

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

**WRIT PETITION NO.13613 OF 2022
WITH
INTERIM APPLICATION NO.794 OF 2024
IN
WRIT PETITION NO.13613 OF 2022**

Venkatesh Vitthal Madam

***....Petitioner
(original Defendant No.1)***

V/s.

1. Balaji Dnyanoba Jana

***...Respondent No.1
(original Plaintiff)***

2. Smt. Sharada Hanumant
Dudam, since deceased, survived
and substituted by her legal
representatives/heirs-
2a] Govind Hanumant Dudam
2b] Vyankatesh Hanumant
Dudam- since deceased, survived
and substituted by his legal
representatives/heirs-
2b1] Smt. Uma Vyankatesh
Dudam
2b2] Nilesh Vyankatesh Dudam
2b3] Sau. Hema Shreeniwas
Chilevery
2b4] Sau. Sheetal Ramesh
Gunwante
2c] Sau. Laxmibai Vijay Tathi
3] Ramchandra Shankarappa Nili
4] Hanumant Shankarappa Nili
5] Dattatraya Shankarappa Nili
6] Anil Shankarappa Nili
7] Sau. Vanmala Sanjay Budharap
8] Sau. Balamma Vitthal Yerawa

9] Smt. Govindamma Narsappa
Sanga since deceased, survived
and substituted by her legal
representatives/heirs

9a] Smt. Yalammabai
Ramchandra Samal

9b] Sau. Rohini Laxman Saka

10] Dattatraya Balkrishna Saka

.... Respondents
(orig. Defendant Nos.2 to 10)

Mr. Jaideep Deo *for the Petitioners.*

Mr. Girish B. Badigar *for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 25 November 2024.

Judgment pronounced on : 3 December 2024.

Judgment:

1) Petitioner-tenant has filed this Petition challenging the decree dated 16 July 2022 passed by the District Judge-20, Pune, dismissing Regular Civil Appeal No.339 of 2017 and confirming the eviction decree dated 3 April 2017 passed by the 6th Addl. Judge, Small Causes Court, Pune, in Civil Suit No.206 of 2010. The Trial Court has decreed Plaintiff's Suit for recovery of possession on the ground of erecting permanent construction without landlord's consent. Since the decree for eviction is confirmed by the Appellate Court, Petitioner -tenant has filed the present Petition challenging the decrees of the Trial and the Appellate Courts.

2) House Property bearing C.T.S. No. 63 (new) of Mahatma Phule Peth and C.T.S. No.781(old) of Ganja Peth admeasuring 48.8 sq. meters within the limits of Pune Municipal Corporation are the **suit premises**. The suit premises originally belonged to Rizwani Masjid Trust and the same was purchased by late Shri Vyankatesh Ashanna Bhandari vide registered Sale Deed dated 30 July 1979. Defendant No.1 was inducted as a tenant in respect of the suit premises by the Trust. After purchase of the suit premises by late Shri Vyankatesh A. Bhandari, he filed Suit in the Small Causes Court against Defendant No.1 and others on 16 June 1980 for recovery of possession, which came to be dismissed on 18 December 1982. Late Shri Vyankatesh A. Bhandari filed Appeal before the District Court, which was dismissed on 20 December 1984. He therefore file+d Writ Petition No.3211 of 1985 in this Court in which this Court passed order dated 24 July 1997 remanding the Suit for fresh decision on the issue of *bonafide* requirement. Late Shri Bhandari filed Special Leave Petition No.18005 of 1999 before the Supreme Court, which was withdrawn seeking direction for decision of the Suit within a period of six months. Accordingly, Suit No.1305 of 1980 was decided again on the ground of reasonable and bonafide requirement and the same was decreed in favour of Late Shri Bhandari on 29 July 2002. Defendant No.1 filed Civil Appeal No.625 of 2002 before the District Court, which was allowed in favour of Defendant No.1. During pendency of the Civil Appeal No.625 of 2002 late Shri Bhandari passed away. His daughters finally decided to dispose of the suit premises. According to Defendant No.1, daughters of late Shri Bhandari requested

Defendant No.1 to purchase the suit premises and it was agreed to purchase the same by Defendant No.1 for Rs.3,90,000/-. That Defendant No.1 had kept earnest money deposit of Rs.90,000/- ready. However, the suit premises came to be sold in favour of Respondent No.1-Balaji Dnyanoba Jana (Plaintiff in Suit No.206 of 2010) by the heirs of late Shri Bhandari vide registered Sale Deed dated 31 July 2007.

