

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO. 611/2018****JOSEPH PERCIVAL FRANKLIN FONSECA****DECEASED THR. L.Rs.****CHERYL PEARL FONSECA & ORS.****..... APPLICANTS****VS****GIRLJA RAJU POOJARY AND ORS.****..... RESPONDENTS**

Adv. Kunal Bhangе a/w. Adv. Vasim Siddiqui, Adv. Akshay Pawar,
Adv. Faiz Ali for the Applicants.

Adv. Mandar Soman i/b. Adv. Minakshi Surve for the Respondent
No.1.

CORAM: RAJESH S. PATIL, J.**RESERVED ON : 6 AUGUST, 2026****PRONOUNCED ON : 7 SEPTEMBER, 2026****JUDGMENT :-**

1) The present civil revision application has been filed by the landlord challenging the Appellate Court judgment and decree, which set aside the trial Court judgment and decree of eviction.

2) The landlord had filed suit for eviction of commercial premises where the tenant was running a business of “restaurant and bar”. Though the suit was filed on four grounds of eviction under the Bombay Rent Act, viz., subletting, *bonafide* requirement, non-user,

and nuisance and annoyance, the Trial Court decreed the suit on the grounds of subletting and *bonafide* requirement.

3) Only the defendant no. 1 filed an appeal before the Appellate Authority. The Appellate Court reversed the decree passed by the Trial Court. Hence, the landlord has filed the present Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908. Since the Trial Court granted the decree on two grounds, I am considering those two grounds for deciding this Civil Revision Application, i.e., subletting and *bonafide* requirement.

Subletting

4) The case of the plaintiff is that the tenant of the suit premises was one Mr. Raju Pujari, who used to run the business of a restaurant and bar. He left the premises and went to his hometown in Karnataka. Thereafter, defendant no. 1 claimed to be the widow of the original tenant, Raju Poojari. Hence, in the eviction suit, defendant no. 1 was added as a party. The eviction suit was filed in the year 1999, and the Trial Court decreed the suit in the year 2016. During the pendency of the suit, defendant no. 1 case that she entered into a partnership firm on 23 April, 2003 and continued running the business of “restaurant and bar”. In the plaint filed in 1999, it was

specifically stated by the landlord that there was subletting in favour of the defendant nos. 2 to 5 and that Defendant No. 1 was “profiteering” and part of the suit premises was exclusively given to the defendant nos. 2, 3, 4, and 5. It has been stated that the defendant no. 3 was running the business of “Deccan Bidi Shop”, defendant no. 4 was carrying on his business in the name of “Naresh Electrical and Plumbing”, and the defendant no. 5 was carrying on business in the name of “R.C. Hair Cutting Saloon”.

5) The plaintiff entered into the witness box and examined himself; he was cross-examined by the advocate appearing for the defendant no. 1. The plaintiff’s son also entered into the witness box (need of the premises per the plaint was for the son) and was cross-examined by the advocate appearing for the defendant no. 1.

6) On behalf of the defendants, only the Constituted Attorney (CA) of the defendant no. 1 entered the witness box. Nobody else entered the witness box to lead the evidence.

7) It is an admitted fact that the defendant no. 4 has handed over possession of the suit premises to the defendant no. 1. The defendant no. 3 claims to be conducting business from the year 1972 from Mr. P. P. Mohari. Neither defendant no. 3 nor Mr. Mohari entered

the witness box. Though a written statement was filed by the defendant no. 3, the defendant no. 3 failed to prove the facts stated therein by entering the witness box. In the written statement, it was stated that Mr. Mohari came into the suit premises on 18 May, 1959 through one Mr. P.V. Ibrahim. The documents as stated on 18 May, 1959 and thereafter so called conducting agreement has not been brought on record. There is no reference to the landlord agreeing to any of these transactions. Hence, in my view, this is a clear case of subletting.

8) As far as defendant no. 5 is concerned, it is his case that he is having rent receipt from the landlord while running the business under the name "R.C. Hair Cutting Saloon". Even, defendant no. 5 did not enter the witness box, neither the documents called as rent receipt was on record. In such a situation, in my view, as far as defendant no. 5 is concerned, this is again a clear case of subletting by Defendant No. 1, who is the tenant of the plaintiff-landlord.

9) As far as defendant no.4 is concerned, his case is that he was inducted by the defendant no. 1 and he runs a business of "Naresh Electrical and Plumbing". He claims to have handed over possession of his portion of the suit premises being part of the suit

premises to the defendant no.1. It is nobody's case that the landlord has approved transaction or given permission of transaction of the defendant no.4 being inducted into the part of the suit premises and thereafter he handed over possession back to the defendant no. 1 and not to the landlord. This, in my view, also amounts to subletting.

10) It is also pertinent to note that during the pendency of the suit, the defendant no. 1 entered into a partnership deed dated 23 April 2003 without permission of the landlord with three more persons without permission of the landlord. Admittedly, the original tenancy of the suit premises was in the name of Raju Poojari, who died in the year 1998. His wife, defendant no. 1 claims thereafter that she was conducting the business of a restaurant and bar in the suit premises, and only in the year 2003 did she enter into a partnership deed with three additional partners being added apart from and she being fourth partner. This, in my view, is nothing but a camouflage to transfer the premises in favour of third parties without the knowledge of the landlord and to make profit from the said transaction. Though this ground of subletting from the defendant no.1 to a new created partnership is not taken into the plaint as the plaintiff was filed in the year 1999. The deed of partnership was entered into only on 23 April, 2003 while the suit was pending for hearing.

