi.