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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLIATION NO.58 OF 2008

Kacharulal Dipchand Marwadi,
Age: 66 years, Occ: Business,
R/o. Residing at Dondaicha
and Sidkheda, Tq. Sindkheda,
District Dhule,
(since died through his legal
heirs and representaties)

1. Shantilal s/o Kacharulal Jain,
Age: Major, Occ: Business,
R/o. Dondaicha, Tq. Sindhkheda,
District Dhule.
(Since died through his Legal Heirs)
- 1A. Kesharbai w/o Shantilal Jain,
Age: 65 years, Occ: Housewife,
R/o. Gandhi Chowk, Saraf Bazar,
Dondaicha, Tq. Sindkheda,
District Dhule.
- 1B. Sunita w/o Satish Jain,
Age: 43 years, Occ: Housewife,
R/o. Nirmal Icecream Parlour,
Near Dadawadi, Jalgaon,
Tq. & Dist. Jalgaon.
- 1C. Nainesh s/o Shantilal Jain,
Age: 40 years, Occ: Business,
R/o. Gandhi Chowk, Saraf Bazar,
Dondaicha, Tq. Shindhkheda,
District Dhule.

(Amendment carried out as per
order passed by this Hon'ble
Court on dated 10/08/2017 in
C.A. No.13426/2012 in respect of
legal heirs of deceased Shantilal
s/o Kacharulal Jain)

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2. Shubhash s/o Kacharulal Jain,
Age: 58 years, Occ: Business,
R/o. Dondaicha, Tq. Shindkheda,
District Dhule
(Since Died through his Legal Heirs)
- 2A. Sandhyabai wd/o Subhash Jain,
Age: 52 years, Occ: Household,
R/o. Hudco Colony, Behind Business
Depot, Dondaicha, Tq. Shindkheda,
Dist. Dhule.
- 2B. Priya w/o Mahaveer Jain,
Age: 32 years, Occ: Household,
R/o. C/o Anand Sampatlalji Mehata,
Sector-6, Near Water Tank,
Tq. & Dist. Pali (Rajasthan).
- 2C. Gaurav s/o Subhash Jain,
Age: 30 years, Occ: Business,
R/o. 128, Pahilapura, Sector-8,
Tq. & Dist. Kota (Rajasthan)
(Amendment carried out as per
order passed by this Hon'ble
Court on dated 01/08/2017 in C.A.
No. 15846/2016 in respect of legal
heirs of deceased Shubhash s/o
Kacharulal Jain)
3. Sureshchand s/o Kacharulal Jain,
Age: 52 years, Occ: Business,
R/o. Dondaicha, Tq. Shindkheda,
District Dhule.
4. Rajendra s/o Kacharulal Jain,
Age: 49 years, Occ: Business,
R/o. Dondaicha, Tq. Shindkheda,
District Dhule.
5. Sanjay s/o Kacharulal Jain,
Age: 46 years, Occ: Business,
R/o. Dondaicha, Tq. Shindkheda,
District Dhule.

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6. Saw. Kalabai Campalal Jain,
Age: 72 years, Occ: Household,
R/o. Dondaicha, Tq. Shindkheda,
District Dhule.
7. Lilabai Gyanchand Jain,
Age: Major, Occ: Household,
R/o. Dondaicha, Tq. Shindkheda,
District Dhule,
(Since died through his Legal Heirs)
- 7A. Gyanchand s/o Hiralal Jain,
Age: 60 years, Occ: Business,
R/o. Dr. Sandi Arsad Makan,
Gokul Colony, Javahar Nagar,
Akola, Tq. & Dist. Akola.
- 7B. Dhiraj s/o Gyanchand Jain,
Age: 37 years, Occ: Business,
R/o. Dr. Sandi Arsad Makan,
Gokul Colony, Javahar Nagar,
Akola, Tq. & Dist. Akola.
- 7C. Rakhibai w/o Vasantrajji Jain,
Age: 35 years, Occ: Household,
R/o. C/o. Vasantrajji Hanumandasji
Nakhat, Suyog Colour Lab,
Mahatma Gandhi Road, in front of
Government Hospital, Chandrapur.
- 7D. Anamika w/o Mahavirchand Jain,
Age: 32 years, Occ: Household,
R/o. Mahavirchandji Pannalalji
Begani, Vardhman Automobiles
Nirkari Complex, in front of Cotton
Market, Khamgaon, Tq. Khamgaon,
District Buldhana.

(Amendment carried out as per
order passed by this Hon'ble Court
on dated 01/08/2017 in C.A.
No. 15847/2016 in respect of
legal heirs of deceased Lilabai

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Gyanchand Jain)

8. Jayabai Ashok Jain,
Age: 49 years, Occ: Business,
R/o. Dondaicha, Tq. Shindkheda,
District Dhule.

(Amendment carried out as per
order passed by this Hon'ble Court
on dated 01/08/2017 in C.A.Stamp
No. 23385/2002 in respect of
legal heirs of deceased Kacharulal
s/o Dipchand Marwadi) ..APPLICANTS

VERSUS

Govindlal Hiralal Wani,
(since deceased through his legal
heirs and representative)

1. Pradipkumar Govindlal Wani,
Age: Major, Occ: Agri.,
R/o. Dondaicha, Tq. Shindkheda,
Dist. Dhule.
2. Sushilabai w/o Govindlal Wani,
Age: Major, Occ: Household,
3. Vijayabai w/o Narendrakumar
Tikliwala, Age: Major,
Occ: Household,
4. Rajlaxmi d/o Govindlal Wani,
Age: Major, Occ: Household,
5. Rajesh s/o Govindlal Wani,
Age: Major, Occ: Agri.,
6. Ravindrakumar s/o Govindlal Wani,
Age: Major, Occ: Agri.,

All are Resident of Dondaicha,
Tq. Shindkheda, District Dhule. ..RESPONDENTS

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Mr S.M. Godsay, Advocate for applicants;
Mr S.P. Shah, Advocate for respondents;

CORAM : N.W. SAMBRE, J.

