

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 3 OF 2022

ALONGWITH

INTERIM APPLICATION NO. 71 OF 2022

Ajmera Enterprises)
A registered partnership firm,)
1st Floor, Room No. CF/1, 'C' Building)
1, Prabhat Nagar, Jogeshwari (West)
Mumbai – 400 102)

..... Applicant

VERSUS

1. Dilipkumar Rameshchandra Patel)
2. Vijaykumar Rameshchandra Patel)
3. Rameshchandra Somabhai Patel)
4. Kantilal Ramanbhai Patel)
5. Surendrabhai Somabhai Patel)
6. Valiben Surendrabhai Patel)
7. Sumatiben Rameshchandra Patel)
8. Kamlaben Kantilal Patel)
9. Laxmiben Prafulchandra Desai)
10. Yogendrakumar Surendrabhai Patel)
11. Ameet Surendrabhai Patel)
12. Prakash Kantilal Patel)

All members of Raman Brothers,)
 An Association of Persons having its)
 Office at 1, Prabhat Nagar,)
 Jogeshwari (West), Mumbai 400 102) Respondents

ALONGWITH
 INTERIM APPLICATION NO. 18068 OF 2023
 IN
 CIVIL REVISION APPLICATION NO. 3 OF 2022

Hiren Mahendra Ajmera)
 1st Floor, Amrut Kunj, Lallubhai Park,))
 L.S.Road (Off S.V.Road), Andheri)
 (West), Mumbai – 400 058) Applicant/
 Intervener

IN THE MATTER BETWEEN

Ajmera Enterprises)
 A registered partnership firm,)
 1st Floor, Room No. CF/1, 'C' Building)
 1, Prabhat Nagar, Jogeshwari (West)
 Mumbai – 400 102) Applicant

VERSUS

1. Dilipkumar Rameshchandra Patel)
 age 45 years, Occ. Business)

2. Vijaykumar Rameshchandra Patel)
 age 41 years, Occ. Business)
 both Co-owner in Raman Brothers,))
 An Association of Persons having)
 office at 1, Prabhat Nagar,)
 Jogeshwari (West), Mumbai)
 400 102 (erstwhile 400 060))

3. Rameshchandra Somabhai Patel)
 (full name not known))

4. Kantilal Ramanbhai Patel)
age 68 years, Occ. Business)
5. Surendrabhai Somabhai Patel)
age 70 years, Occ. Business)
6. Sumatiben Rameshchandra Patel)
age 66 years, Occ. Housewife)
7. Kamlaben Kantilal Patel)
age 68 years, Occ. Business)
8. Laxmiben Prafulchandra Desai)
(a.k.a. Ms.Lakshimiben R. Patel))
age 62 years, Occ. Business)
9. Yogendrakumar Surendrabhai Patel)
age 45 years, Occ. Business)
10. Ameet Surendrabhai Patel)
age 34 years, Occ. Business)
11. Prakash Kantilal Patel)
(full name : not known))
age 41 years, Occ. Business)
All defendants from No.3 to 11 are)
Co-owners, along with plaintiffs)
in the name of Raman Brothers,)
having Office at 1, Prabhat Nagar,)
Jogeshwari (West), Mumbai 400 102)

..... Respondents

**ALONGWITH
INTERIM APPLICATION NO. 18066 OF 2023
IN
CIVIL REVISION APPLICATION NO. 3 OF 2022**

1. Dilipkumar Rameshchandra Patel)
age 52 years, Occ. Business)

2. Vijaykumar Rameshchandra Patel)
age 60 years, Occ. Business)
both co-owners in Raman Brothers,))
having is office at 1, Prabhat Nagar,))
Jogeshwari (West),)
Mumbai – 400 102)

..... Applicants

IN THE MATTER BETWEEN

Ajmera Enterprises)
A registered partnership firm,)
1st Floor, Room No. CF/1, 'C' Building)
1, Prabhat Nagar, Jogeshwari (West)
Mumbai – 400 102)

..... Applicant

VERSUS

1. Dilipkumar Rameshchandra Patel)

2. Vijaykumar Rameshchandra Patel)

3. Rameshchandra Somabhai Patel)

4. Kantilal Ramanbhai Patel)

5. Surendrabhai Somabhai Patel)

6. Valiben Surendrabhai Patel)

7. Sumatiben Rameshchandra Patel)

8. Kamlaben Kantilal Patel)

9. Laxmiben Prafulchandra Desai)

10. Yogendrakumar Surendrabhai Patel)

11. Ameet Surendrabhai Patel)

12. Prakash Kantilal Patel)

All members of Raman Brothers,)

An Association of Persons having its)

Office at 1, Prabhat Nagar,)

Jogeshwari (West), Mumbai 400 102) Respondents

Mr.Sharadkumar Bansal a/w. Mr.Krishkumar A. Jain, Mr.Kalpesh
A.Bandre i/b. Mr.Ritesh K.Jain for the Applicant in C.R.A.

