

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 71 OF 2008

01. Mohanlal Laxmidas Mehta
Since deceased, through his L.Rs.

1A. Smt. Lalita Mohanlal Mehta,
Since deceased

1B. Hitendra Mohanlal Mehta,
Age : 46 years, Occu. Business,
R/o 120, Navi Peth, Jalgaon,
Taluka and District Jalgaon

1C. Hemang Hitendra Mehta,
Age ; 17 years, Occu. Student,
through his natural guardian/
father Hitendra Mohanlal Mehta,
Age : 46 years, Occu. Business,
R/o 120, Navi Peth, Jalgaon,
Taluka and district Jalgaon

**PETITIONERS/
ORI.PLAINTIFF**

VERSUS

01. Zumbarlal Khivraj Surana,
Since deceased, through his L.Rs.

1A. Vijaykumarji Zumbarlal Surana,
Age : 58 years, Occu. Business
R/o Surana Medical & General Stores,
Tq. and District Jalgaon

1B. Sau. Pushpa Prakashchandra Parakh,
Age : 60 years, Occu. Household,
R/o Malkapur, Dist. Buldhana

1C. Durga Mohanlalji Shrishrimal,
Age : 54 years, Occu. Business,
R/o Ashta, Dist. Sihor (M.P.)

1D. Shobha Ashokkumarji Runwal,
Age : 50 years, Occu. Household,
R/o Budhaware, At Post Ashta,
District Sihor (M.P.)

02. Swarupchand Motilal Chhajed,
Since deceased through his L.Rs.

Bhawarlal Swarupchand Chhajed,
Age : 50 years, occu. Business,
R/o Teli Lane, Dhule,
Taluka and District Dhule

03. Kantilal Motilal Chhajed,
Since deceased, through his LR.

3A. Rajendra Kantilal Chhajed,
Age : 48 years, occu. Business,
R/o 1/11, Ankit Vijay Colony,
Jalgaon, Tq. & District Jalgaon

**RESPONDENTS/
ORIG. DEFENDANTS**

Mr. V.J. Dixit, Senior Counsel, instructed by and
with Mr. Girish Rane, Advocate for the petitioner.
Mr. A.M. Gholap, Advocate for respondent No. 3A.
None for respondents No. 1A to 1D and 2.

CORAM : M.T. JOSHI, J.

DATE : 10/04/2015

ORAL JUDGEMENT :

1. Aggrieved by the decree of the District Judge,
dated 03.02.2007, allowing the appeal bearing Civil
Appeal No. 232/1991 and thereby reversing the decree of
eviction passed by the learned Civil Judge Junior
Division, Jalgaon in Rent Suit bearing Regular Civil

Suit No. 206/1984, dated 14.10.1991, the present revision application is preferred by the original plaintiff/landlord's legal representatives.

2. The present petitioners are the legal representatives of deceased Mohanlal Mehta – the original plaintiff. According to the deceased plaintiff, the suit premises i.e. a shop at Jalgaon was given on rent to present respondent No. 1 Zumbarlal and respondent No. 2 Swarupchand for rent at the rate of Rs. 45/- per month vide rent note dated 06.12.1963. However, without permission of the plaintiff, the suit shop was sublet by these respondents/defendants to the defendant No. 3 i.e. present respondent No. 3 – Kantilal. They have stopped the use of the said premises for a period of more than six months prior to filing of the suit and therefore, on these two counts, the decree was sought.

3. Deceased respondent No. 1 Zumbarlal though filed written statement claiming therein that he had already re-delivered the possession of the suit shop in the year 1963, sought dismissal of the suit, he later on did not contest the same.

4. Deceased respondent No. 2 Swrupchand did not appear in the proceedings before the trial court and therefore, the suit proceeded without any written statement as against him.

5. The sole contesting defendant was present respondent No. 3 Kantilal (since deceased). According to him, the suit shop was let out on rent for running Lucky Medical and General Stores in the year 1963. The said firm was a registered partnership firm which, at the relevant time, consisted of three partners. Deceased respondent No. 3 Kantilal and deceased respondent No. 2 Swrupchand alongwith one Shantilal were the partners of the firm. Out of these partners, while Shantilal retired on 29.10.1968, deceased respondent No. 2 Swrupchand retired on 01.05.1977. therefore, the respondent No. 3 became the sole proprietor of the said shop. In the circumstances, it was contended that there is no question of sub-letting the premises to him. In the alternative, he pleaded that in view of the sub-letting of the suit premises since the year 1963, he has been protected by the provisions of Section 15-A of the

Bombay Rent Act.

