
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 170 OF 2026

DEEPAK ISHWARIPRASAD AGARWAL

...APPLICANT

Versus

AJINKYA CONSTRUCTION LLP, A REGISTERED
PARTNERSHIP FIRM

...RESPONDENT

Mr. Aadil Parsurampuria a/w Mr. Rohit Jadhav & Ms. Aishwarya Bapat i/b Vis Legis Law Practice, *learned counsel for the Applicant.*

Mrs. Ranjana Parikh, *learned counsel for the Respondent.*

CORAM : ARUN R. PEDNEKER, J.

DATE : 9th OCTOBER, 2026.

Per Court :

1. Heard learned counsel appearing for the parties at length.
2. By the present Civil Revision Application, the Applicant challenges an eviction judgment dated 26th April, 2012, passed against him on the ground of sub-letting under Section 16(1)(e) of the Maharashtra Rent Control Act, 1999.
3. The facts, in brief, giving rise to the present Civil Revision Application are that the Applicant has filed a suit bearing R.A.E. Suit

No. 1198/1919 of 2005, as the Defendant seeking eviction of the Plaintiff on the ground that the suit premises are sub-let. The suit premises are Shop No. 6 on the ground floor of the building situated at 173-E, Girgaum Road, Mumbai – 400 004. The suit was resisted by the present Applicant by filing the written statement and it was stated that there is no sub-letting and that, he is running a business in partnership with one Mr. D. N. Shah, who was the qualified ‘Diploma in Pharmacy’ and in whose name the licence to run pharmacy business is issued.

4. It is submitted that the Applicant did not have sufficient qualification to run the business of pharmacy and accordingly, the licence was obtained in the name of Mr. D. N. Shah, who was the qualified Pharmacist.

5. It is also stated that on trial basis, initially the partnership was run for some period and thereafter, the partnership was closed and Mr. D. N. Shah had obtained another premises for running his own business.

6. In pursuance of the material placed on record, learned Trial Court formulated the following issues and rendered its findings thereon, which are noted below :-

Sr. No.	ISSUES	FINDINGS
1.	Whether the Plaintiff proves that the	In the affirmative

	Defendant has unlawfully sublet or given on licence, the suit premises to third person ?	
2.	Whether the Plaintiff is entitled to recover vacant and peaceful possession of the suit premises ?	Yes
3.	Whether the Plaintiff is entitled to perpetual injunction as prayed ?	No
4.	What order and decree?	Suit is partly decreed with costs

7. Learned Trial Court has particularly observed on consideration of the evidence that the business in the premises is run in the name and style of “M/s. Lifecare Chemist” and the Trial Court held that the Defendant is not himself running the business of Chemist Shop from the suit premises and he has no licence for the same.

8. Learned Trial Court has observed that initially the burden of proving an unlawful sub-tenancy or assignment lies on the landlord but once the landlord shows that third person is in occupation and the tenant himself is not in the suit premises, the burden of proving

the nature of occupation of the third person shifts to the tenant and this is a well established position of law in various judgments.

9. Learned Trial Court finally decreed the suit and directed the Defendant to handover the possession.

10. The Applicant thereafter challenged the judgment of learned Trial Court before the Appellate Court. The Applicant has also filed an application for leading further evidence at an appellate stage under Order 41, Rules 27 and 28 of the Code of Civil Procedure, 1908.

11. The Applicant had attempted to produce additional evidence in the form of Partnership Deed dated 29th September, 2001, Deed of Dissolution dated 11th January, 2002, Conducting Agreement dated 11th January, 2002, Declaration and Indemnity dated 18th January, 2002, Conducting Agreement dated 15th January, 2003 and Declaration and Indemnity dated 7th July, 2003.

12. The Appellate Court has refused to entertain those documents, as the documents were within absolute possession of the Plaintiff when the suit was filed. However, it has also examined the documents and held that the documents even if seen *prima facie*, would be held against the Defendant's own case. The Appellate Court has primarily held that the Defendant has created these documents only to subserve his own purpose.

13. Upon consideration of all the material on record, the Appellate Court again formulated the following issues and rendered its findings thereon, which are noted below :-

Sr. No.	ISSUES	FINDINGS
1.	Whether the Plaintiffs prove that the Defendant has unlawfully sublet or given on licence, the suit premises to third person ?	Yes
2.	Whether the Plaintiffs are entitled to recover vacant and peaceful possession of the suit premises ?	Yes
3.	Whether there is need to interfere with the impugned judgment and decree of the Trial Court ?	No
4.	What order and decree?	As per final order

14. The Appellate Court has examined the evidence and rendered findings that the sub-tenant Mr. D. N. Shah was the person, who was in possession of the suit premises and was carrying on the business in the suit premises.

15. It is brought on record that the Defendant was only qualified upto 8th Standard and he had no knowledge to run Chemist Shop and he does not have licence to run the Chemist Shop.

16. It is also brought on record that in the written statement, there is no averment that the Chemist Shop was run in the suit premises by the Defendant.

17. The Appellate Court thereafter held that it is the duty of Defendant to establish that Mr. D. N. Shah was assisting him to run the business, more particularly when Mr. D. N. Shah had a licence to run the business and the Applicant did not have such a licence to run the business, as he was not qualified to hold the same. Further Balance Sheet of business of the licencees is not brought on record, as to the nature of business being transacted.

18. Considering this aspect, the Appellate Court has come to the conclusion that it is the sub-tenant, who was running the business in the suit premises of tenant. The findings recorded by both the Courts are that it was a sub-tenant, who was in exclusive possession of the suit premises and running the business. It was upon the Defendant to establish that the business is joint and that the alleged sub-tenant Mr. D. N. Shah was merely assisting or was in partnership with him in running the business.

19. No perversity is seen in the findings recorded by both the Courts. The initial burden lies on the landlord to establish that the sub-tenant is in exclusive possession of the suit premises. Thereafter it is the duty of tenant to establish the nature of business transaction. In the instant case, the Defendant has failed to establish the nature of transaction with the sub-tenant. The tenant failed to establish that he continues to hold possession of the tenanted premises.

20. In this view of the matter, no case is made out to interfere with. The present Civil Revision Application is accordingly dismissed.

21. The order shall remain stayed for a period of four weeks from the date of uploading of this order.

[ARUN R. PEDNEKER, J.]

GITALAXMI
KRISHNA
KOTAWADEKAR

Digitally signed
by GITALAXMI
KRISHNA
KOTAWADEKAR
Date:
2026.10.15
10:57:53 +0530