Mr. S.M.Vyas for the Respondents.

CORAM: RAJESH S. PATIL, J.

DATE : 11 JANUARY, 2024

ORAL JUDGMENT :-

This Civil Revision Application challenges impugned judgment and decree dated 30 September, 2021 passed by the Appellate Court on the ground of 'non-user'.

2. The suit premises is a commercial premises i.e. Room No.C/F1, 1st Floor, 'C' Building on Plot No. 1, Prabhat Nagar, admeasuring 3,600 sq. ft. situated at Jogeshwari, Mumbai, in a

building which is ground plus two storey. The suit premises is on the first floor. Admittedly, as of today there is no electricity in the suit premises.

3. The suit was filed by the landlord for eviction on the ground of non-user of the suit premises, which is a commercial premises. The Trial Court framed two Issues. The first issue was regarding 'non-user' of the suit premises, and second issue was 'whether the plaintiffs were entitled to file a suit for possession?' The Trial Court answered Issue no.2 in favour of the plaintiffs/landlords and held that the plaintiffs had a right to file a suit. As regards the issue of 'non-user', the same was answered in negative and the Trial Court dismissed the suit.

4. The original plaintiffs/landlords filed an appeal before the Division Bench of the Court of Small Causes challenging the findings recorded by the Trial Court as regards to the issue of the 'non-user'. The Appellate Court framed two Points for Determination, first regarding 'non-user' and second 'whether the

plaintiffs were entitled for possession of the suit premises?’ The original tenant had not carried the Trial Court’s order in appeal on the issue which was answered in favour of the plaintiffs, i.e. ‘whether the plaintiffs were entitled for possession of the suit premises?’ Both the points as framed by the Appellate Bench, were answered in favour of the plaintiffs/landlord. And a decree of possession was passed in favour of the original plaintiffs.

5. The present Civil Revision Application challenges the impugned judgment and decree passed by the Appellate Court.

Mr.Sharad Bansal, learned counsel made his submissions on behalf of Applicant/Tenant :-

6. Mr.Bansal submitted that the Civil Revision Application challenges the impugned judgment on two counts :-

- (i) First line of argument is that a suit itself was not maintainable as a suit was filed by two members of Raman Brothers an Association of Persons.

(ii) Second line of argument is regarding non-user being not proved by the plaintiffs as document produced on record was only a letter written by electricity company in the year 2007, which stated that the electricity in the suit premises has been disconnected in the year 2004. The suit on the ground of non-user has been filed in the year 2010. He also submitted that the impugned decree is perverse, as the author of the said document was not examined. According to applicant (defendant), what is required to be proved in a suit for eviction for non-user is that non-use of the premises for last six months before filing of the suit.

7. Mr.Bansal further submitted that as regards the maintainability of the suit, he submitted that the landlords of the suit premises was a "Association of Persons". Therefore, a suit could have been filed by the Association of Persons only through

all its members.

8. Mr.Bansal further submitted that only two members of the Association of Persons, could not have filed the eviction suit. Neither any authority is produce to show that, all members of the Association of Persons were authorizing the two plaintiffs to file suit on their behalf. Therefore, according to him, the suit itself was not maintainable. He further submits that the Association of Persons is an unregistered body.

9. Mr.Bansal to fortify his submission on the issue about whether the suit was maintainable has taken through the cross examination of the PW No.1. Mr.Bansal submits that in the cross examination, there is an admission that Raman Brothers, is a Association of Persons and they are the landlords of the suit property.

10. Mr.Bansal further took me through the title of the plaint. Mr.Bansal submitted that in the title itself, the plaint is filed by the only two members and the rest of the members of the

Association of Persons have not been joined as plaintiffs. Mr.Bansal submitted that rest of the members of the Association of Persons are just shown as defendants.

