



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

**CIVIL REVISION APPLICATION NO.86 OF 2022
WITH
CIVIL APPLICATION NO.1296 OF 2023
WITH
CIVIL APPLICATION NO.5203 OF 2023**

Shirish s/o Bhaskar Deshpande,
Age : 65 years, Occu.: Business,
R/o.: Deep Electronics,
Khakidas Baba Math, Laltaki Road,
Ahmednagar

... **APPLICANT**
(Original Defendant)

VERSUS

Shri Khakidas Baba Math (Maheshwari)
Math Trust, Laltaki Road, Ahmednagar

1. Deepak s/o Bansilal Kabra,
Age : 51 years, Occu.: Business,
R/o.: Sarda Galli, Ahmednagar
2. Biharilal s/o Bansilal Kabra,
Age : 71 years, Occu.: Business,
R/o.: Ganj Galli, Ahmednagar
3. Shivnath s/o Ramnath Kakani,
Age : 84 years, Occu.: Advocate,
R/o.: Mahesh Colony, Tarakpur,
Ahmednagar
4. Sunil s/o Badrinarayan Mundada,
Age : 57 years, Occu.: Advocate,
R/o.: 5, Venans Plaza, Court Galli,
Ahmednagar
5. Jitendra s/o Samsundarji Bihani,
Age : 41 years, Occu.: Business,
R/o.: Riddhi Siddhi Colony,
Gulmohar Road, Ahmednagar

6. Ramesh s/o Chunilal Aasawa,
Age : 64 years, Occu.: Business,
R/o.: "Krushnakunj", Kothi Road,
Ahmednagar
7. Nandlal s/o Murlidhar Maniyar,
Age : 59 years, Occu.: Business,
R/o.: Dalmandai, Ahmednagar
8. Shivdas s/o Lalchand Daga,
Age : 55 years, Occu.: Business,
R/o.: Sarjepura, Ahmednagar
9. Pravin s/o Chatrabhuj Bajaj,
Age : 46 years, Occu.: Business,
R/o.: "Vyankatesh", Near Kohinoor
Apartment, Savedi, Ahmednagar
10. Kisanlal s/o Ramkisan Bang,
Age : 38 years, Occu.: Business,
R/o.: Tapkir Galli, Ahmednagar
11. Chandrakant s/o Ramnarayan Kabra,
Age : 53 years, Occu.: Business,
R/o.: Tapkir Galli, Ahmednagar

.... **RESPONDENTS**
(Original plaintiff)

.....

Mr. Vijay Dixit, Senior Advocate h/f Mr. Dixit Sushant V., Advocate
for the applicant

Mr. Nikhil S. Jaju, Advocate for Respondent.

.....

WITH
CIVIL REVISION APPLICATION NO.87 OF 2022
WITH
CIVIL APPLICATION NO.1297 OF 2023
WITH
CIVIL APPLICATION NO.7275 OF 2023

Vinaya w/o Shirish Deshpande,
Age : 56 years, Occu.: Business,
R/o.: Deep Electronics,
Khakidas Baba Math, Laltaki Road,
Ahmednagar

... **APPLICANT**
(Original Defendant)

VERSUS

Shri Khakidas Baba Math (Maheshwari)
Math Trust, Laltaki Road, Ahmednagar

1. Deepak s/o Bansilal Kabra,
Age : 51 years, Occu.: Business,
R/o.: Sarda Galli, Ahmednagar
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.... **RESPONDENTS**
(Original plaintiff)

.....

Mr. Vijay Dixit, Senior Advocate h/f Mr. Dixit Sushant V., Advocate
for the applicant

Mr. Nikhil S. Jaju, Advocate for Respondent.

