

*K.S. Jadhav*

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

**CIVIL REVISION APPLICATION NO. 524 OF 2022**

**Safoora Manoo Shaikh Wd/o.  
Manoo Rehman Shaikh**

**...Applicant/Original  
Plaintiff**

***Versus***

**Dr. Prakash C. Jain and Ors.**

**...Respondents**

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Mr. V.T. Dubey a/w Rashid Ansari, Advocate for the Applicant.

Ms. Pratiksha Desai, Advocate for Respondent No.1.

Mr. Rajesh G. Singh a/w Rishabh Singh i/b Legal Liaisons,  
Advocates for Respondent Nos.3, 5 and 6.

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**CORAM : R.I. CHAGLA, J.**

**DATE : 28th NOVEMBER, 2022.**

**ORDER :**

1. Heard the learned Counsel appearing for the Parties.
2. By this Civil Revision Application, the Applicant/Original Plaintiff has sought quashing, setting aside of the impugned Judgment and Order dated 9<sup>th</sup> June, 2022 passed in R.A.D. Appeal No.152 of 2018 in R.A.D. Suit No.96 of 2006.

3. The Applicant was the Original Plaintiff who had filed R.A.D. Suit No.96 of 2006 for declaration and possession of the suit premises before Small Causes Court at Bandra, Mumbai. The R.A.D. Suit No.96 of 2006 was dismissed by the Trial Court vide its Judgment and Order dated 20<sup>th</sup> January, 2018. The Applicant had filed Appeal No.152 of 2018 against the Judgment and Order dated 20<sup>th</sup> January, 2018 before the Appellate Court of Small Causes at Bandra and the same was dismissed by the Appellate Court vide impugned Judgment and Order dated 9<sup>th</sup> June, 2022. The Applicant being aggrieved with the impugned Judgment and Order, filed the present Civil Revision Application.

4. The Applicant has raised grounds of challenge including that the Applicant was issued rent receipt by landlord in the name of the Applicant and which the Court below failed to appreciate that the Applicant was recognized as tenant of suit premises. The Applicant has further raised ground that the Applicant being the legally wedded wife of the deceased tenant comes under the definition of tenant in respect of the suit

premises and the rent receipt had been rightly transferred in the name of Applicant / Original Plaintiff. The Applicant has further challenged the impugned judgment and order on the ground that it ought to have appreciated that the Deed of Conveyance dated 28<sup>th</sup> October, 2005 had mentioned the name of the Applicant as tenant in respect of the suit premises alongwith shop premises situated on ground floor in the same building. The Court below should have considered that the suit in respect of premises situated on ground floor wherein the Applicant was mentioned as tenant had been decreed in her favour by the concerned Court and Suit should be decreed in favour of the Applicant as tenant in respect of suit premises situated on first floor. Accordingly, the present Civil Revision Application is filed for setting aside of the impugned judgment and order.

5. The Civil Revision Application is vehemently opposed by the learned Counsel appearing for the Respondents. He has submitted that there is a concurrent finding by the lower Court and which has held that the Defendant Nos.2 to 6 are the legal

heirs of the original tenant through his first wife. The Defendant Nos. 3 to 6 were born and brought up in the suit premises. They were residing in the suit premises at the time of death of original tenant and this is admitted by the Applicant in her evidence. The Applicant/Original Plaintiff never shared accommodation with them in the suit premises. Accordingly, the Appellate Court by upholding the order of the learned Trial Judge held that the Defendant Nos.2 to 6 have preference to claim the transmission of tenancy in their name as per the first category of tenant defined in the Section 7(15) of the Maharashtra Rent Control Act, 1999.

6. The finding in the impugned Judgment and Order is upon considering the rent receipts and reference to the name of the Applicant/Original Plaintiff in Conveyance Deed in support of her claim to be exclusive tenant of the suit premises. The Appellate Court has held that the Applicant/Original Plaintiff has not clarified as how she become tenant of the suit premises from 1994, as claimed by her. There is no pleading and evidence as

to whether she was contractual or statutory tenant. Even if the rent receipt and Conveyance Deed speaks in her favour, this does not mean that the suit premises was transmitted to her.