11. Mr.Bansal in support of his submissions, has referred to the following authorities:-

(i) Judgment of Single Bench of this Court in case of *Gorakh Hilal Patil & Anr. vs. Parit Samaj Seva Mandal, Shripur & Anr.*, reported in **2011 SCC OnLine Bom 939**,

(ii) Judgment of Single Bench of this Court in case of *Satyavart Sidhantalankar & Ors. vs. Arya Samaj, Bombay*, reported in **1945 SCC OnLine Bom 117**,

(iii) Judgment of Andhra Pradesh High Court in case of *Hyderabad Cricket Association Gymkhana Grounds, Secunderabad vs. Cambridge Cricket Club & Anr.*, reported in **2002 SCC OnLine AP 798**,

(iv) Judgment of High Court of Punjab and Haryana in case of *Food Corporation of India vs. Truck Operators Union Nabha & Anr.*, reported in *2014 SCC OnLine P&H 24482*.

12. Mr.Bansal further submitted that the law as laid down by the Supreme Court as to whether the co-owner can file a suit for eviction. According to him, there is no dispute that the co-owner can file a suit for eviction as held by series of the judgments of the Supreme Court.

13. Mr.Bansal submitted that the same proposition of law is not applicable to the present proceedings because in the present proceedings the persons who have filed a suit are not the co-owners. He relied upon the judgment of Supreme Court in case of *Ramanlal Bhailal Patel & Others vs. State of Gujarat* reported in *(2008) 5 SCC 449*.

14. On the second point, Mr.Bansal submitted that as far as the ground of 'non-user' is concerned, it was the duty of the plaintiffs

to prove that the defendants were not using the suit premises. He submitted that under section 16(1)(n) of the Maharashtra Rent Control Act, 1999, the tenant can be evicted on the ground of non-user of the premises. He submitted that as mentioned in the said ground, the plaintiffs have to prove that the defendant was not using the premises for last six months before filing of the suit.

15. Mr.Bansal submitted that in the present proceedings, the plaintiffs have not proved that the defendant was not using the suit premises for six months before filing of the suit. He further submitted that the plaintiffs have just produced one document of the Reliance Electricity to show that the defendant is not using the said suit premises. Mr.Bansal submitted that the said document of the Reliance Electricity is of the year 2007 which mentions that there is no electricity in the suit premises from the year 2004. He submitted that only one lone document cannot be held against the defendant to grant an eviction decree on the ground of non-user of the suit premises.

16. Mr.Bansal submitted that the plaintiffs has not examined the author of the letter dated 5 February, 2007 and of electricity bill to prove that the electricity was disconnected from the suit premises.

17. Mr.Bansal further submitted that the suit premises was used by the defendant for the purpose of storage/godown. In such a situation, the defendant did not require any electricity supply in the suit premises. Therefore, according to Mr.Bansal even if it is presumed that there is no electricity in the suit premises, that will not be enough for the plaintiffs to prove that the suit premises is not used for a period of atleast six months prior to the date of filing of the suit. Mr.Bansal further submitted that even though as of today, there is no electricity supply that cannot be a fit case to pass a decree of 'non-user' against the defendant as what has to be seen while passing a decree on the ground of non-user whether there was non-user of the suit premises by the defendant for a period of six months before filing of the suit.

18. Mr.Bansal further submitted that the defendant was using the suit premises for the purpose of storage and earlier the suit premises was used for a job work by the defendant. Mr.Bansal further submitted that the defendant has produced on record the delivery challans and has also produced the rent receipts.

19. Mr.Bansal to buttress his submission on the issue of non-user has relied upon the judgment of Supreme Court in case of *Dunlop India Limited vs. A.A.Rahna, (2011) 5 SCC 778* and he also relied upon the judgment of this Court in case of *Om Prakash Berlia & Anr. vs. Unit Trust of India & Others*, reported in *1982 SCC OnLine Bom 148*.