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 11/07/2024

PRONOUNCED ON : 22/08/2024

JUDGMENT :

1. Both the applicants in these civil revision applications, are wife and husband of each other and they have challenged the judgments and decrees dated 31/01/2018 passed by the learned Civil Judge (Junior Division), Ahmednagar i.e. the learned trial court, in Regular Civil Suit No.244 of 2009 and Regular Civil Suit No.254 of 2009 filed against them by the common respondent /landlord- Trust for their eviction from suit shops namely shop Nos.B-6 & B-7 respectively, situated on Survey No.147/2-A at Khakidas Baba Math Complex, Laltaki Road, Ahmednagar. Under the aforesaid judgments and decrees the learned trial court has

granted their eviction which has been confirmed by the learned District Judge, Ahmednagar i.e. the learned first appellate court under the judgments and decrees dated 07/03/2022 passed in Regular Civil Appeal No.111 of 2018 and Regular Civil Appeal No.112 of 2018 respectively. Though the tenanted premises are different namely shop No.B-6 and B-7, but it has been claimed by the applicants / tenants that it was in fact one shop since the respondent / landlord-Trust had in fact converted those shops into one shop by demolishing a internal wall between them. It is to be noted here that since the eviction is sought from those shops on the similar grounds namely default in paying rent and permanent alteration by the applicants / tenants, both these applications are taken for disposal by a common judgment.

2. Background facts are as under :

The applicant / wife is a tenant in shop No.B-6, whereas her husband i.e. the applicant / tenant in Civil Revision Application No.86 of 2022 is a tenant of shop No.B-7. The applicant / husband is a tenant of respondent / Trust and conducting business in his shop since 1983. Due to requirement of more space for conducting business, he approached the respondent / Trust for allotting another shop. However, the then managing trustee informed him

that another shop cannot be allotted to the same person and therefore, asked to execute rent agreement in the name of his wife Vinaya. Accordingly, shop No.B-6 was given to the applicant / wife. For conducting business in both the shops, a common wall between them was removed by obtaining permission from the managing trustee of the respondent. It has been contended by the applicants / tenants that the respondent / Trust never raised any objection about removal of the wall but directly filed the aforesaid civil suits against them on 31/01/2018 for seeking eviction on the ground of breach of conditions of rent agreement and non-payment of rent. Though the said suits were resisted by both the applicants, but the learned trial court after conducting trial, partly allowed both the suits only on the ground of breach of terms and conditions of rent agreement i.e. in respect of permanent alteration by removing the common wall. However, the learned trial court rejected the claim of the respondent / landlord-Trust in respect of eviction of the applicants on the ground of default in payment of rent. Thereafter, the applicants / tenants filed their respective appeals against the impugned judgments passed by the learned trial court before the learned first appellate court. The respondent / landlord-Trust even filed cross-objections in respect of rejection of its claim of eviction on the ground of default in payment

of rent. The learned first appellate court though dismissed the appeals of the applicants / tenants, but allowed the cross-objections of the respondent / landlord – Trust. Hence, these revision applications.

3. The learned senior counsel Mr. Vijay Dixit of the applicants vehemently argued that the respondent / landlord – Trust had sought eviction of the applicants / tenants on the ground of default in rent as well as on the ground of making permanent alteration in the suit shops but both the learned courts below, did not appreciate the evidence on record properly. According to him, both the learned courts below committed an error by granting decrees of eviction against the applicants / tenants on the ground of making permanent alteration i.e. by removing the common wall between two shops. He also pointed out that the learned first appellate court committed an error of granting decrees on default in payment by ignoring the notice dated 05/04/2005 issued by the respondent / landlord – Trust. According to him, the amount of rent was not due at the time of issuance of the said notice. He pointed out that there was no breach committed by the applicants / tenants by removing the common wall between two shops since the then managing committee had already granted

permission to demolish the wall as per the letter dated 16/05/1995 by the respondent / landlord-Trust. According to him, there was no notice for the period alleged in the suits in respect of arrears of rent. In view of the same, he prayed for setting aside of the impugned judgments and decrees. In support of his submissions, he relied on following judgments.

A) Kantu Shankar Dessai and another vs. Sociedade Agricola Dos Gauncares De Cuncolim E Veroda and others, 2019(6) Mh.L.J.

B) Vinayak Narayan Deshpande and others vs. Deelip Prahlad Shisode, 2010(3) Mh.L.J. 807.

