

## MAHARASHTRA RENT CONTROL LAW

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## **CHAPTER 1: INTRODUCTION**

Housing being one of the three basic needs of life always remains in the top priorities of any person, society and economy. As a human being, an individual needs his own space and privacy, which can be provided by the house which may be owned or rented. The home is the basic unit of the Society. Home provides a platform to the family and the family is the most important social institution, which leaves its imprint on an individual for whole life. Thus, housing deserves significant attention in the context of developing policies and strategies for human development. But, still the majority of human population lives in slums and temporary shelters. This shortage of housing is a big impediment in the healthy development of an individual and consequently the Society and Nation.

The Rent Control Legislation is the posthumous child of war. In the 1st World War, germs of such legislation were found in England. The condition after the war necessitated the intervention of legislation in the so called field of contract of letting. The necessity of such legislation became more acute during and after the 2nd World War. The personal freedom of contract was restricted and curtailed on the ground that the individual freedom is to give way to social liberty. Normally speaking, the contractual relations between the parties are the bilateral acts of violation and they can be wiped of, or interfered or tempered with except in the

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case of war, undue-influence, coercion, or mistake etc, vitiating the very contract. The provision contained in the Transfer of Property Act relating to the landlord and Tenants are also indicated of the fact that normally the Tenants and the Landlords are given full liberty to mould their contractual relations in the way which suits them best.

All these elements of free contract exist in the normal socio-economic conditions, but when due to greed, scarcity or inflation the profiteering motive dominates the will of a landlord in making or terminating a lease, the free contract of lease become a social evil and mockery. The speedy and tremendous growth of trade, commerce and industries in the urban areas resulted in the large migration of people from villages to the cities and towns. The big concentration at one place added to the necessity of enacting the legislation relating to the lease. The huge migration to the commercial centres created a great problem for the Government. In India, the provincial legislatures enacted rent control legislations controlling the Rent and Eviction. This legislation initially was confined only to the big cities of Bombay, Calcutta and Rangoon. The very First Act passed by any Indian Legislature is the 'The Bombay Rent Act, 1918' (War Restriction). In the same year, another Act bearing the title of 'The Bombay Rent (War restriction No. 2) Act' was passed on 11th November, 1918. This Acts was followed by the Bombay

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Rent (War Restrictions) Amendments Acts of 1920 and 1923. Similarly, in the presidency town of Calcutta, the 'Calcutta Rent Control Act, 1920' and for Rangoon, the 'Rangoon Rent Control Act, 1920' was passed. However, these provisions were insufficient to meet the conditions arising out of Second World War which wasn't the light of poor Tenants living in big cities. The remedy to be provided had to be an immediate and controlling one else the scarcity of living space in big city might result in compelling the persons to revert to villages which would entail the closure of factories and big establishment. Thus, to prevent this catastrophe, 'The Bombay Rent Restriction Act, 1939 (Act No. of 1939)', was passed in order to restrict the increase of rent of premises. In the year 1942, in exercise of the powers conferred by the Defence of India Rules, 'The Bombay Rent Restriction Order, 1942' was promulgated which also underwent several amendments till it was followed by 'The Bombay Rents, Hotels, Lodging Houses Rates Control Act, 1947'.

Thus, the above brief history clearly goes to show that the Rent Control Legislation was born and brought up in the rap of war. The inflation of currency and big economic upheaval in India gave the life blood to sinister desire of profiteering. The demand for higher rent increased day-by-day and reached a climax and therefore, the legislature came to the rescue of the plighted tenants. As is has been

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judicially noticed by the Hon'ble Supreme Court of India in P. J. Irani V/s State of Madras (AIR 1961 SC 1731), the subject of legislation is to prevent unreasonable eviction and also to control rent. These two purposes are intervened and accordingly the Rent Act should make the provisions thereby giving balancing rights to both Landlord and the Tenant which in result will give boost to housing and to reduce the gravity of housing problems.

Considering the provisions of different Rent Control Acts passed by the various States in India, they may be classified into three categories. In the first category fall Rent Acts which are with reference to Article 254 (1) and (2) of the Constitution as being merely supplementary to the Transfer of Property Act, 1882 e.g. the Rajasthan Act.

In the Second category fall the larger number of Acts like the Bombay Rent Act, which gave an additional protection to the statutory tenancies in the several ways but the ordinary machinery of civil courts is not disturbed.

In the Third category may be included the Acts like Madras Building (Lease and Rent Control) Act, 1960, which in Section 10 practically enacts a self-contained code with a special machinery of Rent Control Tribunals application for Evictions and orders for Eviction.

### *1.1 : Definition of Rent Control*

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Rent controls can be broadly defined as Governmental Regulations that limit landlords ability to set and increase rents freely on residential; properties. Rent Controls often coincide with a host of other regulations concerning landlords' responsibilities and tenants' rights in a rental arrangement. Most rent controls are of two types: rent ceilings, which place hard limits on the amount of money a landlord can charge for a rental unit that is based on the unit itself; and tenancy rent control, which is a set of regulations that limit the actions a landlord can take during the tenure of a sitting tenant, including limitations on landlords ability to increase rents.

Rent Ceilings are the most commonly studied types of rent control, but have become quite uncommon in practice. Most rental ceilings came into being at the end of World War II (1939 – 1945) to help mitigate expected disruptions in the rental housing market due to the demand stock of veterans returning from overseas services in the war. While, Tenancy rent controls are much more common in the contemporary world. Most of the Tenancy Rent Control laws were enacted in the wake of the global economic downturn of the mid 1970's that brought high inflation and many more were then abolished by 1980's and 1990's. Tenancy rent controls are typically one component of a host of policies that strengthens tenants rights in the rental housing market.

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## **CHAPTER 2: REVIEW OF RENT CONTROL; ACT IN MAHARASHTRA**

The provisional Rent Legislation Act came first all in Bombay (*The Bombay Rent [War Restriction] Act, 1918*) which was followed by Calcutta (*The Calcutta Rent Control Act, 1920*) and Rangoon (*The Rangoon Rent Act, 1920*). In rest of the British India, position remained the same where the Landlord-Tenant relationship was governed as per the provisions of Transfer of Property Act 1882.

The law of Rent Control came into operation in the former Bombay State for the first time in 1939 by introducing Bombay Rent Restriction Act, 1939. This was supplemented by Bombay Rent, Hotel and Lodging, Houses, Rents (Control Act), 1944. In view of the Second World War, new Act entitled as ‘Bombay Rent, Hotel and Lodging, Houses, Rents (Control Act), 1947’ was passed. This act was a temporary measure for about two years. It remained in force till 31st March, 2000. This Act was amended for 40 times upto 1987 and the life of this Act was extended from time to time.

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**CHAPTER 3: THREE DIFFERENT TYPES OF RENT ACTS IN**  
**MAHARASHTRA**

Prior to the passing of the Maharashtra Rent Control Act, 1999, there were three different Rent Control Laws made applicable simultaneously in the State of Maharashtra. They were in operation in three different areas of Maharashtra viz.,

- (i) The erstwhile Bombay State
- (ii) Vidharbha Area
- (iii) Marathwada Region

In the areas of the Central Provinces and Berar namely, the Vidharbha Area, which were formerly in the State of Madhya Pradesh and now are included in the State of Maharashtra, the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 issued under the General Provinces and Berar Regulation of Letting of Accommodation Act, 1949 was in operation.