20. Mr.Bansal therefore submitted that the judgment of Appellate Court is perverse and the same should be set aside.

Mr. S.M.Vyas learned counsel made his submissions on behalf of the Respondents/Landlords :-

21. Mr.Vyas submitted that the suit premises is admittedly totally admeasuring 3,600 sq.ft. plus 1,500 sq.ft. loft in the suit

premises. He submitted that the suit premises is situated in the City of Mumbai. Mr.Vyas submitted that it cannot be presumed that a premises in Mumbai, and in such suit premises, there is no electricity since years i.e. from 2004 and the same is been used by the defendant tenant. He submitted that admittedly, the tenancy was created sometime in the year 1970 and till 2004 there was electricity supply in the suit premises. And only from the year 2004 till date there is no electricity supply in the suit premises. He submitted that the suit premises is in a building consisting of ground plus two floors and the suit premises is on the first floor. He submitted that the plaintiffs had duly proved the issue of non-user of the suit premises by bringing on record the letter of Reliance Energy. He submitted that the said letter specifically stated that the electricity connection in the suit premises had been disconnected for non payment of the electricity charges. He submitted that even today while the matter was argued, it has been submitted on behalf of the tenant that as of today, there is no electricity supply in the suit premises. He submitted that in the written submissions or in the evidence it

is nobody's case that the electricity supply was restored back to the suit premises after 2004. In such a case, he submitted that where there is also no denial on the part of the defendant that the electricity supply after the year 2004, was restored back. Therefore, according to him, the fact is proved that there is no electricity supply in the suit premises. He further submitted that in fact, the line of the argument of the tenant itself destroy their case as they have submitted that even though there is no electricity supply in the suit premises, since the premises is used as a godown, there is no need of the electricity supply in the suit premises. He submitted that it is beyond doubt that there is no electricity supply in the suit premises.

22. He submitted that the defendant had not taken trouble of examination of any of its clients who are dealing with the defendant to prove the fact the suit premises is in operation. He further submitted that even in commercial premises, Trade licence are required for operating a business in a commercial establishment. He submitted that no such licence was produced

on record by the defendant. Mr.Vyas further submitted that the defendant did not examine any person from the transport agency to prove the fact that they had been to the suit premises during the period from 2004 till filing of the suit for the purpose of loading and unloading the goods.

23. He further submitted that once the plaintiffs had discharged their initial burden and proved the fact about non-user of the suit premises by leading evidence and by producing the documents of evidence, then the burden is shifted on the defendant to prove the fact that the suit premises were used by the defendant for a period of six months before filing of the suit.

24. Mr.Vyas further submitted that even the summons in the present proceedings when tried to be served on the defendant on the address of the suit premises, the same could not be served as nobody was present in the suit premises at the time of service of the summons. He submitted that the summons were thereafter collected by the defendant from the post office. He therefore

submitted that the Appellate Court has rightly held that the defendants are not using the suit premises and therefore the decree of possession was passed in favour of the plaintiffs.

25. Mr.Vyas further submitted that as regards the issue about the suit being filed by the plaintiffs who are the two members of the Association of Persons, according to him, in the cause title of the plaint itself, after the name of the plaintiffs no.1 and 2, it is specifically mentioned that both of them are the members of the Association of Persons. He further submitted that the other eight members of the Association of Person are already defendants. He submitted that none of the Association of Persons who were the party defendants have opposed the plaint by filing the written statement or leading evidence to that effect.

26. Mr.Vyas submitted that the Trial Court even though did not pass a decree of eviction, however as regards the issue of maintainability of the suit by the plaintiffs, the Trial Court had answered the issue in favour of the plaintiffs. He further

submitted that the defendant did not challenge the said findings recorded before the Appellate Bench of the Court of Small Causes. Therefore, the said findings had attained finality and today only by way of an argument, the said issue cannot be raised.

27. He further submitted that the issue whether a co-owner can file a suit or not has already been settled by the Supreme Court in various judgments. He relied upon the following judgments :-

(i) Judgment of Supreme Court in case of ***Mohinder Prasad Jain vs. Manohar Lal Jain*** reported in ***2006 (2) SCC 724***.

(ii) Judgment of Supreme Court in case of ***V.Sumatiben Maganlal Manani (Dead) by Legal Representatives vs. Uttamchand Kashiprasad Shah & Ors.***, reported in ***(2011) 7 SCC 322***.

(iii) Judgment of Supreme Court in case of ***India Umbrella Manufacturing Co. & Others vs. Bhagabandei Agarwalla (Dead) By LRs. Savitri***

Agarwalla (Smt) & Others, reported in ***(2004) 3 SCC 178***.