4. On the contrary, the learned counsel for the respondent / landlord -Trust opposed the submissions made on behalf of the applicants / tenants. According to him, the applicants had in fact demolished the wall between two shops without permission of the respondent / landlord-Trust and thereby breached the term No.4 of the agreement. He pointed out that the applicants / tenants also committed default in payment of rent from January, 2007 till July, 2009 and also they were in arrears of permitted increase from 2006. As such, the respondent / landlord-Trust was definitely entitled to get possession of the suit property. He pointed out that

though the learned trial court had negated claim of eviction on the basis of default in rent, but the learned first appellate court by considering Section 15 Sub-Section 1, 2 & 3 in proper perspective held the applicants being the defaulters. According to him, the letter under which permission to demolish the wall allegedly issued by the applicants / tenants, was a fabricated one. Further, applicant Shirish was already in possession of shop No.B-7 since 1987 but her wife Vinaya got possession of shop No.B-6 on 09/10/1996. He submitted that the applicants / tenants cleverly hid the date of demolition of wall and came out with a false case of alleged permission. He pointed out that mere payment of entire rent due on filing the suits would not suffice but Section 15 has to be considered in its entirety. Thus, he supported the impugned judgments and decrees and also relied on following judgments.

- A) *Thankamony Amma and others vs. Omana Amma N. and others, AIR 2019 SC 3803;***
- B) *Laxmidas Bapudas Darbar and another vs. Rudravva (Smt.) and others, (2001)7 SCC 409;***
- C) *Babulal Fakirchand Agrawal vs. Suresh Kedarnath Malpani; Anil Kedarnath Malpani; Ghanshyam Kedarnath Malpani; Rupwati d/o Kedarnath Malpani, 2017(6) CPMH37 &***

D) *Shri Prafulkumar Damaji Gala Adult vs. Shri Narayan Govind Gavate and others, 2018(1) AIR Bom. R 690.*

5. Heard rival submissions. Also perused the documents on record.

6. The applicants / tenants have challenged the impugned judgments on the ground that the learned first appellate court erred in holding that they were in default in respect of rent amount. On this aspect if the judgments of the learned trial court are perused, then it is evident that the learned trial court rejected the ground of default in payment of rent as raised by the respondent / landlord -Trust mainly by observing that there was no notice to the applicants / tenants for claiming arrears of rent from June 2007 to July 2009 and that the defendant after issuance of such notice Exhibit-7, paid the rent from January 2003 till December 2006. However, it is significant to note that as per Section 15(2) of the Maharashtra Rent Control Act if the tenant pays the amount of rent within the prescribed period, then the suit for eviction on the ground of arrears of rent is not tenable. However, in the instant matter, it appears that the applicants / tenants were served with suit summons on 03/10/2009 but they paid the rent amount for

the first time on 22/02/2010. As such, they did not pay the amount of rent within 90 days. Further, it has been revealed on the basis of evidence that the applicants / tenants firstly paid the amount of rent in the month of February, 2010 and thereafter in July, 2010. Further, the applicants / tenants also did not regularly pay the amount of rent and therefore, as per Section 15(3) of the Maharashtra Rent Control Act the respondent / landlord-Trust was entitled for decree of eviction on the ground of default in payment of rent. The learned senior counsel for the applicants / tenants submitted that there was no notice under Section 106 of the Transfer of Property Act as per Section 15(2) of the Maharashtra Rent Control Act. However, the learned counsel for the respondent / landlord-Trust placing reliance on the judgment of the Hon'ble Apex Court in the case of **Laxmidas Bapudas Darbar and another** (*supra*) claimed that no notice under Section 106 of the Transfer of Property Act was required. On going through the aforesaid observation it appears that notice to quit under Section 106 of the Transfer of Property Act was not necessary for seeking of eviction of a tenant under the provisions of the Rent Act. Therefore, I find no force in the submission of the learned senior counsel for the applicants / tenants to that effect. As such, no perversity can be found in the observation of the learned first

appellate court for granting decrees in favour of the respondent / landlord-Trust on the ground of default in payment of arrears of rent.

