IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.159 OF 2011 WITH

CIVIL APPLICATION NO. 125 OF 2011

IN

CIVIL REVISION APPLICATION NO.159 OF 2011

Sadashiv B. Raut and another

Applicants

Versus

Smt. Anusaya M. Bedekar and another

... Respondents

Mr. V. S. Pandey i/by Mr. S. U. Pandey for the Applicants Mr. P. J. Thorat for the Respondent Nos. 1 and 2

CORAM: R. M. SAVANT, J.

DATED: 18th January, 2012

P.C.:

1. The above Civil Revision Application takes exception to the judgment and order dated 5th July, 2010 passed by the learned Judge of the City Civil Court, Dindoshi, Mumbai by which order the Suit filed by the Respondents herein being S.C. Suit No. 4831 of 2000 came to be decreed and the Applicants herein who are the landlords were directed to handover the possession of the premises in question being Room No. 5 to the Respondents.

- The case of the respondents herein i.e. the original plaintiffs that 2. they were dispossessed on 20th May, 2006 was accepted by the trial Court on the basis of the material on record which included the rent receipts produced by the plaintiffs as well as the admission of the defendants in their written statement. In so far as the case of the Applicants herein i.e. the defendants in the said suit that the plaintiffs have handed over the possession of the suit premises on 19th May, 2006 voluntarily, on the basis that the plaintiff No.1 has accepted Rs. 20,000/-, from defendant No.1 for vacating the suit premises was not accepted by the trial Court. The trial Court considered the evidence in that regard adduced by the defendants, as also the evidence as regards the payment of Rs.20,000/- to the plaintiff no.1 and has rejected the same as the trial Court was of the view that the said evidence was unbelievable. The trial Court, therefore, recorded a finding of fact in respect of the dispossession of the plaintiffs on 20th May, 2006 as also recorded a finding of fact as regards the case of the defendants in respect of the payment of Rs.20,000/-.
- 3. In so far as payment of Rs. 20,000/- is concerned, it is required to be noted that it is the case of the defendants that the said amount of Rs.20,000/- was paid to the plaintiff No.1 on 19th May, 2006 and the plaintiff no.1 was to execute the document in question on 20th May,

2006. In the said context, it is pertinent to note that the defendant no.1 has already filed a suit for eviction against the plaintiff no.1 who was the tenant in R.A.E. Suit No. 236 of 2006, which was pending on the date when the alleged payment of Rs.20,000/- was made. It is unbelievable that an amount of Rs.20,000/-, was paid to the plaintiff in anticipation of the plaintiff handing over the over possession of the premises, when the suit for eviction was pending. The normal course of action that would have been followed by the defendants is to file a purshis in the said pending proceeding recording the settlement arrived at between the parties. This is one of the circumstance on the basis of which the finding of the trial Court as regards the payment of Rs.20,000/- cannot be faulted with. It is also unfathomable that the landlord who has already filed a suit for eviction pays an amount of Rs.20,000/- without the plaintiff No.1 executing any document in his favour. circumstance is another circumstance on the basis of which it is unbelievable that the plaintiff no.1 has handed over possession on the payment of Rs.20,000/- by the landlord. It is also also significant to note that the eviction suit is withdrawn by the landlords after about 5 to six months of the alleged transaction.

4. The learned counsel for the applicants herein sought to rely upon the complaint made to the police invoking section 145 of the Criminal

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Procedure Code by the plaintiff no.2 where in he has stated that he has purchased the room in question from the plaintiff no.1. The fact of the matter is that the suit has been filed on behalf of both the plaintiffs therefore, even assuming that such statement is made, that would not dent the plaintiffs' case as regards their dispossession on 20th May, 2006.

- 5. Having considered the order passed by the Court below decreeing the suit in question, in my view, no case for invoking the revisionary jurisdiction of this Court under section 115 of the Civil Procedure Code is made out. The Civil Revision Application is accordingly dismissed.
- 6. In view of the dismissal of the Civil Revision Application, The above Civil Application does not survive and the same is accordingly disposed of.
- 7. At this stage the learned counsel for the applicants prays for continuation of the stay which is operating in the matter. In the facts and circumstances of the case, prayer refused.