(iv) Judgment of Single Judge of this Court in case of ***Ravinbhushan Anant Datar & Another vs.***

Waman Dattatray Purohit reported in ***2004 (1) Bom.C.R. 585***

28. Mr.Vyas also took me through the judgment of Appellate Bench which recorded the findings about the maintainability of the suit and as regards the ground of non-user. Mr.Vyas also referred to the findings recorded by the Trial Court on the issue of non-user and submitted that those findings are perverse as regards to the answering the issue of non-user. Mr.Vyas submitted that the Trial Court did not take into consideration the pleadings made by the tenant in the written statement. So also the Trial Court did not consider the fact that the Invoices which were produced by the defendant/tenant along with the written statement and the Invoices which are referred by the defendant while leading evidence. Mr.Vyas submitted that there was

difference between the Invoices produced at the time of filing the written statement and at the time of leading evidence. Mr.Vyas submitted that only on this basis, the suit could have been decreed. Mr.Vyas submitted that both the Courts have considered the judgment of Single Bench of this Court in case of ***Ravinbhushan Anant Datar & Another*** (supra). However, the Trial Court after referring to the said judgment, did not consider the ratio laid down in the said judgment. However, the Appellate Court has discussed the said judgment of ***Ravinbhushan Anant Datar & Another*** (supra) and has corrected decreed the suit in favour of the plaintiffs landlord.

29. Mr.Vyas therefore submitted that there is no need to interfere with the last fact finding court and this Civil Revision Application should be dismissed.

ANALYSIS AND CONCLUSION :

30. I have heard both sides and I have gone through and considered the documents produced on record.

31. In the present proceedings, suit is filed for eviction only on one ground i.e. 'non-user'. It is also submitted that the suit itself was not maintainable on behalf of the persons who had come forward as plaintiffs.

32. I will first consider the submissions made by the applicant as regards the maintainability of the suit :-

(i) The suit admittedly is filed by the two persons who named themselves as the members of the 'Association of Persons'. The other members of the Association of Persons had been joined as party defendants. Hence, it is not a case in the present proceedings that all of the members of the Association of Persons are not joined as party to this eviction suit. Admittedly, none of the members of the Association of Persons have come forward and have opposed the filing of suit on the ground that they don't want the eviction suit to proceed against the defendant/tenant. For the sake of reference, the title of the plaint is reproduced hereinbelow :-

IN THE COURT OF SMALL CAUSES AT MUMBAI
(Bandra Branch)

R.A.E. Suit No. 419/772 of 2010

1. Mr.Dilipkumar Rameshchandra Patel
Age 45 years, Occ.: Business,
2. Mr.Vijaykumar Rameshchandra Patel,
Age 41 years, Occ.: Business,
both Co-owner in Raman Brothers,
An Association of persons having office
at 1, Prabhat Nagar, Jogeshwari (West),
Mumbai – 400 102. (erstwhile 400 060) Plaintiffs

Vs.

1. Ajmera Enterprises,
a registered partnership firm,
tenant in respect of the premises
on the 1st Floor, Room No. CF/1,
in 'C' Building, 1, Prabhat Nagar,
Jogeshwari (West), Mumbai – 400 102.
(erstwhile 400 060)
2. Mr.Rameshchandra S.Patel,
(full name not known)
Age 69 years, Occ.: Business
3. Kantilal R. Patel
(full name not known)
age 68 years, Occ. Business
4. Surendrabhai S. Patel
(full name not known)
age 70 years, Occ. Business
5. Mrs.Valiben S. Patel,
(full name not known)
Age 69, Occ. Housewife
6. Mrs.Sumatiben R.Patel,
(full name not known)
age 66 years, Occ. Housewife
7. Mrs.Kamlaben K. Patel
(full name not known)
age 68 years, Occ. Business
8. Mrs.Laxmiben P. Desai
(full name not known)
(a.k.a. Ms.Lakshimiben R. Patel)
age 62 years, Occ. Housewife
9. Mr. Yogendrakumar S.Patel
(full name not known)
age 45 years, Occ. Business
10. Mr.Ameet S.Patel

(full name not known)
age 34 years, Occ. Business

11. Mr.Prakash K.Patel
(full name not known)
age 41 years, Occ. Business
All defendants from No.2 to 11 are
Co-owners, along with plaintiffs
in the name of Raman Brothers,
having Office at 1, Prabhat Nagar,
Jogeshwari (West), Mumbai 400 102) Defendants

[Emphasis supplied]

(ii) In fact, in this Civil Revision Application before this Court one person (Mr.Hiren Mahendra Ajmera) claiming himself to be a partner of the defendant partnership firm has come forward and filed interim application to add him as party to the present proceedings, since according to him, the plaintiffs and the defendant are compromising the suit and he wants to know what are the terms of the settlement between the parties. The said applicant Mr.Hiren Mahendra Ajmera after filing the interim application has not come forward before this Court for last three hearings to make any kind of submission in the proceedings. Therefore, I am not dealing with the interim application (for intervention) filed by Mr.Hiren Ajmera.