In the Marathwada, which was formerly in the State of Hyderabad, now included in the State of Maharashtra, the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 was in operation. The Bombay Rent Act was a temporary Act, the duration has been extended from time to time inclusive of 31st March, 1996.

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The Rent Control Laws, which were in operation in the Vidharbha areas and Marathwada areas, were permanent laws. All these three laws had different provisions and courts who had different jurisdiction to decide matters, arising out of these laws were also not uniformed.

The Government of Maharashtra was conscious about the existence of three different Rent Laws in the State but it did not take any step seriously for providing a uniform law. During the course of time, many provisions of the three different Rent Control Laws outlived their utility. The State Government decided to unify, consolidate and amend the Rent Control Laws in the State and to bring the Rent Control Legislation in tune with the change circumstances. The Government of Maharashtra constituted a Rent Act Enquiry Committee in 1977 which is “Tambe Committee” to examine and to make recommendations with respect to unified legislation, or otherwise to suggest modifications in the existing three Rent Control Laws.

The State Law Commission also examined the three Rents Control Laws including the report and draft legislation prepared by the Tambe Committee. The State Law Commission had also attempted unification and revision of Rent Control Laws and in its Twelfth Report on the unification of Rent Restriction Laws, it has recommended to enact the unified and consolidated Rent Act for the entire State.

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The draft legislation prepared by the state Law Commission is similar to that of Bombay Rent Act, but with a view to give boost to the housing recommended to give exemptions to the new construction from the operation of the provisions of the Rent Law for a specified period. It also recommended for providing a periodic increase in the rent.

In the meanwhile, the Landlords challenged the validity of the Bombay Rent Act so far as it provides that the Landlords cannot change rent in excess of standard rent. The Hon'ble Supreme Court of India observed that,

*“...in so far as the social legislation, like Rent Control Act is concerned the law must strike a balance between the rival interest and it should try to be just to all. The Law not to be unjust and give a disproportionate benefit or protection to another section of the Society. Such a law has to be revised periodically.”*

The Government did not take remedial measures for revising the rent periodically. The Supreme Court made it very clear to enact a new rent Act by giving the balancing rights to the Landlords and the Tenants considering the circumstances and on the line of Model Rent Law or else would be invalid as being arbitrary and violative of **Article 14** under the Indian Constitution Act.

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The Government of Maharashtra was aware about the pathetic conditions of the landlords and the houses and therefore introduced the Maharashtra Rent Control Bill to unify, consolidate and amend the three rent control laws which were in the operation in the State. The Bill generally adapts the provision contain in the Model Rent Legislation with suitable modifications to suit the circumstances at present in the State. The Supreme Court of India has considered the aspect of house rent under the Bombay Rent Act very elaborately alongwith various other aspects and provisions related to the house rent and its impact on landlords and housing and has made his observations in the landmark judgement of *Malpe Vishwanath Acharya & Ors. V/s State of Maharashtra (AIR 1998 SC 602; (1998) Vol. 100 Bom. L.R. 56)* as follows :

*“...it is true that whenever a special provision like the Rent Control Act is made for a section of the society it may be at the cost of another section but the making of such provision or enactment may be necessary in the larger interest of the society as a whole but the benefit which is given initially if continued, results in increasing injustice to one section of the society and an unwarranted largesse or wind fall to another without appropriate corresponding relief then the continuation of such a law which necessarily and most likely*

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*leads to increase in lawlessness and undermines the authority of the law can no longer be regarded as being reasonable. Its continuance becomes arbitrary.”*

The Maharashtra Rent Control Act, 1999 came into force w.e.f. 31.03.2000. The Preamble to the Rent Act spells out the broad policy and purpose of the statute. From the act, it is crystal clear that the Act is enacted mainly for following reasons:

- (i) Controlling rents so that they may not exceed beyond the standard rent or the fair rate, as the case may be;
- (ii) Regulating the repairs of the premises which may be or are demised and;
- (iii) Encouraging the construction of new houses by assuring a fair return on the investments and to provide for the matters connected with the purposes aforesaid. find the one nugget he needs to prove his case.

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## **CHAPTER 4 : PURPOSE OF NEW LEGISLATION**

Many features of the old rent control laws had outlived their utility. The task of unifying, consolidating and amending the rent control laws in the State and to bring rent control legislation in tune with the changed circumstances, had been engaging the attention of the Government. Therefore, Government had initially appointed Rent Act Enquiry Committee to study and examine and also to make recommendations to the Government with respect to the unified legislation if considered desirable and feasible or otherwise to suggest modifications in the existing above three rent control laws. The Committee had in its report recommended that there should be one unified Act which should extend to whole of the State and in respect to the same, the Committee appended draft legislation to its report. Thus, the new Act was made after combining all the above three Acts and mainly contains the provisions to protect the honest and innocent tenant as well as to safeguard the rights and interests of needy landlord.

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**CHAPTER 5 : ANALYSIS ON MAHARASHTRA RENT CONTROL ACT,**

**1999**

The Maharashtra Rent Control Bill 1999 was passed with amendments made by both the Legislative Assembly and the Legislative Council, thereby aiming to unify the three different Rent Control Laws (as stated supra), in operation in the State of Maharashtra. The new Act called as the Maharashtra Rent Control Act, 1999 was finalized after making several changes in the Bombay Rent Control Act.

**5.1 : Applicability**

This Act shall apply to the premises let for the purposes of residence, education, business, trade or storage in the areas specified in Schedule I and Schedule II of the Act. This Act defines premises under **Section 9** which includes garden, garage and out houses if any appurtenant to such building or part of the building any fitting affixed to the building or part of the building for beneficial enjoyment, but does not include farm building, room or other accommodations in hotel and lodging houses.

This Act is also applicable to the premises let or given on License to Government or local Authority. But, there is an exemption of certain premises under **Section 3** of the Act.

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### 5.2 : Exemption

This Act does not apply to any premises belonging to the Government or a local authority, any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporations established either by the Central or State Act. As per **Section 3** of the said Act, certain premises are exempted i.e., premises belonging to the Government or local authority or Government as Tenant, Licensee. Similarly, any premises let or sub-let to banks or any Public Sector Undertaking or any Corporation established by or under any Central or State Act or Foreign Mission, International Agency, Multinational Company and Private Limited Company and Public Limited Companies having a paid up share capital of Rs. 1 Crore or more are exempted from application of this Act.

### 5.3 : Salient Features of the New Act

The major changes effected by the new Act are as under :

- i) The definition of 'premises' does not include land. Therefore, tenancy or lease only of land will not include land. Therefore, tenancy or lease only of land will not be governed by the Act.
- ii) The Act does not make separate provisions for Hotels and Lodging House.

