



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 241 OF 2023

The Municipal Corporation of Greater Mumbai & Anr. *...Applicants*

Versus.

Smt. Kaiful Abdul Rauf *...Respondent*

Mr. Drupad Patil with Mr. Santosh Mali, for MCGM-Applicants.

Mr. V.R. Dhond, Senior Advocate with Mr. Ziyad Madon and Mr. Rehman Momin i/b. Mr. Shubham Latiwala for the Respondent.

CORAM: SANDEEP V. MARNE, J.

Judgment Reserved On : 21 April 2026.

Judgment Pronounced On : 05 May 2026.

JUDGMENT:

1) The Municipal Corporation for Greater Mumbai (MCGM) has filed the present Revision Application challenging the judgment and decree dated 28 February 2023 passed by the Appellate Bench of the Small Causes Court dismissing Appeal No.6 of 2020 and confirming the Trial Court's eviction decree dated 4 December 2019 passed in RA.E. & R. Suit No. 448/756 of 2012. The eviction of the Applicant-MCGM is ordered on the ground of willful default in payment of rent and non-use of the suit premises.



2) The Plaintiff-Respondent claims ownership in respect of plot of land bearing Survey No. 637 alongwith 5 buildings constructed thereon known as Abdul Rauf Manzil situated at House No.1, 76, Tank Bunder Road, Reay Road, Mumbai-400 010. The Applicant- MCGM was inducted as a monthly tenant in respect of Room Nos. 22 to 31 and 41 for running Urdu Primary School, which are the 'suit premises'. The monthly rent in respect of the suit premises was Rs.1685/-. The Plaintiff alleged that Defendant-MCGM was irregular in paying the rent. Accordingly, demand notice dated 30 August 2006 was issued demanding arrears of rent from April 2005. Once again notice dated 3 July 2009 was issued demanding arrears of rent from September 2006 to June 2009. Plaintiff also alleged that the Defendants had stopped using the suit premises for running of Urdu Primary School, which was shifted to another premises.

3) Plaintiff accordingly instituted R.A.E. & R. Suit No. 448/756 of 2012 in the Court of Small Causes at Mumbai seeking recovery of possession of the suit premises on the grounds of default in payment of rent and non-use of the suit premises. The Defendant- MCGM appeared in the Suit on 3 August 2012 and filed application seeking permission to deposit arrears of rent. The application was allowed on 16 February 2013 permitting the Municipal Corporation to deposit arrears of rent. The Defendant-MCGM filed Written Statement resisting the Suit contending that the suit premises were in dilapidated condition which was unsafe for running of a School. That Plaintiff had failed to carry out structural repairs through Maharashtra Housing and Area Development Authority (MHADA). That the Defendant-MCGM was forced to shift the School due



to the act attributed to the Plaintiff. So far as delay in payment of rent is concerned, the Defendant- MCGM adopted a stand that Plaintiff was informed by notice dated 21 November 2008 for providing a vendor number according to the SAP computer system, for payment of rent. That the delay was caused only on account of Plaintiff not providing the vendor number.

4) Based on pleadings, the Trial Court framed issues *inter-alia* relating to default in payment of rent and non-use. Plaintiff examined her Constituted Attorney in support of her claim and relied on several documents. Defendants examined Shri. Vinod Kadam, Shri. Bhushan Sonawane and Mr. Santosh Bobde and relied on several documents. After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to decree the suit accepting both the grounds of default in payment of rent, as well as non-use. The Defendants were directed to handover possession of the suit premises to the Plaintiff with further direction for conduct of separate inquiry into mesne profits.

5) The Defendant- MCGM filed Appeal No. 6 of 2020 before the Appellate Bench of the Small Causes Court. However, by judgment and order dated 28 February 2023, the Appellate Bench has dismissed the Appeal confirming the decree of the Trial Court. The Appellate Court has upheld both the grounds of default in payment of rent as well as non-use. Aggrieved by the decree of the Appellate Court, the Applicant has filed the present Revision Application. By order dated 4 July 2023, this Court admitted the Revision Application and granted stay to the eviction decree subject to deposit of *ad-hoc* compensation of Rs.2,40,000/- in



respect of the suit premises. By order dated 18 June 2024, this Court fixed the amount of interim compensation at Rs.1,15,000/- per month. The Civil Revision Application is called out for final hearing.