(iii) As regards the question whether such suit can be filed by two members of the Association of Persons are concerned, the Trial Court had framed two issues, one regarding 'non-user' of the suit premises and the second was regarding 'maintainability of the suit filed by the plaintiffs'. Even though the Trial Court dismissed the suit for eviction, however the Trial Court held that the suit was maintainable. The said finding recorded by the Trial Court had not been challenged by the defendant tenant by way of an Appeal. Hence, that findings attended finality. However, today before me, an argument is made that the suit could be filed only by the Association of Persons i.e. "Raman Brothers".

(iv) It is a fact that 'Raman Brothers' being a Association of Persons, it was represented by the ten persons being the members of the Association of Persons. All ten members were party to the eviction proceedings by

way of two of them filing the suit for eviction as plaintiffs and others being joined as party defendants. None of the other members of the Association of Persons have come forward and opposed the suit for eviction. Supreme Court in the judgment of *India Umbrella* (supra) has held that one co-owner can file a suit for eviction against the tenant, for himself and as an agent of other co-owners. Paragraph nos. 6, 7 and 8 of the said judgment are reproduced hereinbelow :-

6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See: Sri Ram Pasricha Vs. Jagannath & Ors.(1976) 4 SCC 184 ; Dhannalal Vs. Kalawatibai & Ors., (2002) 6 SCC 16, para 25). This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law.

7. Buchi Devi had willingly joined with Bhagabandei in filing the suit. During the continuity of litigation she parted with her

share in the property. One out of the two tenants purchased her share. It seems that the tenancy is in the name of a partnership firm and some of the partners have purchased the share of Buchi Devi. It is not clear if all the partners or only a few out of all the partners are the buyers. The fact remains that they have purchased only a share in the property and not the entire property. The applicability of doctrine of merger within the meaning of Clause (d) of Section 111 of the Transfer of Property Act, 1882 is not attracted. In order to bring the tenancy to an end the merger should be complete, i.e. the interest of the landlord in its entirety must come to vest and merge into the interest of tenant in its entirety. When part of the interest of the landlord or the interest of one out of many co-landlords-cum-co-owners comes to vest in the tenant, there is no merger and the tenancy is not extinguished. In our opinion, the first appellate Court was not justified in placing a rider on the right of the decree-holders to execute the decree unless the property was partitioned between the co-owners. However, we need not dwell much upon this aspect as that part of the decree has achieved finality as the landlords have not pursued their challenge to the decree of the first appellate Court by filing special leave petitions in this Court.

8. The decree, insofar as the other tenant and sub-tenants i.e. the appellants in C.A. No.5358/1996 are concerned, has to be sustained. The partners of the other tenant firm i.e. M/s. India Umbrella Manufacturing Company (appellant in C.A. No.5357/1996) have purchased the property *pendente lite* and therefore they cannot be allowed to take a stand contrary to the one taken by their predecessor-in-interest and to the prejudice of the other plaintiff whose rights they have not purchased. Their filing an application that they were not interested in securing eviction of the other tenant is in the facts and circumstances of the case immaterial and irrelevant.

[Emphasis supplied]

(v) In ***Mohinder Jain*** (supra) Supreme Court, held that in a eviction suit under Rent Act is maintainable by co-owner, non joinder of other co-owners is not fatal to proceedings. Assumption as to all co-owners have

consented unless they file objections. Paragraph no.8 of the said judgment reads as under :-

8. A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceeding before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event, a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondent herein. The submission of the learned counsel for the appellant to the effect that before initiating the proceedings, the appellant was required to show that he had experience in running the business in Ayurvedic medicine, has to be stated to be rejected. There is no law which provides for such a pre-condition. It may be so where a licence is required for running a business, a statute may prescribe certain qualifications or pre-conditions without fulfilment whereof the landlord may not be able to start a business, but for running a wholesale business in Ayurvedic medicine, no qualification is prescribed. Experience in the business is not a pre-condition under any statute. Even no experience therefor may be necessary. If the respondent has proved his bona fide requirement to evict the appellant herein for his own purpose, this Court may not, unless an appropriate case is made out, disturb the finding of fact arrived at by the Appellate Authority and affirmed by the High Court.