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- iii) The Act applies to the whole State of Maharashtra including the areas known as Vidharba and Marathwada. The Rent Acts applicable to these areas are repealed.
- iv) The premises to which the Act applies are buildings or structures or parts thereof and the land appurtenant thereto including garages and outhouses thereon.
- v) From the commencement of the Act that is from 31st March, 2000 the landlord will be entitled to increase the rent by 4% per annum in respect of premises let for purposes of residence, education, business, trade or storage.
- vi) The landlord can also increase rent reasonable for any improvement or structural alteration to premises carried out with the written consent of 70% of the tenants.
- vii) The landlord is also entitled to increase the rent by amount not exceeding 15% per annum of the expenses incurred due to special alterations made or additional amenities provided.
- viii) Agreement for grant of tenancy or license is required to be in writing and registered under the Registration Act.
- ix) Prohibition against receipt of Pagdi or premium for transfer or relinquishment of tenancy is removed and the same is legalized.

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- x) Landlord can also charge fine, premium or deposit as consideration for grant or renewal of a lease of any premises or giving consent thereto.
- xi) A 5% increase is allowed on the standard rent fixed under Section 7(14) (a) and (b)(ii).

5.4 : Rights and Duties of Landlord under the Maharashtra rent Control Act, 1999

The Maharashtra Rent Control Bill, 1999, specifies both, the rights and duties of the landlord –

5.4.1: Fixing and Increasing Rent

It is the landlords prerogative to fix the rent and increase it at the rate of four percent per annum from the date of the commencement of the Act. The landlord can also increase the rent at the rate of 15 percent per annum for improvements and alterations provided 70 percent tenants consent in writing. The landlord can also increase rent at 25 percent per annum for special or structural repairs, exclusive of any repairs carried out under the Maharashtra Housing & Area Development Authority (**MHADA**) Act. He can also increase rent due to any increase in taxes.

5.4.2 : Duty to keep premises in good repair

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According to the Act, every landlord shall be bound to keep the premises in good and tenantable repair. If he neglects to make any repairs, within a reasonable time after a notice of fifteen days is served upon him by post or in any other manner by a tenant or jointly by tenants interested in such repairs, such tenant or tenants may themselves make the same and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord. Provided further that, the amount so deducted or recoverable in any year shall not exceed one-fourth of the rent payable by the tenant for that year.

**5.4.3 : Eviction of the Tenant**

**Section 16 (1)** of the Act provides that the landlord may recover possession subject to the provisions under Section 25. **Section 25** states that a landlord is entitled to recover possession of any premises if the court is satisfied that the premises are reasonable and authentic. The landlord can also recover possession if the tenant, without the permission / consent of the landlord given in writing, erects any permanent structure on the premises. If the tenant, his agent, servant, people claiming under the tenant or anyone residing with the tenant has been found guilty of conduct which is an annoyance or nuisance to the adjoining house, the landlord can recover possession. Moreover, if the tenant has been convicted of using the

premises or allowing the premises to be used for illegal or any other unauthentic  
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purpose then also he is found accountable. Tenant can be evicted on following grounds :-

- 1) Non-payment of rent within the stipulated time period
- 2) Sub-letting the entire building or portions of it without due authority and permission
- 3) Using the building for a purpose other than for which it was leased.
- 4) Committing acts, which are likely to impair materially the value and the utility of the building or change its identity.
- 5) Tenant has been convicted under any law for using the building or allowing the building to be used for immoral or illegal purposes.
- 6) The tenant is guilty of such acts, which are a nuisance to those residing in other portions of the same building or those in the neighbourhood.
- 7) The tenant has ceased to occupy the building for a continuous period of a certain number of months, without reasonable cause.
- 8) The tenant has denied the title of the landlord and claimed the right to permanent tenancy, and the denial and the claim are not bona fide.
- 9) The landlord requires the building for his own occupation, bona fide.
- 10) The tenant is occupying the building as a part of his contract of employment with the landlord and the occupation has now ceased.

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- 11) The tenant has given notice to quit, but has failed to deliver vacant possession of the premises to the landlord in accordance to such notice.
- 12) The tenant has acquired or constructed a house or a flat.
- 13) Immediate eviction of tenant can be undertaken on the expiry of period of limited tenancy as per provisions of the agreement.
- 14) The tenant has done any act contrary to the provisions of the Transfer of Property Act, 1882.

#### 5.4.4 : Rules for Rebuilding

The landlords have to meet various conditions for rebuilding purposes. They need to carry out certain undertakings, as mentioned in the sub-section 6, which are :

- 1) Securing sufficient funds to carry out the work.
- 2) Plan for the proposed building should be prepared and approved by municipal authorities.
- 3) The number of residential units in the new building should not be less than the number of residential units in the old building.
- 4) Demolition work of the old building needs to be completed within three months and the new building should be completed within 15 months thereafter.

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- 5) The carpet area of premises in the new building must be the same as in the old building.
- 6) If the landlord gives an undertaking that the carpet area of premises allowed in the new building are same as was in the old building, then the premises in the new building will be offered to the tenants of the old building.

#### 5.4.5 : Leave and License Agreement

**Section 55** of the Maharashtra Rent Control Act, 1999, provides that any agreement for leave and license or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the commencement of this Act, shall be in writing and shall be registered under the Registration Act, 1908. The responsibility of getting such agreement registered shall be on the landlord and in the absence of the written registered agreement, the contention of the tenant about the terms and conditions subject to which a premises have been given to him by the landlord on leave and license or have been let to him, shall prevail, unless proved otherwise. Any landlord who contravenes the provisions of this section shall, on conviction, be punished with imprisonment which may extend to three months or with fine not exceeding rupees five thousand or with both.

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**Under Section 55(1)** of the said Act, it is clear that only the agreement of tenancy or leave and license executed between the landlord and tenant or the landlord and the licensee is required registration.

*5.4.6 : Responsibility for Repair of Premises*

According to the said Act, every landlord is bound to keep the premises in a good condition. If the landlord neglects repairs, the tenant can serve them with a notice of fifteen days. If the landlord refuses to comply with the notice, the tenant is eligible to make the repairs themselves and deduct the expenses of the repairs from their rent or recover the amount otherwise. The recoverable amount should not exceed one-fourth of the rent payable by the tenant for that year.

*5.4.7 : The Legislation of the Pagdi System*

In case of redevelopment of old properties in Mumbai, there is a reference to pagdi properties. Pagdi refers to the consideration paid to a landlord as a fine, premium or the consideration that has been legalised under Section 56 of the Rent Control Act 1999. The pagdi system has provided an assurance to the tenant, that despite price inflation or other fluctuations, their paid rent will be nominal. In few areas of South Mumbai, the pagdi system is prevalent where some tenants pay a rent of Rs. 500 per month even when market rates might be as high as Rs. 60,000.

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### 5.5 : Rights of a Tenant

The Rent Control Act is established not only to protect the landlord and their property but also to protect the tenant. Under the Act, the few important rights that are given to the tenant are:

#### 5.5.1 : Protection against unfair Eviction

Under the Act, the landlord cannot evict the tenant without sufficient reason or cause. The rules of eviction are slightly different from state to state. In some states for the landlord to evict a tenant, he/she must approach the court and obtain a court order for the same.