7. Learned Counsel for the Respondents has relied upon the decision of this Court in **Rajaram Keshav Dhobi and Anr. Vs. Narayan Jairam Marathe, 2011 (2) Mh.L.J., Page 663**, wherein this Court has held that the Court in Revisional jurisdiction cannot re-appreciate evidence and cannot set aside the concurrent findings of the Courts below, by taking different view of the evidence. The High Court is empowered to interfere with the findings of fact, if the findings are perverse or there has been a non appreciation or non consideration of the material evidence on record by the Courts below. He has accordingly submitted that in the present case there is a concurrent finding upon a proper appreciation of the evidence on record and after which the Appellate Court of Small Causes has dismissed the Appeal from the order of the Trial Court which then had dismissed the suit. Hence, he has stated that there is no merit in

the present Civil Revision Application.

8. I have considered the rival submissions. There is a concurrent finding by the Court below that the Defendant Nos.2 to 6 are the legal heirs of the Applicant/Original Plaintiff and Defendant Nos.3 to 6 as legal heirs were residing with the original tenant in the suit premises at the time of his demise. Further, this has been borne out from the evidence which has been properly appreciated by the Trial Judge by giving the detailed reasoning in Paragraph Nos. 17 to 22. Further, the Appellate Court of Small Causes had upon appreciation of the evidence considered that the Applicant/Original Plaintiff never occupied the suit premises and / or shared her accommodation with Defendant Nos. 3 to 6 in the suit premises.

9. The claim of the Applicant/Original Plaintiff is that rent receipts of the suit premises which were in the name of her husband as original tenant and after demise of her husband, rent receipt were transferred in her name. This is borne out from the cross-examination of the Applicant/Original Plaintiff. Further,

she has admitted that rent receipts of the suit premises stood in the name of Defendant No.5 after 2005. The last rent receipt of the suit premises was in her name as of March 2003. There is further evidence on record that the suit summons was served on Defendant Nos. 3 to 6 at the address of the suit premises and the Applicant/Original Plaintiff was residing elsewhere namely at Jamat-E-Jamuria Colony, Ghoga Chawl No.140, Near Lucky Hotel, Bazar Road, Bandra (W), Mumbai – 400 050. This was where the Applicant/Original Plaintiff was residing prior to shifting her address to Room No.7, Haji Taiba Building, 21-A, Ground Floor, Rahat Galli, Navpada, Bandra (East), Mumbai – 400 051 wherein the Applicant/Original Plaintiff is residing in tenanted premises. This has all come out from the cross examination of the Applicant/Original Plaintiff.

10. Having appreciate the evidence on record, the Appellate Court of Small Causes has held that, Defendant Nos.2 to 6 have been established that they have preference to claim transmission of tenancy in their name in first category of tenant defined in

Section 7 (15) of the Maharashtra Rent Control Act, 1999. The Applicant/Original Plaintiff cannot claim to be the tenant of the suit premises as she was not residing with the original tenant on the date of his demise and merely, if rent receipt and Conveyance Deed which are dated after the demise of the original tenant mention her name, this has been held to be insufficient for declaration of tenancy of the suit premises in her favour.

11. I find no infirmity in the decision of the Court below that Defendant Nos. 3 to 6 have preference to claim transmission of tenancy in their name as per the first category of the claim defined in Section 7 (15) of the Maharashtra Rent Control Act, 1999. This being a concurrent judgment of the lower Court, it is well settled, including in *Rajaram Keshav Dhobi (Supra)* that the Court in revisional jurisdiction cannot re-appreciate evidence and cannot set aside concurrent finding of the Court below by taking different view of the evidence. I find no perversity in the findings or that there has been non appreciation of material

evidence recorded by the Court below. Accordingly, the present Civil Revision Application is dismissed.

12. No order as to costs.

**[R.I. CHAGLA, J.]**