[Emphasis supplied]

(vi) In the judgment of ***Satyavart*** (supra) of Bombay High Court, the suit was filed by few minority members of Arya Samaj, Bombay, on their behalf and on behalf of all other members of Arya Samaj, against the Arya Samaj, for a declaration that the resolutions passed are ultra

vires and in fraud of the minority and the resolutions passed in General Body Meeting is also null and void. Issues were raised by the defendant whether the plaintiffs are entitled to maintain the suit without having obtained the sanction and consent of the society for the institution thereof. The High Court held that the plaintiff is at liberty to amend the plaint by describing themselves as members of the Arya Samaj except the defendants. The suit as framed would then be maintainable. In my opinion, the findings of this judgment does not help the applicant in the present proceedings. The facts in the present proceedings are quite different.

(vii) In the judgment of ***Gorakh Patil*** (supra) the suit was filed by 5 persons who claimed to be Panchas of a Mandal of 262 members. There was no authorization letter brought on record authorizing the 5 persons who claim to be Panchas. Neither were rest of 262 members made party defendants. In a challenge to eviction decree,

the High Court held that suit was not maintainable and decree passed was nullity. In the present proceedings, all the members of “Association of Persons”, were admittedly added as parties. Therefore, the facts in the present proceedings are totally different from the facts in the case of ***Gorakh Patil*** (supra).

(viii) Supreme Court in the judgment of ***Ramanlal Patel*** (supra) was dealing with the issue of Gujarat Agricultural Land Ceiling Act. In the said proceedings, 5 appellants along with their respective spouses had purchased 172 acres and 36 gunthas of agricultural land under 4 sale deeds. The Deputy Collector issued show cause notice that the group of persons had to be treated as ‘person’ under the Act and therefore could hold jointly only one unit. The Division Bench of High Court approved this judgment. However, Supreme Court, remanded the matter back to Mamlatdar to determine whether any of the 10 purchasers hold excess land. The ratio laid down

in this judgment is not applicable to the present proceedings, as the facts in the present proceedings are very different .

(ix) The judgment referred by the applicant of Single Judge of Andhra Pradesh High Court ***Hyderabad Cricket Association*** (supra), the facts were quite different as petition seeking prayer under Order 39 of the Code of Civil Procedure, 1908 were filed by unregistered Cricket clubs against registered society Hyderabad Cricket Association. These clubs were created by one Mr.R.Dayanand, who treated the clubs as proprietary concerns and as personal property which could be inherited. The Single Judge held that such a suit by a unincorporated body is not maintainable. I am not persuaded with the argument of the applicant, that the ratio of this judgment helps the applicant's case.

(x) In ***Food Corporation of India*** (supra), case decided

by Punjab and Haryana High Court, the Truck Operators Union, an unregistered body filed suit for recovery. The Court held that such a suit filed for recovery was not maintainable. Therefore, the facts in the said judgment were different then the present proceedings.

(xi) I am bound by the dicta of the Supreme Court in the judgment of *Mohinder Jain* (Supra) and *India Umbrella* (supra) which followed the judgment of *Sri Ram Pasricha vs. Jagannath & Ors.* reported in (1976) 4 SCC 184 and *Dhannalal Vs. Kalawatibai & Ors.*, reported in (2002) 6 SCC 16. The applicant had not challenged the findings of the Trial Court on maintainability. I hereby hold that the suit for eviction is always maintainable even if filed by two persons of 'Association of Persons'. It would have been a different situation if one of the member of the Association of Persons would have come forward and oppose the suit on any ground. All the members of Association of Persons are the parties to the present

proceedings. Therefore, in the present proceedings the suit itself was maintainable.

(xii) As regards the issue of 'non-user' of the suit premises, the landlord himself has come forward and laid evidence and had produced on record the two documents of Reliance Energy to prove the fact that there was no electricity supply in the suit premises. It is admitted fact that as of date, there is no electricity supply in the suit premises. The suit premises is admeasuring 3,600 sq.ft. along with a loft of 1,500 sq.ft. The defendant did not come forward and made any kind of submission that after the year 2004, the defendant had cleared the electricity dues of Reliance Energy and had restored the electricity supply to the suit premises. In fact, it is argument on behalf of the defendant tenant that the suit premises is used as a godown and if there is no electricity supply in the suit premises, still the premises is in use by the defendant tenant. The defendant did not produce any

trade licence to show that they are carrying on business in commercial premises.