According to this said Act, the 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.

The landlord cannot file any suit against the tenant on the ground of non-payment of the standard rent or 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.

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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.

*5.5.2 : Protection against New Proposals*

The landlord when letting out a house cannot charge extraordinary amounts in rent. The valuation of a property for rent is to be dependent on the value of the property. If the tenant feels that the amount of rent that is being asked is too much compared to the value of the property, he/she may approach the court to seek redressal. Usually, the rent is to be between 8% and 10% of the value of the property, including all costs incurred via construction and fixtures on the property.

*5.5.3 : Essential Services*

It is the basic right of the tenant to enjoy essential services such as water supply, electricity etc. A landlord doesn't have the right to withdraw these services even if the tenant has failed to pay rent with regards to the same property or a different one

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## **CHAPTER 6 : IMPORTANT PROVISIONS OF THE ACT**

### *6.1 : Section 8*

The Court may fix standard rent and permitted increases in certain cases upon an application made to it 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. If application for fixing standard rent or for determining the permitted increase is made by the tenant, the Court shall forthwith specify the amount of rent or permitted increases which are to be deposited in Court by the tenant. Even at any stage of the Suit for recovery of rent, whether with or without claim for possession of the premises, the court is satisfied that the rent is excessive and standard rent should be fixed, the court may make order directing the tenant to deposit in court forthwith such amount.

### *6.2 : Section 14*

Duty casted upon the landlord to keep premises in good repair. If the landlord neglects to make any repair which he is bound to make as per rule and after a notice of fifteen days is served upon him by tenant in such repair, then such tenant may make the same and deduct the expenses of such repairs from the rent. It is an

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important provision in favour of the tenant because in most of cases, it is seen that landlord keep the premises in such a condition that no one can stay there. So to curb such tactics this provision is made in this Act.

**6.3 : Section 16**

Landlord may recover possession under following grounds :

(1) Notwithstanding anything contained in this Act **but subject to the provisions of Section 25**, a landlord shall be entitled to recover possession of any premises if the court is satisfied-

(a) that the tenant has committed any act contrary to the provisions of clause [o] of Section 108 of the Transfer of Property Act, 1882;

(b) that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure;

(c) that the tenant, his agent, servant, persons inducted by tenant or claiming under the tenant or, any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupier, or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purposes or that the tenant has in respect of the premises been convicted of an offence of contravention of

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any of the provisions of clause (a) of Sub-section (1) of Section 394 or of Section 394A of the Mumbai Municipal Corporation Act, or of Sub-section (1) or of Section 376 or of Section 376A of the Bombay Provincial Municipal Corporations Act, 1949, or of Section 229 of the City of Nagpur Municipal Corporation Act, 1948; or of Section 280 or of Section 281 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965; or

(d) that the tenant has given notice to quit and in consequence of that notice, the landlord has contracted to sell or let the premises or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession of the premises; or

(e) that the tenant has,

(i) on or after the 1st day of February 1973, in the areas to which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 applied; or

(ii) on or after the commencement of this Act, in the Vidarbha and Marathwada, areas of the State, unlawfully sub-let or given on license,

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the whole or part of the premises or assigned or transferred in any other manner his interest therein; or

(f) that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after commencement of this Act, to be in such service or employment; or

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust; or

(h) that the premises are reasonably and bona fide required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated; or

(i) that the premises are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished; or

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- (j) that the premises let consist of a tenement or tenements on the terrace of a building such tenement or tenements being only in part of the total area of the terrace, and that the premises or any part thereof are required by the landlord for the purpose of the demolition thereof and erection or raising of a floor or floors on such terrace
- (k) that the premises are required for the immediate purpose of demolition ordered by any municipal authority or other competent authority; or
- (l) that where the premises are land in the nature of garden or grounds appurtenant to a building or part of a building, such land is required by the landlord for the erection of a new building which a municipal authority has approved or permitted him to build thereon; or
- (m) that the rent charged by the tenant for the premises or any part thereof which are sub-let is in excess of the standard rent and permitted increases in respect of such premises or part or that the tenant has received any fine, premium other like sum of consideration in respect of such premises or part; or

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(n) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.

**Case Law: Deena Nath v. Pooran Lal, [2001] 3 SCR 925.**

***“Bona fide requirement has to be distinguished from a mere whim or fanciful desire. The bona fide requirement is in presenti and must be manifested in actual need so as to convince the Court that it is not a mere fanciful or whimsical desire.”***

**6.4 : Section 28**

It deals with the rights of the landlord to inspect the premises let or given on licence, at a reasonable time after giving prior notice to the tenant, licensee or occupier.

**6.5 : Section 29**

It puts a restriction on the landlord for not to cut-off or withhold any essential supply or services of the tenanted premises.

**6.6 : Section 31**

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As per the Act, it is mandatory for the landlord to issue receipt for any amount received in respect of the premises.

6.7: Section 53

(1) Offences under **Section 10** shall be **Non-Cognizable** offence :

Charging rent in excess – imprisonment upto 3months or fine upto Rs. 5000/- or both ;

(2) Offences under Sections 17-19, 21, 29, 30 ad 31 shall be **Cognizable** offence :

(i) Section 17

Failure to commence the work of repairs after the tenant has vacated the premises by the date as specified in the Decree or fails to comply with the Court's Order of repossession after repairs – Imprisonment for 3 months or fine upto Rs. 1000/- or both ;

(ii) Section 18

Failure to occupy the premises recovered on the ground of bonafied requirement - Imprisonment for 3 months or fine upto Rs. 1000/- or both ;

(iii) Section 19

Failure to carry out any undertaking given to the Court or failure to comply with Court's Order under a decree obtained on the ground of bona fide requirement

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by the landlord for demolishing the premises for the immediate purpose of erecting new building- Imprisonment for 30 days or fine upto Rs. 5000/- or both;

(iv) Section 21

Failure to intimate to tenant the date on which the erection of the new building shall be completed - Imprisonment for 3 months or fine upto Rs. 5000/- or both ;

(v) Section 29

To cut-off or withhold essential supply or service - Fine upto Rs. 100/- for each day of default ;

(vi) Section 30

Conversion of residential into commercial premises by landlord - Imprisonment for 6 months or fine upto Rs. 10,000/- or both;

(vii) Section 31

Failure to issue the rent receipt - Fine upto Rs. 100/- for each day of default;

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**CHAPTER 7 : DETAILS MANDATORY WHILE FILLING A SUIT :**

The Complaint shall be presented in duplicate and comprise of the following details:

- 1) Name of the Court where the suit is brought [**Order 7 Rule 1(a) of CPC**]
- 2) Name, place and description of residence of plaintiff/s [Order 7 Rule 1(b) of CPC]
- 3) Name, place and description of residence of defendant/s [Order 7 Rule 1(c) of CPC]
- 4) Facts constituting the cause of action and when it arose [Order 7 Rule 1(e) of CPC]
- 5) Facts point out to the jurisdiction of the Court [Order 7 Rule 1(f) of CPC]
- 6) Statement of value of the subject matter of the suit for the purpose of jurisdiction and court fees [Order 7 Rule 1(i) of CPC]
- 7) Reliefs claimed by the plaintiff or on the alternative [Order 7 Rule 1(g) of CPC]
- 8) Where the plaintiff files a suit in a representative capacity the facts showing that the plaintiff has an actual existing interest in the subject matter and he has taken steps that may be necessary to enable him to file such a suit [Order 7 Rule 4 of CPC]

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- 9) Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished [Order 7 Rule 1(h) of CPC]
- 10) Where the suit is for recovery of money, the precise amount claimed [Order 7 Rule 2 of CPC]
- 11) Where the suit is for accounts or mesne profits or for movables in the possession of the defendant or for debts which cannot be determined, the approximate amount or value thereof [Order 7 Rule 2 of CPC]
- 12) Where subject matter of suit is an immovable property, a description of the property sufficient to identify e.g., boundaries, survey numbers etc; [Order 7 Rule 3 of CPC]
- 13) The interest and liability of the defendant in the subject matter of the suit [Order 7 Rule 5 of CPC]
- 14) Where the suit is time-barred, the ground upon which exemption from the Law of Limitation is claimed [Order 7 Rule 6 of CPC]
- 15) Plaintiff's Signature and Verification (verifying and acknowledging the facts of the matter) alongwith the date and place, at the end of the Plaint is essential. The verification can only be done before a competent court or in front of an oath commissioner. (In case of Power of Attorney, the original Power of Attorney has to be shown during the verification process).

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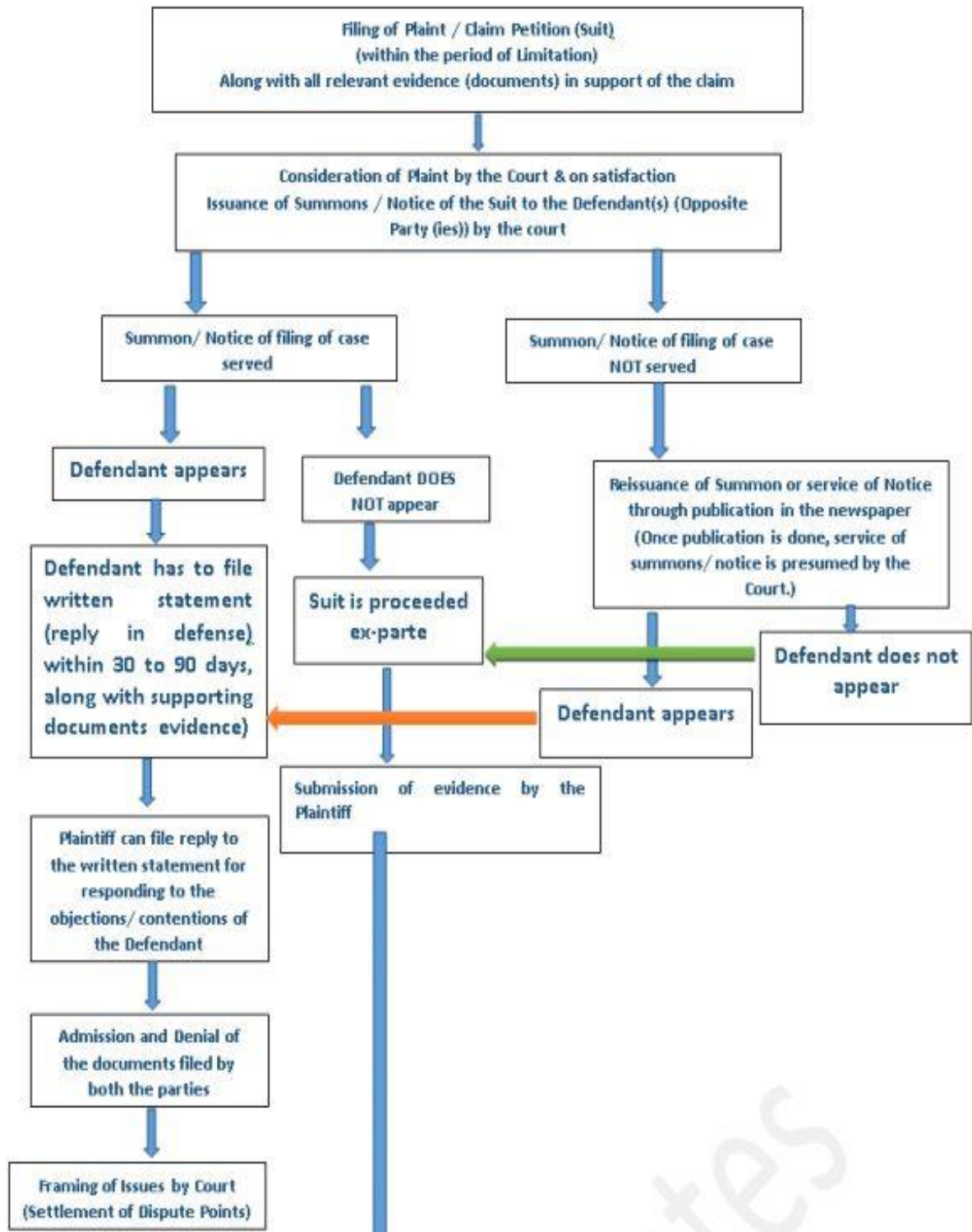
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- 16) Copy of the Relevant and supporting documents proving the case, should be notarized before filling (a document which ought to be presented by the plaintiff at the time of presenting the plaint is not produced then the same will not be received in evidence).
- 17) Affidavit-in-Support of the person (plaintiff) who is filling the suit or the authoritative representative of the Plaintiff needs to succumb on oath the facts of the matter.
- 18) Vakalatnama is to be affixed on the last page of Plaint / Suit and is kept alongwith the Court records.

**7.1 : FLOWCHART DISCLOSING FILLING PROCESS IN CIVIL MATTERS**

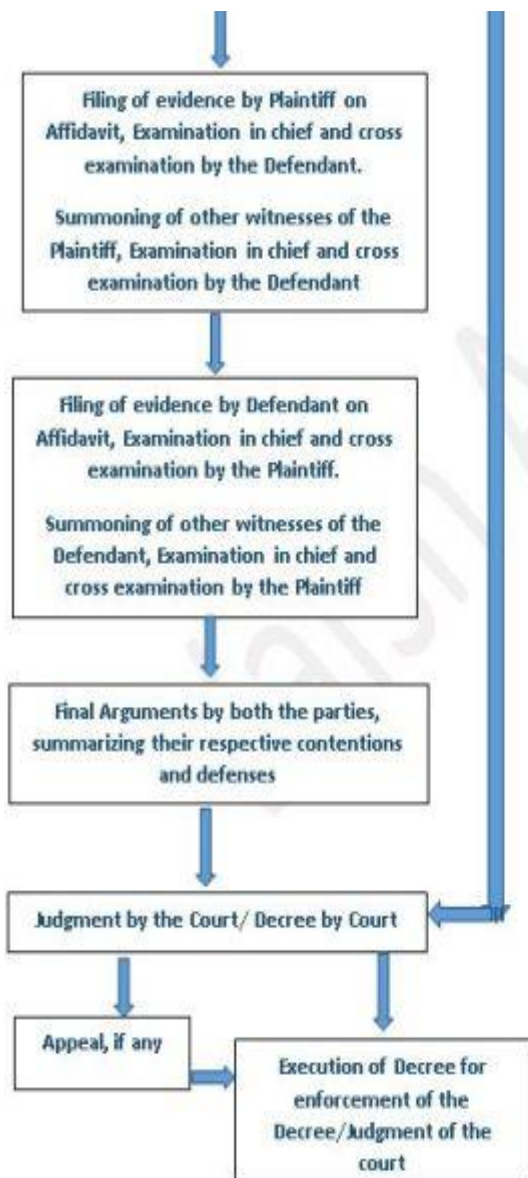
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## **CHAPTER 8 : PROCEDURE FOR FILLING SUIT IN SMALL CAUSES**