7. Further, it appears that the respondent / landlord-Trust had also sought eviction of the applicants / tenants on the ground of making alteration in the suit shops of permanent nature by committing breach of conditions of the agreement. Perusal of both the impugned judgments indicates that both the learned courts below have concurred on this aspect by observing that the appellants / tenants without any permission removed the wall in between two shops in breach of conditions of their agreements of rent and therefore, liable for eviction on the ground of alteration in the suit shops of permanent nature. Admittedly, the internal common wall between two suit shops, has been removed. However, the applicants / tenants had come with a case that the respondent / landlord-Trust had in fact demolished the partition of wall between the suit shops and allowed them to use the suit shops as one tenement for doing their business. With such contentions of the applicants / tenants it has been indirectly admitted that earlier there was a partition between two shops which was demolished. There is nothing in the written statement of the applicants /

tenants that they had demolished the partition wall by seeking prior permission of the respondent / landlord-Trust. However, surprisingly they took such defence during trial that by obtaining prior permission of the plaintiff / respondent / landlord-Trust in writing under application Exhibit-108, which was issued by them, they demolished the wall. For that purpose the then trustee by name Nandlal Maniyar was also examined by them, where he deposed that after allotment of the suit shops to the applicants / tenants, shop No.B-7 fell short for doing business of electronics and therefore, the partition wall between the suit shops was demolished on his permission in writing on the said application Exhibit-108.

8. Thus, the applicants / tenants have claimed that they demolished the partition wall by taking permission of the trustee Nandlal Maniyar. However, the said application Exhibit-108 was found to be false and fabricated. Both the learned courts below have held that trustee- Nandlal Maniyar was having dispute with the other trustees of the respondent / landlord-Trust and therefore, with an intention to help the applicants / tenants, he came with the concocted story of this fabricated letter Exhibit-108. It is significant to note that the rent agreement at Exhibit-91 in Regular Civil Suit No.244 of 2009 indicates that the stamp of said

agreement was purchased by applicant / tenant – Shirish Bhaskar Deshpande on 09/10/1996. Further, the applicants / tenants have already admitted the fact that prior to giving suit shop No.B-6 on rent to the applicant – Vinaya, there was another tenant in the said shop. The evidence shows that shop No.B-6 was given in possession of the applicant – Vinaya as per agreement dated 09/10/1996. Thus, obviously applicant – Vinaya was not having possession of the suit shop No.B-6 on 16/05/1995 and therefore, the contention of the applicants / tenants that they removed the partition wall between the suit shops under written permission of trustee – Nandlal Maniyar dated 16/05/1995 is apparently false.

9. Further, it has been accepted in the cross-examination by the applicants / tenants that there was no common rent agreement in respect of the aforesaid two shops and that the respondent / landlord-Trust was giving separate rent receipts to them in respect of two suit shops. Not only this, but the evidence indicates that there were two separate Shop Act licenses for two different businesses issued to the applicants / tenants. The license at Exhibit-67 is issued to applicant / tenant – Shirish for establishment known as “Deep Electronics Trading”, whereas the license at Exhibit-68 in the name of applicant – Vinaya is for the

establishment known as “Deshpande Electronics and Appliances”. It is significant to note that Nandlal Maniyar who deposed as a witness of the applicants, was removed from trusteeship by the respondent / landlord-Trust and therefore, he might have prepared the letter Exhibit-108 to help the applicants / tenants.

10. It is most surprising to note that the applicants / tenants in the cross-examination have admitted that if any alteration is made in the suit shops which are on ground floor, it may cause danger to the residents of the tenement constructed above the suit shops. Not only this but applicant – Vinaya has also admitted in her cross-examination that when she took suit shop No.B-6 on rent, she had gone in the shit shop No.B-7 and at that time there were walls from three sides and shutter at remaining side. Further, she also accepted in the cross-examination that the partition wall between those two suit shops was removed by herself and Shirish. As such, considering all these aspects, the respondent / landlord-Trust has established both the grounds on which it has claimed eviction of the applicants / tenants from the suit shops. On going through the evidence on record and observations of both the learned courts below, no perversity is found in their observations. Therefore, there

is no substance in these revision applications and the same are dismissed.

11. Civil Application Nos.1296 of 2023 and 1297 of 2023 are allowed and the applicants are allowed to withdraw the amount which the applicants / tenants have deposited as per order dated 11/10/2022 till date alongwith the accrued interest thereon.

12. The Civil Application Nos.5203 of 2023 & 7275 of 2023 are disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

13. The learned counsel for the applicants / tenants requested to continue the interim relief and to stay the order of withdrawal of rent, since he wants to challenge this order before the superior court. In view of the same, the interim relief granted in favour of the applicants / tenants to continue for further period of four weeks and till then the respondent / landlord shall not withdraw the amount.

(SANDIPKUMAR C. MORE, J.)