

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

CIVIL REVISION APPLICATION NO.524 OF 2023

Shankarlal Hansraj Porwal
since deceased, through legal heirs
Mahendra Shankarlal Porwal & Ors.

....Applicants

V/S

Ashok Ramkrishna Malu

....Respondent

Mr. S.R. Ganbavale i/b Mr. Abhijit Adagule *for the Applicants.*
Mr. R.D.Soni i/b Ram & Co. *for Respondent.*

CORAM: SANDEEP V. MARNE, J.
DATE : 11 SEPTEMBER 2024.

P.C.:

1 Applicants have invoked revisionary jurisdiction of this Court under section 115 of the Code of Civil Procedure, 1908 (**the Code**) challenging the decree dated 20 June 2023 passed by the District Judge, Kolhapur by which Regular Civil Appeal No.64 of 2021 filed by original Plaintiff has been allowed and Regular Civil Suit No.274 of 2013 has been decreed by setting aside the judgment and order dated 17 March 2021 passed by the Civil Judge Senior Division, Kolhapur.

2 It appears that the Plaintiff instituted Regular Civil Suit No.274 of 2013 in respect of two properties viz. 'Plaint Para 1-A' being Shop

admeasuring 10 ft. x 27 ft., and 'Plaint Para 1-B' being two residential rooms on the first floor. The Trial Court decreed the suit partly by judgment and order dated 17 March 2021 only to the extent of property described in Plaint Para 1-B viz. two residential rooms on the first floor. The suit *qua* property described in Plaint Para 1A (shop on ground floor) came to be dismissed. Plaintiff filed Regular Civil Appeal No.64 of 2021 before the District Judge, Kolhapur, to the extent of dismissal of suit *qua* the shop property. The Appellate Court has decreed the suit even *qua* shop property on the ground of bonafide requirement of the Plaintiff.

3 I have heard Mr. Ganbavale, the learned counsel appearing for Applicants/Defendants and Mr. Soni, the learned counsel appearing for Respondent/Plaintiff.

4. At the outset, Mr. Ganbavle would fairly submit that Applicants are not challenging the concurrent decrees with regard to their eviction in respect of premises at Plaint Para 1-B, being two residential rooms on the first floor.

5 During the course of hearing of the Revision Application, it transpired that Plaintiff had given a suggestion to the Applicant/Defendant's witness that Respondent/Plaintiff was willing to give alternate premises admeasuring 200 sq. ft. in property bearing City Survey No.626. The Defendant's witness however refused to accept the offer on the ground that the alternate premises are located inside in narrow lane. Since Plaintiff had shown willingness to handover alternate premises admeasuring 200 sq. ft. in property bearing City Survey No.626, this Court queried with

Mr. Soni as to whether the said offer can be revived. After taking instructions from his client, Mr. Soni has fairly submitted that Plaintiff is willing to exchange the suit premises by offering premises admeasuring 200 sq.ft. in City Survey No.626. Mr. Ganbavale would raise a query about the nature of such alternate premises. After taking instructions from his client, Mr. Soni would clarify that premises admeasuring 200 sq.ft. at City Survey No.626 would have an access from Municipal Road. Mr. Ganbavale, after taking instructions from his client, submits that the offer is acceptable to the Applicants/Defendants. Parties have thus agreed to exchange the suit premises with premises admeasuring 200 sq. ft. at City Survey No.626. Applicants/Defendants have agreed to pay rent @ Rs. 7500 to the Plaintiff in respect of the alternate premises. In view of agreement expressed between the parties, the decree passed by the Appellate Court deserves to be modified.

6. As observed above, since Applicants/Defendants are not challenging the decree *qua* premises at Plaint Para 1-B, being two residential rooms on the first floor, the arrangement of exchange is only *qua* premises at Plaint Para 1-A i.e. the ground floor shop premises.

7 Accordingly with the consent of the parties, following order is passed:

ORDER

i) Plaintiff/Respondent shall handover possession of premises admeasuring 200 sq. ft. in property at City Survey No.626 with Municipal Road access to the Applicants/Defendants within a period of two months from today.

ii) Simultaneously with receipt of possession of alternate premises as directed above, Applicants/Defendants shall handover possession of the suit premises to the Plaintiff/Respondent.

iii) So far as the residential rooms described in paragraph 1B of the plaint, Applicants/Defendants shall handover possession thereof to the Plaintiff on or before 30 September 2024. Plaintiff would be free to press his claim for payment of mesne profits in respect of the residential rooms described in paragraph 1B of the plaint.

8 In respect of the alternate premises admeasuring 200 sq. ft. in City Survey No.626, Applicants/Defendants shall pay monthly rent of Rs.7,500/- to the Plaintiff with further increase as provided for in section 11 of the Maharashtra Rent Control Act, 1999.

9 Applicants/Defendants shall not be liable to pay any mesne profits in respect of the shop premises described in paragraph 1A of the plaint.

10 With the above directions, the Civil Revision Application is disposed of.

(SANDEEP V. MARNE, J.)

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KATKAM
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by SUDARSHAN
RAJALINGAM
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Date:
2024.09.13
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