### **COURT**

#### *8.1 : Plaint*

Plaint is a legal document which contains the statement of Plaintiff's claim. Plaint is the first step towards the initiation of a suit. It can be said to be a statement of claim, a document, by the presentation of which the suit is instituted. However, the expression "Plaint" is defined in **Order 7** of the Civil Procedure Code, 1908. **Order 7 Rule 1 to 8** relates to the particulars in a plaint. Order 7 should be read with Section 26 of the Civil Procedure Code.

Suit can be filed in Small Causes Court under **Sections 16(1)(a), 16(1)(g), 16(1)(n)** [as per the facts of the case] of the Maharashtra Rent Control Act alongwith Section 108(o) of Transfer of Property Act.

#### *8.2 : Issue of Summons to the Defendant*

**Order 7 Rule 9** of the Civil Procedure Code lays down the procedure on Plaint being admitted. Once the plaint is presented and admitted by the Court, the next step involves issuing of summons to the Defendant. The summons is issued to the Defendant to appear and answer the claim. As per **Section 27** of Civil Procedure

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Code, 1908 Defendant/s is given a period of 30 days from the date of summons received to answer the claim via filing its Written Statement.

8.3 : Modes of Services of Summons :

(i) For defendant/s residing within jurisdiction of the Court in which plaint is presented – Service of summon may be made by delivering or transmitting a copy of the summons :

- a) Registered post acknowledgement due
- b) Speed post

(ii) For defendant not residing within jurisdiction of the Court in which plaint is presented - **Order V Rule 9 (4)** of Code of Civil Procedure, 1908 states that in such a case if the Court directs that the service of summons shall be made by any of the aforesaid (except by registered post acknowledgment due), the provisions of Rule 21 shall not apply. **Rule 21** provides for the service of summons where defendant resides within the jurisdiction of another Court.

(iii) Presumption as to the service of summons :

A summon shall be taken to be duly served if the article containing the summons has been received back with the endorsement of the person authorized by the courier service that the defendant or his agent has refused to accept the summon.

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(iv) Where summons or notice by registered post is sent at the given and correct address, there is a presumption of due service.

(v) In case of Defendant refusing to accept the service through bailiff, substitute service through publication can be made.

#### 8.4 : Appearance of Parties :

When the summons is duly served upon the defendant/s, both the parties are required to be present before the court on the next date as fixed by the court. In the event, if defendant doesn't appear before the court on several dates, then the court may proceed as 'Ex-parte' against the Defendant. Likewise, if Plaintiff fails to remain present before the court for several dates, then the court has the power to dismiss the suit.

#### 8.5 : Ex-Parte Decree

In the event when the Plaintiff appears and the Defendant fails to appear before the Court when the suit is called up for hearing despite of the summons been duly served upon the Defendant, the court may pass an Order of hearing and proceeding as ex-parte with the matter under **Order 9** of the Civil Procedure Code, 1908.

#### 8.6 : Filing of Written Statement by the Defendant

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It is the pleading / reply of the Defendant wherein he deals with the material facts alleged by the Plaintiff in his plaint and also states any new facts in his favour or takes legal objections against the claim of the plaintiff. In the case of *Food Corporation of India v. Yadav* ([1982] 2 SCC 499), the Hon'ble Supreme Court of India observed that :

*“it is a term of specific connotation ordinarily signifying a reply to the plaint filed by the plaintiff”.*

**Order 8** of Code of Civil Procedure, 1908 requires that the Defendant shall file his written statement within 30 days from the date of service of summons on him. However, the Court on recording reasons can extend the time to file written statement on any other day, which shall not go beyond 90 days (**Order 8 Rules 1 of CPC**) from the date of service of summons.

In the event of more than 1 defendant, each defendant needs to file their individual written statement as written statement filed by one defendant does not binds on other defendants. Besides this, defendant/s can claim to set off any sums of money payable by the plaintiff to him as a counter defence. In the event of defendant having any claim against the plaintiff relating to any matter in the issue raised in the plaint, then he can separately file a counter claim alongwith their written statement (Order 8 Rule 6A – 6G).

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*8.7 : Rejoinder filed by the Plaintiff*

The Written Statement filed by the Defendant can also include the details of counter-claim. This all the documents upon which the counter-claim is based should be presented to the court with the counter-claim. The Plaintiff may file a rejoinder against the counter-claim.

*8.8: Filling of Documents referred by the parties:*

After filing of Written Statement, the next stage is the production / filing of documents by the parties referred and relied by them in their pleadings. In this stage, both the parties have to file those documents relied by them and which are in their possession to support their case. Documents filed by one party, may or may not be admitted by the opposite party stating the reasons for denial. Once, documents have been admitted, it forms a part of record of the suit. The documents denied, are returned back to the respected party.

In the event where parties rely on such a document which is not in their possession, then in such a case, parties will have to apply to the court to issue summons to such authority or person in whose possession the documents would be. Pursuant to serving of summon on the defendant, the defendant has to refer to a copy of the plaint and if any documents are referred to in the plaint, of which the defendant has

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not got copies, a notice shall be given to the plaintiff or his pleader to produce the documents for inspection.

*8.9 : Examination of Parties by the Court*

After filing of the written statement, production of documents and appearance of the parties, one of the important stages is the Examination of parties. At the first hearing of the suit, the Court ascertains from each party or their pleader whether they admit or deny such allegations as made in the plaint and written statement. Such admissions and denials are recorded by the Court.

*8.10 : Framing of Issues by the Court*

It is the duty of the Court to frame issues pertaining to the suit under **Order 14** of the Civil Procedure Code, 1908. Issues arise when the allegations of the parties are denied by the other and in the end, the judgement is given individually explaining each of the issues. Issues can be issue of fact or issue of law. The Court may frame issues by referring the plaint and written statement or may even refer the drafts as produced by the parties.

*8.11 : Amendment in Pleadings*

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An application for amendment of pleading can be made at any stage of proceeding. It can be made by either of the party or their legal heirs in the event of death of any party. An application for amendment of pleading will not entertained after trial commences, unless the Court is of the opinion that inspite of due diligence, a party could not have raised the matter before the commencement of the trial.