6) Mr. Patil, the learned counsel appearing for the Applicant submits that the Trial and the Appellate Courts have erroneously decreed the suit of the Plaintiff. He submits that the Defendant- MCGM had appeared in the Suit and deposited the entire arrears of rent in pursuance of the order dated 16 February 2013 alongwith 15% interest till pendency of the Suit. That therefore the ground of default in payment of rent no longer subsists. He further submits that even during the pendency of the Suit, the rent was deposited in the Court till December 2017. He submits that the tenant is Municipal Corporation and there cannot be absence of an intent to pay the rent. That delay in payment of rent was wholly attributable to Respondent-Plaintiff who refused to share the vendor number and co-operate with online payment system under the SAP program implemented by Municipal Corporation. He relies on letter dated 21 November 2008 of the Municipal Corporation calling upon the Plaintiff to share vendor number for smooth and timely payment of rent. That some leeway is required to be granted considering that the tenant is a Municipal Corporation and some delay in payment of rent due to administrative approvals cannot entail loss of tenancy in respect of the Suit premises. He submits that the building was and is in dilapidated condition and the Plaintiff was deliberately not repairing the same. That there is reasonable cause for non-use of the premises. The Plaintiff cannot keep the building in unsafe condition and artificially create a ground of non-use. That MCGM was running a School in the suit



premises, and any mishap would have endangered the lives of young students. That MCGM was therefore forced to shift the School to some other premises. That in such circumstances, it cannot be contended that the ground of non-use is made out in the present case.

7) Mr. Patil further submits that the plaint itself was defective as the same was verified by the Constituted Attorney of the Plaintiff, but Power of Attorney (**POA**) was not filed on record. That there was no foundation for the plaint and that therefore subsequent production of the POA during the course of evidence cannot infuse life into a dead plaint. That since the suit itself was defective, the same ought to have been dismissed. On above broad submissions, Mr. Patil would pray for setting aside the orders passed by the Trial and the Appellate Courts.

8) Mr. Dhond, the learned senior advocate appearing for the Respondent-Plaintiff opposes the Revision Application. He submits that concurrent findings on fact are recorded by the Trial and the Appellate Courts which do not warrant any interference in exercise of revisionary jurisdiction by this Court. That the Applicant has consistently defaulted in payment of rent both before filing of the suit, as well as during pendency thereof. That the deposit of rent was not made within a period of 90 days as mandated under Section 15(3) of the Maharashtra Rent Control Act,1999 (**MRC Act**) and the rent was deposited only in the year 2013. That Defendant-MCGM was found irregular in making of deposit of rent during pendency of the Suit. That no rent was deposited after December 2017 till the suit was decreed on 4 December 2019. That even before the Appellate Court, the Defendant- MCGM was irregular in



depositing the rent. He submits that there is also default on the part of the Municipal Corporation in deposit of interim compensation fixed by this Court and no deposit is made during the past 6 months.

9) Mr. Dhond further submits that non-use of the suit premises was admitted by the Municipal Corporation as the School is admittedly shifted in some other premises. That the pretext of condition of the building raised by the Municipal Corporation is false as there are other tenants who continue to occupy the rooms in the building. That repair works to the building were carried out in the years 2007 and 2014. He therefore submits that no interference is warranted in respect of the findings recorded with regard to the ground of non-use.

10) Mr. Dhond further submits that Plaintiff is a widow and at an advanced age of 87 years. That Applicants are keeping the premises locked without using the same. That therefore possession of the suit premises needs to be handed over to the Plaintiff in an expeditious manner. He prays for dismissal of the Revision Application.

11) I have considered the submissions canvassed by the learned counsels appearing for the rival parties. I have gone through the findings recorded by the Trial and the Appellate Courts. I have also considered the records of the case filed alongwith the Revision Application and with the Compilation.

12) The eviction of Applicant- MCGM is ordered concurrently by the Trial and the Appellate Courts on the ground of default in



payment of rent and non-use of the suit premises. Applicant- MCGM was running an Urdu Primary School in the suit premises.

13) So far as the ground of default in payment of rent is concerned, it was Plaintiff's case that the Municipal Corporation had committed default in payment of rent since September 2006 to June 2009 for which demand notice dated 3 July 2009 was issued. The Applicant did not dispute the position of non-payment of rent but filed application after appearing in the Suit seeking permission to deposit arrears of rent. The application was allowed on 16 February 2013, and this is how the Applicants finally deposited the arrears of rent since the year 2006 after a period of 6 long years. The deposit was also belatedly made since Section 15(3) provides for period of only 90 days from the date of service of summons of the suit for deposit of arrears of rent. However, since Court's permission is necessary for making the deposit, I do not wish to enter into technicalities and proceed to accept the position that the default was made good under Section 15(3) by making deposit in pursuance of order dated 16 February 2013. However, Section 15(3) also contemplates payment/tendering of the rent regularly in the Court throughout pendency of the suit. After making the first deposit in the year 2013, Applicant committed further default by not depositing rent in respect of the period from January 2018. The rent in respect of the period from January 2018 to December 2019 (date of decree) was not deposited in the Court. Thus, for 2 long years, the rent in respect of the suit premises was not deposited by the Applicant-MCGM