6. The learned Civil Judge Junior Division, Jalgaon relied on the rent note at Exhibit-185 as proved by the petitioners wherein the name of the present respondent No. 3 did not figure. The learned Judge thereafter drew adverse inference against the respondents No. 1 and 2 for not leading any evidence and therefore, the decree for recovery of possession was passed.

7. The learned Adhoc District Judge, however, reversed the said decree on the basis of documentary as well as oral evidence. Hence, the present civil revision application by the legal representatives of the original plaintiff.

8. Mr. V.J. Dixit, learned senior counsel, instructed by Mr. Girish Rane, learned counsel for the petitioners, submits that the rent note (Exh-185) would clearly show that deceased respondent No. 3 Kantilal is stranger to the agreement. In that view of the matter, it would be clear that the respondent No. 3 was not the

tenant in the suit premises. Further, the person to whom the shop was let out, failed to lead any evidence and therefore, the learned Civil Judge has correctly drawn the adverse inference in the case.

. In support of his submissions, the learned senior counsel relied on the ratio laid down in the case of **"Vidhyadhar V. Mankikrao and another"**, reported in **AIR 1999 S.C. 1441 (1)**.

9. On the other hand, Mr. A.M. Gholap, learned counsel for the respondent No. 3A, however, took me through the entire evidence on record, including the public documents to show that the rent note (Exh-185) is a suspicious document and on the other hand, the public documents clearly showed the possession of the partnership firm and thereafter, the possession of the present respondent No. 3 Kantilal since beginning. He, therefore, submitted that the learned District Judge has not committed any material irregularity and therefore, he submits that, the present revision application is liable to be dismissed.

10. On the basis of above material on record and

the submissions advanced on behalf of the petitioners and respondent No. 3A, following points arise for my determination:-

- (I) Whether the deceased respondents No. 1 and 2 had illegally sublet the suit premises to the deceased respondent No. 3 ?
- (II) Whether, in the alternative, respondent No. 3 – Kantilal was entitled for protection of the possession of the suit premises ?

My finding to both points is in the affirmative. The civil revision application is, therefore, dismissed without any order as to costs, for the reasons to follow:-

R E A S O N S

11. The rent note at Exhibit-185 would show that the suit premises were already let out and only a memorandum of rent note was executed between the predecessor of the present petitioners and the deceased

respondents No. 1 and 2. This rent note shows that the premises were let for running Lucky Medical and General Stores. From the side of the respondent No. 3, we have the certified copies of the registration of the very same partnership firm, regarding the retirement of the parties, regarding the sales tax returns, income tax returns, notices issued to the present respondent No. 3 by the public authorities, which would show that the firm existed prior to the rent note and operated from the premises. The rent note at Exhibit-185 would show that the shop was leased for running of the Lucky Medical and General Stores, which has been clearly proved to be a partnership firm, to which the defendant No.2/deceased respondent No. 2 was a stranger. The pleadings of the respondent No. 3 are amply supported by all these documents duly proved during the evidence. In that view of the matter, no material irregularity is committed by the learned District Judge.

. Further, the authority relied on by Mr. Dixit, learned senior counsel relates to the well established principle that adverse inference is to be drawn for not entering into the witness box against the person who fails to put the evidence on record. The respondent No.

3, however, cannot be blamed in this regard. The authority relied upon, therefore, cannot be made applicable in the facts of the present case.

12. Considering the possession of the present respondent No. 3 since the inception, the learned District Judge has alternatively observed that the respondent No. 3 is protected by the provisions of section 15A of the Bombay Rent Act, which reasoning cannot be faulted with. In the result, the following order:-

13. The civil revision application is hereby dismissed without any order as to costs. Rule stands discharged accordingly.

[M.T. JOSHI]
JUDGE

npj/cra71-2008