*Case Law : Rajendar Kumar v. Dipinder Kumar Sethi (AIR 2005 SC 1592),*

The Hon'ble Supreme Court of India opined that generally all amendments would be allowed which are necessary for the purpose of determining the real question in controversy between the parties to any proceedings or for correcting any defect or error in any proceedings.

#### 8.12 : Evidence and Examination-in-Chief of the Plaintiff and their Witnesses

The Plaintiff himself or the person whom he/she wishes to make his/her witness to support their case, has to file their Affidavit of Evidence, stating on oath the true facts supported with the documents which were marked earlier in the initial stage. Accordingly, the person has to step in the witness box before the court as per the date fixed by the court for his Examination-in-Chief by the Defendant's Advocate. The same are recorded before the Court in the proceedings.

#### 8.13 : Evidence and Cross Examination of the Defendant and their Witnesses

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After completion of the Plaintiff's witness, it's the Defendant's turn to produce his Evidence and documents supporting his case. Defendant himself or the person whom he/she wishes to make his/her witness to support their case, has to file their Affidavit of Evidence, stating on oath the true facts supported with the documents which were marked earlier in the initial stage. Accordingly, the person has to step in the witness box before the court as per the date fixed by the court for his Cross Examination by the Plaintiff's Advocate. The same are recorded before the Court in the proceedings.

#### *8.14 : Final Hearing*

Once the Evidence has been submitted and Examination-in-Chief and Cross-Examination is completed of both the parties, they are at liberty to file their written argument or argue the matter in length to the extent the issues had been framed and the documents which had been admitted by the Court.

#### *8.15 : Judgement / Decree / Final Order*

The Judgement contains the decisions taken by the court on all the issues that were framed by the court in the beginning. After hearing both the parties, the Court delivers its Judgement / Final Order either on the same day or after 15 days of the final Hearing. In the event if judgement is not delivered within 30 days of the final

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hearing, then the reasons of the same are to be specified in the Final Order. The Judgement is signed and dated by the Judge and a copy of the same is provided to both the parties.

The person in whose favour the Judgement has been passed is known as “**Decree Holder**” and the person against whom the Judgement is passed is called as “**Judgement Debtor**”.

#### 8.16 : Challenging the Decree / Final Order

If a party against whom the Order has been passed is not satisfied with the Judgement passed, then that party can challenge the said Judgement and initiate further proceedings like :-

##### 8.16.1 : Appeal:

A party can appeal in the appellate court against the original decree under **Section 96** of the Civil Procedure Code, 1908. A memorandum needs to be filed in the Appellate Court specifying the grounds of objection.

- An Appeal has to be filed in the form prescribed, signed by the Appellant alongwith true certified copy of the Final Order.
- An appeal should contain grounds of objection under distinct heads and such grounds shall be numbered consecutively.

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- A ground / objection which has not been taken in the lower court, cannot be taken up for Argument without the permission of the Appellate Court.
- Only those grounds and points can be argued which are challenged from the Final Order.
- The Court on the very first day of Hearing (Admissibility of Appeal) may accept, reject or send back the Appeal to the appellant for modifications.
- If the Appellate Court accepts the appeal, it shall send a notice to the lower court (who decree is being appealed) in order to study the facts and relevancy of the matter.
- If the Appellate Court finds sufficient cause for stay on the execution of decree, then it may order to do so.
- The Appellant Court may confirm, vary or reverse the original decree in its Judgement.
- An Appeal should be filed within 30 days from the date of Final Order / Decree passed by the lower court.

#### 8.16.2 : Review

The aggrieved party can also file a Review Application before the Appellate Court to review the Decree passed by the Court.

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8.16.3 : Revision

The aggrieved party also has an option of revising the Decree passed by the Court by filling a Revision Application before the Appellate Court to revise the Decree in the event of Decree not passed appropriately as per the reliefs claimed.

8.17 : Trial Proceedings

(i) During the proceedings, Court may grant time and adjourn hearings with or without cost (**Order 17** of Civil Procedure Code, 1908)

(ii) The suit can be compromised, settled or withdrawn at any point of time (**Order 23** of Civil Procedure Code, 1908)

(iii) Under **Order 26** of Civil Procedure Code, 1908, either of party can file an application for appointment of Court Commissioner for :-

- Examination of Witnesses
- Local investigation
- Scientific investigations
- Performance of a ministerial act
- Sales of movable or immovable party

(iv) The Court can pass Temporary Injunction and Interlocutory Orders under (**Order 39** of Civil Procedure Code, 1908) for :-

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- Preserving the subject matter of the suit
- Preventing the Defendant from removing or disposing the property;
- Preventing irreparable loss or injury;
- Prevent continuation of breach of any right



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## **CHAPTER 9 : TYPES OF SUITS FILED IN SMALL CAUSES COURT :**

There are five (5) types of Suits filed in the Hon'ble Small Causes Court. They are as follows :

1. Rent and Eviction (RAE)
2. Rent Act Declaration Suit (RAD)
3. Rent and Eviction Revision Suit (RAER)
4. L. E. C. Suit
5. R. A. N. Suit

### **9.1 : Rent and Eviction Act (RAE)**

*Finding a tenant is easy, and is one of the most convenient ways to earn money, however, a person takes a huge risk in leading out his property to a stranger. Nowadays, landlords take extreme precautions to avoid situations especially, when it comes to the situation where it is the need to evict the tenant who is neither paying the rent nor vacating the property and are equally well-versed with the rules and regulations relating to the rental laws, rights of the landlords and tenants under the Rent Control Act passed by the Government of India in 1948.*

This Act was implemented by the State Governments to regulate the rentals of the properties and evictions of the tenants. Under this Act, a Rent Agreement needs to

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be signed between the landlord and the tenant stating the details of the rented property, the rent period, monthly rent amount and the parties involved.

The purposes of the Rental Agreement can be commercial or residential. If the premises has been rented for commercial purposes then the landlord can evict the tenant only under the following conditions :

- (i) The landlord has to show that the tenant has an alternative place to do business
- (ii) If he is not abiding by the terms and conditions of the rental agreement.
- (iii) If he is using the property for some unlawful/ illegal purposes.
- (iv) If he is causing any damage to the property.
- (v) The most important ground is that the landlord himself is in need of the premises. To prove this the landlord needs to show that
  - (a) The landlord himself is using a rented property.
  - (b) And the said premises are convenient and cost-effective for him.

If the premises is being rented for residential purposes then the grounds of eviction shall be :

- (i) The owner himself is using another rented premises,
- (ii) The subsequent purchaser of the property wants to evict the tenants,
- (iii) If the tenant is using the property for any unlawful or illegal purposes,
- (iv) Or the tenant has caused some damage to the property.

