

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9374 OF 2026

Lt. Col. Suresh D. Patil (Retd)

... **Petitioner**

Versus

Anuradha Damodar Panse & Anr.

... **Respondents**

Adv. Shon Gadgil a/w Adv. Siddharth Khandelwal for Petitioner.

Mr. Sharan Jagtiyani, Senior Advocate a/w Adv. Rahul Soman i/b Adv. Shweta Dali for Respondents.

CORAM : ARUN R. PEDNEKER, J.

DATE : 21 AUGUST, 2026

P.C. :

1. Heard learned counsel appearing for parties.
2. The Petitioner, original Plaintiff in R.C.S. No. 16 of 2026 before the Small Causes Court, Pune, has filed the present petition challenging the Judgment and Order dated 7 July, 2026 passed by the District Judge-17, Pune in Misc. Civil Appeal No. 87 of 2026. By the impugned order, the District Court allowed the Respondents' appeal, and set aside the order dated 20 February 2026, granting temporary injunction in favor of the Petitioner, and thereby rejected the

Petitioner's application under Order XXXIX Rules 1 and 2 of the Civil Procedure Code, 1908.

3. The facts giving rise to the present Petition, in brief, are as follows:

The dispute pertains to two properties forming part of the estate bearing Survey No. 163, 4, Nehru Marg (old Bungalow No. 4, Prince of Wales Road) Village Ghorpadi, Taluka Haveli, District Pune. The Said Suit Property comprises three rooms admeasuring 626.25 sq. ft., enclosed pavements admeasuring 350 sq. ft. and open ground/access area admeasuring 3,467 sq. ft. The Petitioner was inducted therein as a monthly tenant by the late Maj. Damodar V. Panse under the MOU dated 27 January 1994, and the said tenancy is admitted by the Respondents. The Petitioner had also advanced an interest-free repair loan of Rs.36,500/-, adjustable against rent, and carried out repairs to the premises. The adjoining second property, namely, Suit Property-A, comprises a garden admeasuring approximately 3,000 sq. ft. The said property was permitted to be used by the Petitioner by the late landlord in 1994. The Petitioner claims to have remained in continuous, open and undisturbed possession thereof since then, having landscaped the garden and installed a recycled PMT bus/caravan, a garden swing, tent and fencing with two entry points.

The late Maj. Damodar V. Panse died in 2020, whereafter Respondent Nos. 1 and 2 became the holders of the occupancy rights. The Petitioner asserts his possession over both properties and submits that he remained in undisturbed possession thereof for more than three decades, until December 2025-January 2026, when persons allegedly acting on behalf of the Respondents threatened his family and subsequently entered the premises, allegedly damaging the fencing, garden, CCTV cameras and water connection, and issuing threats. An FIR was registered on 8 January 2026. Apprehending forcible dispossession, the Petitioner instituted R.C.S. No. 16 of 2026 and sought a temporary injunction under Order XXXIX Rules 1 and 2 of the CPC. By order dated 20 February 2026, the Small Causes Court restrained the Respondents from dispossessing or disturbing the Petitioner's possession of both properties, except by due process of law. However, by the impugned order dated 7 July 2026, the District Court has allowed the Respondents' appeal and set aside the said injunction, giving rise to the present petition.

4. The Learned counsel for the Petitioner challenges the impugned order on the ground that the Petitioner is in undisputed possession of both the properties and the order of injunction in favor of Petitioner

shall have not been interfered with. The Petitioner relies upon the MOU dated 27 January 1994 to claim his tenancy rights.

5. I have perused the documents, i.e. the Memorandum of Understanding dated 27 January 1994. The Petitioner relies upon this particular document to assert his right over the suit property, paragraphs 10 and 11 thereof, which are noted below:

10. It is specifically agreed between the Parties hereto that only the part of the outhouse and a portion of the open ground for gardening purposes and for access of road (more particularly described in the Schedule written hereunder) is let out by the Present landlord to the Tenant and the Present Tenant shall not have any right over the adjoining premises or open ground and garden owned by the Present Land-lord. Further the tenant is permitted to enclose the aforesaid portion of open ground by erecting a fencing around it at his own cost.

11. The present tenant undertakes not to disturb the possession and enjoyment of the present landlord in respect of the area around and Garden of the Present Landlord.

6. The Suit Property - A, which is referred to in Clauses 10 and 11 of the MOU dated 27 January 1994, is in possession of the Respondent and not of the Petitioner. The Petitioner may have some permissive right to use the said property. However, the Clauses 10 and 11 particularly indicate that the Petitioner shall not disturb the possession

of the landlords, i.e. the Respondents herein. Since the Petitioner relies upon this document i.e. MOU dated 27 January 1994 to assert his right over the suit property, he cannot plead contra to Clauses 10 and 11 of the same document.

7. The Petitioner is not in possession of the Suit Property-A, as such, no injunction can follow against the true owner of the property, who is also in possession of the Suit Property-A. No error in the Appellate Court order as regard Suit Property - A is concerned.

8. Learned counsel appearing for Respondents submits that, insofar the suit property is concerned, he has filed suit for eviction of the Petitioner and he would proceed in accordance with law for eviction of the Petitioner, from the suit property.

9. In view of the statement made by the learned counsel appearing for the Respondents/landlord as regards the suit property is concerned that, he would follow due process of law for eviction of the present Petitioner/Tenant. The impugned order of the Appellate Court with regard to the suit property stands modified accordingly. However, it is clarified that, this will not bar the Respondents/landlord from filing any complaint before any statutory authority for violation of any statutory

provisions by the tenant or any unauthorized construction carried out by or on behalf of the Petitioner/Tenant. The said statement is accepted. The Writ Petition is **disposed of** accordingly.

[ARUN R. PEDNEKER, J.]