(xiii) According to me, it is difficult to believe that in the City of Mumbai, a commercial premises admeasuring 3,600 sq.ft. is being used without supply of the electricity. This coupled with the fact that the plaintiff had examined himself and the fact that the defendant did not come forward and examine any person who had any kind of business dealing with the defendant as regards the suit premises. So also, the Courts below have raised doubt about the Invoice produced by the defendant in evidence and the Invoice produced by the defendant in his written statement.

33. I am guided by the judgment of Bombay High Court in case of ***Ravinbhushan Anant Datar*** (supra) which held that absence of electricity, telephone, business licence, would go to establish ground of eviction of non user. The facts in this judgment are similar to the present proceedings. Paragraph no.8 of the said

judgment reads as under :-

8. Counsel for the Respondent sought to urge that there was no electricity connection because the premises have been used only as a godown since the Respondent had certain adjoining premises in which the factory is situated. No such case has been established by the Respondent in the course of his evidence. On the contrary, the case of the Respondent in the course of Examination-in-Chief is that he was using the premises for painting, woodwork and paper manufacturing. That being so, the Learned Trial Judge was clearly justified in coming to the conclusion that there was a complete failure on the part of the Respondent to produce any material which would even prima facie indicate that the premises had been used for the purpose for which they were let. The absence of electricity, the absence of a telephone which was, in fact, removed after 12 years in 1977, the absence of a business licence and the failure of the Respondent to produce accounts books and a wage register would only go to establish that a ground for a eviction has been clearly established with reference to Section 13 (1) (k). An adverse inference would have to be drawn against the Respondent for a complete failure to produce any evidence whatsoever to show the user of the premises for the purposes for which they were let. I am conscious of the limitations on the exercise of the jurisdiction under Article 227 of the Constitution. This Court would not in that jurisdiction re-appreciate the evidence, substitute its own conclusions for those of the Court below or adopt a particular view only because it commends itself better than that of the primary fact finding Court. However, this is a case where the First Appellate Court has failed to consider and has completely ignored material evidence on the record, including clear admission of the Respondent. Hence, the interference of the Court is warranted in order to ensure that a failure of justice does not ensue.

[Emphasis supplied]

34. Single Judge of Bombay High Court in case of ***Om Prakash Berlia*** (supra) was dealing with a case where the question to be decided was when copy of the Returns of Allotments filed by the

8th defendant Company with ROC and an extract of the Annual Returns, both of which were certified by the Registrar, whether truth of contents thereof should be proved. The Court held that the truth of what document states must be separately established. In my opinion, the findings recorded in this judgment will not be applicable to the present proceedings, as in present case, admittedly there is no electricity in suit premises from 2004. The defendant did not produce any trade licence to show that they are using the suit premises.

35. In *Dunlop* (supra), Supreme Court held that initial burden was on landlord to prove that the tenant was not occupying the suit premises for 6 months before filing of suit, by adducing tangible evidence. In the present proceeding, the landlord had produced on record the original electricity bill of Reliance Energy, and hence, the burden shifted on tenant/defendant to prove that he occupied the premises 6 months before filing of the suit.

36. In my opinion, the plaintiff had succeeded in proving the

fact that the defendant is not using the suit premises. Therefore there is no perversity shown by the applicant/defendant in the judgment passed by the Appellate Court.

37. There is no merit in this Civil Revision Application. Hence, Civil Revision Application is accordingly dismissed. All interim applications are also disposed of.

38. The defendant is granted three months time to vacate the suit premises.

39. The applicant/defendant should file an usual undertaking before this Court within a period of one week from the date of this judgment is uploaded, that they will not create any third party right with regard to the suit premises.

40. The advocate for the respondent/landlord submits that the applicant/defendant should also clear the entire outstanding of agreed rent amount which according to him is Rs.34,81,602/-. Mr.Bansal, advocate for the applicant/original defendant has

disputed this position. According to him the entire rent has been paid.

41. Mr.Bansal on instruction from his client submits that if there is any outstanding amount, the same will be directly paid to the respondent landlords, within a period of three months. The said undertaking is accepted as an undertaking given to this Court.

[RAJESH S. PATIL, J.]