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Case Law:

**Shri Gopalkrishna Deosthan Vs. Padmakar S/o Raghunathji Dighe**  
**(26.02.2020)**

The said provision, came for further consideration of the Hon'ble Bombay High Court in M/s. Mohanlal Kisanlal Agrawal & Ors. (supra) wherein it has been held thus:

"16. Provisions of Bombay Rent, Hotel and Lodging Houses Rates (Control) Act contains an identical provision like present Section 16[1][g] of the Maharashtra Rent Control Act. That provisions is Section 13[1][g]. The said provision is considered in judgment in case of *Bandu Ravji Nikam Vs. Acharyaratna Deshbhushan Shikshan Prasarak Mandal, Kolhapur [2003(1) ALL MR 198]* (supra), by this Court in the light of its earlier judgment reported Judgment at AIR 1973 Bombay 46 - *Kishinchand Murjimal and others Vs. Bai Kalavati and others*. It is found that being Public Trust, requirement of pleading as well as proof to establish the ground under Section 13[1][g] of the Bombay Act is different than one required to be shouldered by any other landlord. The distinction between two parts of Section 13[1][g] is

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noted for said purpose. Section 16[1][g] of the Maharashtra Rent Control Act, 1999 is pari-materia and that discussion is also material for present purpose. This Court in 1973 judgment holds that if the Legislature intended that the requirement of the trustees should also be proved to be bona fide and reasonable they would have stated so. Instead they have merely used the words, "or where the landlord is trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust". It is an alternative ground in respect of premises belonging to public charitable trusts added to the ground which originally stood in Clause (g) of Section 13(1), by Bombay Act 61 of 1953 to advance the cause of public charity by not allowing it to suffer for want of accommodation. The ground merely requires the trustees to establish that there is some requirement importing an element of necessity which compels them to file a suit for eviction. This logic applies here also & the contention that rigorous standards required to be applied to a case of private landlord while examining his bonafide need must also apply to public trust like present respondent no.1, therefore, cannot be accepted. I do not find anything

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wrong with the concurrent consideration even in this respect by the Appellate Court and Trial Court".

**9.2 : Rent Act Declaration (RAD) and Rent and Eviction Revision (RAER)**

Suit for declaration is the most common and effective types of civil suits. It seeks the relief of declaration and injunction on the basis of the declaration of the court. Suit for declaration is a declaration from the court on any issue by way of a decree of the court. The relief of injunction in a suit for declaration is the consequential relief in most cases.

**Section 34 and 35** of the Specific Relief Act lay down the law relating to declaratory decrees. A declaratory decree is a decree declaratory of a right which is doubtful or which requires to be cleared or pronounced by the courts in favour of the person approaching the court. The object of the declaratory decrees is to prevent future litigation by removing the existing cause of the controversy. In other words, if a cloud is cast upon the title or legal character of the rights of the plaintiff in any manner, he is entitled to seek the aid of the court to dispel it by way of a suit for declaration. The court considers the rival contentions and passes a decree of declaration establishing the rights of the parties to the suit.

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9.2.1 : PROVISION OF LAW RELATED TO SUIT FOR DECLARATION :

**Section 34** of the Specific Relief Act lays down the circumstances under which a declaratory decree may be passed. It provides:

“Discretion of court as to declaration of status or right” - Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

*Section 34 of the Specific Relief Act does not sanction every kind of declaration but only a declaration that the plaintiff is entitled to any legal character or to any property. It is not a matter of absolute right to obtain a declaratory decree and it is discretionary with the court to grant or refuse to grant it.”*

**Section 35 – Effect of Declaration**

A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the

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parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

*9.4 : L. E. C. SUIT :*

**Section 24** of the Maharashtra Rent Control Act defines: Landlord entitled to recover possession of premises given on license on expiry.

- (i) Notwithstanding anything contained in this Act, a licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence, by making an application to the Competent Authority, and, the Competent Authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of a licensee.
- (ii) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be

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liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.

(iii) The Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence.

Explanation- For the purposes of this section,-

- a) the expression "landlord" includes a successor-in-interest who becomes the landlord of the premises as a result of death of such landlord; but does not include a tenant or a sub-tenant who has given premises on license;
- b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein.

9.5 : R. A. N. Suit :

It is an Application filed for fixing the standard rent by the Court. As per **Section 7(14)** of the Maharashtra Rent Control Act, the term 'Standard Rent' has been defined as follows:

**"standard rent"**, in relation to any premises means,-

- a) where the standard rent is fixed by the Court or, as the case may be, the Controller under the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 or the

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Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, or the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 issued under the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946, or the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, such rent plus an increase of 5 per cent, in the rent so fixed; or

- b) where the standard rent or fair rent is not so fixed, then subject to the provisions of sections 6 and 8,
  - i. the rent at which the premises were let on the 1st day of October 1987; or
  - ii. where the premises were not let on the 1st day of October 1987, the rent at which they were last let before that day, plus an increase of 5 per cent, in the rent of the premises let before the 1st day of October, 1987, or
  - iii. any of the case specified in section 8, the rent fixed by the court;

As per **Section 8** of the Maharashtra Rent Control Act, the 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

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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

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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.

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(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.

As per **Section 9** of the Maharashtra Rent Control Act, No applications for standard rent in certain circumstances.

No court shall, upon an application or in any suit or proceeding, fix the standard rent of any premises under **Section 8**, or entertain any plea that the rent or increases are excessive, if the standard rent or the permitted increase in respect of the same premises have been duly fixed by a competent court on the merits of the case, without any fraud or collusion or an error of the facts, and there has been no

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structural alterations or change in the amenities or in respect of any other factors which are relevant to the fixation of the standard rent, or change in such increases, thereafter in the premises.

As per **Section 10** of the Maharashtra Rent Control Act, Rent in excess of standard rent illegal.

- (1) Save as otherwise provided in Section 6, it shall not be lawful to claim or receive on account of rent, for any premises any increases above the standard rent and the permitted increases, unless the landlord was, before the coming into operation of this Act, entitled to recover such increase by virtue of, or under, the provisions of any of the repealed Acts or is entitled to recover such increase under the provisions of this Act;
- (2) Any contravention of provisions of sub-section (1) shall be an offence punishable, on conviction, with imprisonment not exceeding three months or fine not exceeding rupees five thousand or with both.

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1. Akansha Harjai, Associate Research Analyst, 99acres.com available at [99acres.com/articles/all-about-the-maharashtra-rent-control-act.html](http://99acres.com/articles/all-about-the-maharashtra-rent-control-act.html)
2. Encyclopedia.com available at <https://www.encyclopedia.com/social-sciences-and-law/economics-business-and-labor/economics-terms-and-concepts/rent-control>
3. Vakilno1.com available at [vakilno1.com/bareacts/laws/steps-involved-filing-suit.html](http://vakilno1.com/bareacts/laws/steps-involved-filing-suit.html)
4. Commonfloor.com available at <https://www.commonfloor.com/guide/the-maharashtra-rent-control-act-1999-an-analysis-49476.html>
5. SoOLEGAL available at <https://www.soolegal.com/rc/the-basic-court-procedure-for-filing-a-civil-suit-in-india>
6. Origin and Development of Rent Control Legislation in India – 06\_Chapter 1 available at [shodhganga.inflibnet.ac.in](http://shodhganga.inflibnet.ac.in)

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