14) The statutory scheme of MRC Act is to protect possession of tenanted premises so long as the tenant pays standard rent and permitted increases regularly to the landlord. However, even if the tenant commits default in payment of rent, he does not automatically attract the folly of default in payment of rent and attracts forfeiture of tenancy. The Legislature has provided twin opportunities to the tenant to make good the default. The first opportunity is to make the payment of rent after receipt of demand notice. However, if the tenant fails to avail the first opportunity, the Legislature has provided second opportunity to the tenant to make good the default. The tenant, who has committed default in payment of rent, and has even failed to pay rent despite receiving demand notice, can deposit the entire arrears of rent alongwith 15% interest and costs of the suit within 90 days of receipt of suit summons. If none of the two opportunities are not availed by the tenant, he becomes liable for eviction. However, it is not that the tenant who deposits rent, interests and costs after receipt of the suit summons, gets relieved in respect of the ground of default in payment of rent. Section 15(3) also imposes condition of regular payment of rent during pendency of the suit. This issue is no more *res-integra* and is covered by Full Bench judgment of this Court in **Babulal s/o Fakirchand Agrawal Versus. Suresh s/o Kedarnath Malpani**¹ in which it is held that the landlord can proceed with the suit and keep a vigil as to whether the tenant is regular in payment of rent. In the present case, Applicant-MCGM is found to be irregular in deposit of rent during pendency of the suit. The case does not involve insignificant delay in deposit of the rent, which could have been condoned by the Court. Courts have held that

¹ 2017(4)Bom CR 495



there may not be mathematical precision in deposit of rent during pendency of the suit and some leeway can be granted by Courts. So long as it is satisfied that the tenant shows reasonable punctuality in the matter of deposit of rent, protection under Section 15(3) will have to be necessarily extended to him. [SEE: *Mranalini B. Shah and Anr. Vs. Bapalal Mohanlal Shah² and Abhay Dushyant Desai v. M/s. K. C. Chheda & Co³*]

15) However in the present case, the rent for two long years was not deposited before the decree was made. In my view, therefore the ground of default in payment of rent is rightly held to be established in the facts of the present case. I am therefore not inclined to interfere in the concurrent findings recorded by the Trial and the Appellate Courts on the aspect of default in payment of rent.

16) Coming to the ground of non-use, there is no factual dispute to the position that the Applicant-Municipal Corporation was actually not using the suit premises 6 months prior to institution of the suit. However, it raised a defense of 'reasonable cause' for not using the premises for which the same were let.

17) Under Section 16(1)(n) of the MRC Act, the ground for eviction is attracted if the premises are not used without reasonable cause for the purpose for which they were let for a continuous period of 6 months immediately preceding the date of the suit. Thus, mere non-use of the premises is not sufficient and what also needs to be established is

² (1980) 4 SCC 251

³ CRA 327 of 2023 decided on 27 June 2024



the fact that non-use is without a 'reasonable cause'. This is a reason why the Applicant-MCGM has set up the defense of reasonable cause for not using the suit premises. The cause pleaded by it was about the condition of the suit premises. Since Municipal Corporation was running Urdu Primary School in the suit premises, it claimed that the condition of the suit premises was such that it was impossible to run a School therein. The Applicant has now sought to blame the landlady for not getting the building repaired from MHADA despite repeatedly request made by MCGM. However, the Appellate Court has recorded a finding that the repairs of the building were carried in the years 2007 and 2014. The Appellate Court has also recorded a finding that several other occupants in the building continue to reside therein on ground, first and second floors. Also of relevance is the fact that the Suit was instituted in the year 2012 before which the Applicant had stopped using the premises and the building continues to stand till date. In any case, the Trial and Appellate Courts have concurrently refused the defense of building being in unsafe condition for justifying non-use of the suit premises by the Applicant. In my view, therefore no cause is made out for interference in the concurrent findings relating to the ground of nonuse.

18) Considering the overall conspectus of the case, I am of the view that the Applicant has failed to make out a case for interference in the concurrent findings recorded by the Trial and the Appellate Courts in exercise of revisionary jurisdiction under Section 115 of the Code of Civil Procedure,1908.

19) The Trial Court has also directed conduct of inquiry into mesne profits. The Applicant-tenant is a public body being Municipal



Corporation. The decree for eviction is passed on 4 December 2019 and on account of dismissal of the Revision Application, the Municipal Corporation may incur liability to pay mesne profits in respect of the suit premises from the date of the decree i.e. from 4 December 2019. Since the issue of spending public funds are involved, this Court put up a query to Mr. Dhond as to whether the Plaintiff is willing to forego the claim for mesne profits against the Municipal Corporation. In his usual fairness, Mr. Dhond, after taking instructions from his clients, has made statement that if the Applicant-MCGM does not further challenge the order of this Court, the Plaintiff is willing to forego the claim for mesne profits and would be satisfied with the amount of interim compensation deposited in the Court. He submits that the claim for mesne profits would be in excess of Rs.1 crore, which the Plaintiff is willing to forego if the Municipal Corporation does not litigate further in respect of the suit premises. It is for the Municipal Corporation to take a call in this regard and save wastage of public funds.

20) The Civil Revision Application is devoid of merits. It is accordingly **dismissed** with no order as to cost.

[SANDEEP V. MARNE, J.]

21) After the judgment is pronounced Mr. Patil the learned counsel appearing for the Applicant requests for extension of time for making deposit in terms of order dated 21 April 2026. The time is extended by period of 4 weeks.

[SANDEEP V. MARNE, J.]