DATE : 1st AUGUST, 2017

ORAL ORDER :

The present applicants are legal heirs of defendant-tenant in Regular Civil Suit No. 124 of 1981 initiated by the respondent-landlord for possession against the defendant-tenant. The said suit came to be decreed vide judgment and order dated 20th June, 1989 by Civil Judge, Junior Division, Sindkheda, which was confirmed in appeal being Civil Appeal No. 103 of 1989 decided by 3rd Additional District Judge, Dhule on 21st September, 1993. As such, this Civil Revision Application.

2. Heard Mr. Godsay, learned Counsel for the applicant-tenant and Mr. Subodh Shah, learned Counsel for the respondent-landlord.

3. According to Mr. Godsay, learned Counsel for the applicant, enactment under which, the suit

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is initiated is brought into effect with an intention to protect the interest of the tenant and as such, the provisions of Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 (for short, Bombay Rent Act') are required to be interpreted to the benefit of the applicant-tenant. According to him, there was no written agreement between the parties, however, from the pleadings and evidence on record, it could be noticed that the suit premises were used initially for the purpose of operating shop. According to him, even if presuming that the premises were used for operation of shop, it cannot be inferred from the pleadings and evidence of the respondent-landlord that premises were never to be used for dual purpose i.e. residential also. He would then harp upon the judgment of this Court in the matter of **Saharabegam Sikandar Shaikh (Mrs.) and another vs Abdul Ali Mawaji Tejani and another**, reported in **1991(2) Bom.C.R. 455** so as to canvass his claim on the object of statute and default as is alleged. According to him, even if the applicant has

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admitted about possession and use of shop premises by son in law and daughter of the applicant for residential purpose, it has been tried to establish that the suit premises were used by the applicant for running cutlery business. He would then urge that looking to the long tenancy of the applicant, the Court must answer the issue of change of user or not, use of premises for more than six months in favour of the applicant-tenant.

4. Per contra, Mr. Shah, learned Counsel for the respondent-landlord would urge that both the Courts below concurrently held that tenancy in question was for running shop and not for residential purpose. According to him, shop premises are admittedly used by daughter and son in law of the applicant for residential purpose i.e. change of user in express terms is admitted by the applicant. He would then invite attention of this Court to the evidence of applicant, wherein original defendant has admitted that the suit premises are used for residential purpose i.e.,

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other than for running shop. He would accordingly urge that it is second generation of both the parties who are fighting litigation and this Court should consider and infer the submissions in favour of respondent-landlord.

5. At the outset, it is required to be noted that both the Courts below have framed issue as regards whether premises are not used for the purpose for which it was let out by the applicant-defendant-tenant. The respondent-plaintiff examined himself as PW-1 and has brought on record about shop is occupied by the daughter and son-in-law of the applicant-tenant. His testimony was corroborated by the evidence of PW-2 Santosh, who reside adjacent to the shop premises. Though very place of stay of residence of PW-2 was disputed, however, defendant Kacharulal in his cross examination admitted about place of residence of Ananda and Santosh happened to be son of said Ananda, who was residing next to the suit property. PW-3 Pandurang deposed at Exhibit-68 and stated

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that son in law of the defendant is residing in the suit property since last 3 to 3-1/2 years. The said testimony was evaluated by the Courts below in the light of admissions given by the original defendant. The defendant in his evidence has admitted about premises being occupied by his son in law and daughter for residential purpose and he has stopped running Adat shop in the premises.

6. From these admissions of the present applicant – original defendant, it can be easily inferred that the suit premises are put to use other than one for which it was let out i.e. for running Adat shop. Original defendant, in clear terms, admitted that he has incorrectly stated about running cutlery business in the suit premises.

7. In appeal, learned District Judge reassessed the entire claim of the original defendant and considered the judgment of the trial Court in its entirety. The appellate Court framed

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the point for its consideration as to whether the suit premises were used for the purpose for which it was let out or there is default. The lower appellate Court considered the provisions of Section 13(1) (k) of the Bombay Rent Act and assessed the pleadings and evidence of the respective parties in the backdrop of requirements thereunder. The lower appellate Court proceeded to consider Exhibit-70, letter given to the Municipal Council by the Shop Inspector stating that he visited the suit premises on 29th November, 1982 and found that the premises were closed. Apart from above, the lower appellate Court also considered the admissions given by the original defendant.

8. In the aforesaid background, in my opinion, the fact that the suit premises were not used by the applicant for the purpose for which it was let out was very much established by the original plaintiff-respondent herein.

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9. In view of above and having regard to the concurrent findings of fact, I hardly see any substance in the civil revision application. As such, revision fails and stands dismissed.

10. Since the revision is dismissed, interim order passed by this Court stands vacated. The plaintiff-decree holder will be at liberty to execute the decree.

11. If the execution proceedings are initiated, the Executing Court shall decide the same expeditiously.

(N.W. SAMBRE, J.)

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