11) It is also pertinent to note that none of the defendants entered into the witness box, out of five defendants, only the defendant no.1 through her C.A. led evidence. The written statement was filed by the defendant no.1, defendant no.3 and defendant no.5 and the matter proceeded *ex-parte* against the defendant nos. 2 and 4. The written statement itself were contradictory wherein the defendant no.3 claims to be conducting business from 1972 from Mr.P. P. Mohari and Mr.Mohari claiming to becoming tenant through the earlier tenant Mr. P. V. Ibrahim on 18 May, 1959. The defendant no.5 claiming to be having rent receipt in his possession from the defendant no.1 which was without any permission from the landlord, no document was produced on record in this regard. The defendant no.4 claims to be inducted by the defendant no.1 and further claimed that he has handed over possession to the defendant no.1.

12) Single Judge of Bombay High Court in ***Shantilal Shah vs. State of Maharashtra, 1995 SCC OnLine Bom 1*** has held that the landlord has to establish that the tenant has parted with whole or portion of rented premises. This is a settled law, however in present proceedings, the landlord's case is that the original tenant had created three sub-tenancy, and one of them during pendency of proceedings before trial, handed back the premises.

12.1) In recent judgment of *Sri. M.V.Ramchandra vs. Mahendra Watch Company, 2026 SCC OnLine 582*, Supreme Court considered earlier judgments on the issue of sub-letting, and held that sub-letting requires parting with legal possession, and mere inducting partners does not amount to sub-letting so long as the tenant retains control and legal possession. In my view, the law as laid down in this judgment supports the case of landlord in the present proceedings.

13) In my view, the findings of the Trial Court were based on a correct appreciation of evidence. The appellate court, without properly considering the facts and evidence on record, set aside the findings of the Trial Court. Hence, the ground of subletting, according to me, has been proved by the landlord. Therefore, the findings of the Appellate Court are quashed and set aside.

Bonafide Requirement

14) It is a case of the landlord that he requires the suit premises for the business of his son, Fabian, and for the residence of his son, Fabian. At the time of the filing of the suit, the landlord was residing on the first floor of the suit premises when he was 74 years of age, and along with him his wife, three unmarried daughters, and one unmarried son (Fabian) were residing. He had one more son who was

married and was staying separately with his wife. The landlord was the original employee, who was retired from the service and the suit filed by the defendant no.1 was on the ground that the landlord, after retirement received good retirement benefits. So also, there is enough FSI balance in the suit premises, hence, the landlord can construct additional room for himself.

15) The need of the landlord is a dual purpose. It is a matter of record that though the landlord and his wife has died, as of now his son – Fabian alongwith his three unmarried sisters are residing on the first floor of the suit premises which is a four room flat.

15.1) The Defendant No. 1 has, during cross-examination, admitted that Defendant No. 4 was inducted by Orig. Tenant, and now that portion is used by Defendant no 1 for restaurant business, which proves subletting.

15.2) In my view the landlord cannot be dictated how he should use his own premises. Neither we can ask the landlord whether he has fund to start his own business or to expand his own business. The law is settled on this issue and in any case, the defendant no.1, the original tenant was running a business of restaurant and bar and as of now, even the case of the defendant no.1

is that he has converted a individual business into a partnership business, which has four partners, out of which she is one of the partner. It is not the case of the tenant that during the pendency of the suit, she made efforts to find a new premises.

16) In *Maganlal, Son of Kishanlal Godha vs. Nanasaheb, Son of Udhaorao Gadewar, (2008) 13 SCC 758*, Supreme Court held in favour of landlord, the ground of *bonafide* requirement, wherein the landlord had pleaded at the time of eviction application, the need for his son and for himself, by amendment to pleading landlord stated that his son has now completed his studies, therefore the need is further expanded, hence the order of High Court passed in L.P.A. was set aside, and eviction passed by Rent Controller was confirmed. In my view, the law laid down in this judgment is squarely applicable in present proceedings in favour of landlord.

16.1) In *Maria Martins vs. Noel Zuzarte – SLP (C) No. 11349 of 2025*, Supreme Court held that *bonafide* need was of family of the plaintiff, hence death of plaintiff would not change the ground of relief. Therefore, the judgment of High Court was set aside and the matter was remanded back to the Small Causes Court. The findings recorded in this judgment does not help the tenant in the present

proceedings.

17) In such a situation, in my view, even the ground of *bonafide* requirement needs to be answered in favour of the landlord.

18) Hence, the civil revision application stands allowed.

19) The impugned judgment and decree dated 5 July, 2018 passed by the Appellate Court of the Small Causes at Bandra stands quashed and set aside and the impugned judgment and decree passed by the Trial Court dated 8 February, 2016 passed in R.A.E. & R. Suit No. 98/223 of 1999 is confirmed.

[RAJESH S. PATIL, J.]

20) At this stage, Mr.Mandar Soman, learned counsel appearing for Respondent No.1 (Thr. V.C.) is seeking stay to the implementation and execution of this Judgment. Mr.Pawar, learned counsel appearing for the applicant (Thr. V.C.) has opposed the request made by Mr.Soman.

21) Considering the request made by Mr.Soman, implementation and execution of this Judgment is stayed by four weeks.

[RAJESH S. PATIL, J.]