3) After purchase of the suit premises, Plaintiff filed Suit No.206 of 2010 against Defendant No.1 and several other persons seeking recovery of possession of the suit premises alleging that Defendants illegally carried out construction of bathroom and latrine in the suit premises without obtaining permission of the landlord as well as removed existing windows on the eastern wall and unauthorisedly constructed a new window on the south east corner of the said wall. That two additional windows were constructed in the suit premises. Plaintiff accordingly sought recovery of possession of the suit premises from the Defendants with further direction to pay arrears of rent alongwith interest and expenses of Rs. 5,323/-. The Suit was resisted by Defendant No.1 by filing written statement. After receipt of the suit summons, Defendant deposited the entire arrears of rent alongwith 15% interest. Defendant No.1 contended that the heirs of late Shri Bhandari had permitted him to put up a toilet in the suit premises since the Defendant No.1 and his family members did not have any toilet facility. Defendant No.1 denied removal of any window or putting up of new windows and

submitted that existing windows were merely strengthened by him.

4) Based on the pleadings of the parties, Trial Court framed issues. Both sides led evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to decree the suit on the ground of erecting permanent structure without landlord's consent. The Appellate Court accordingly directed the Defendants to handover possession of the suit premises to the Plaintiff with further direction to conduct enquiry into *mesne* profits from the date of the Suit till the date of handing over possession of the suit premises. Plaintiff granted liberty to withdraw the amount deposited by the Defendants in the Court.

5) Defendant No.1 filed Regular Civil Appeal No.339 of 2017 in the Court of District Judge, Pune, challenging the eviction decree dated 3 April 2017. The Appellate Court has however dismissed the Appeal of Defendant No.1 by confirming the eviction decree. Aggrieved by the decree passed by the Appellate Court on 16 July 2022, Petitioner/Defendant No.1 filed the present Petition.

6) When the Petition came up for admission before this Court on 18 November 2022, this Court issued notice to the original Plaintiff and thereafter directed maintenance of status-quo in respect of the suit premises by order dated 22 November 2022. By order dated 28 August 2023, the Petition came to be

admitted by continuing ad-interim order granted earlier till decision of the Petition. Respondent No.1/Plaintiff has filed Interim Application No.794 of 2024 for vacation of the interim order or to fix the Petition for final hearing. In view of the request made by Respondent No.1/Plaintiff, the Petition is taken up for final hearing with the consent of the learned counsel appearing for the parties.

7) Mr. Deo, the learned counsel appearing for the Petitioner would submit that the Trial and the Appellate Courts have erroneously accepted the ground of erecting permanent structure without landlord's consent under Section 16(2) of the Maharashtra Rent Control Act, 1999 (**MRC Act**). He would submit that the work of repairing of existing *Mori* was carried out by Defendant No.1 by adding a toilet for convenience within the area used for *Mori*. That Defendant No.1 has not carried out any additional construction. He would rely upon report of the Court Commissioner in previous Civil Suit No.1305 of 1980 showing existence of *Mori* within the Suit premises. That closure of *Mori* by enclosing the same for the purpose of convenience and privacy does not amount to a permanent construction as held by this Court in ***Alisaheb Abdul Latif Mulla V/s. Abdul Karim Abdul Rahmani Mulla and Ors*¹**. He would submit that any construction, which is put up by a tenant for more beneficial use of the premises does not amount to a permanent structure within meaning of Section 16(1)(b) of the MRC Act. He would draw analogy with the activity of construction of kitchen platform or

¹ AIR 1981 Bombay 253

enclosure of existing *Mori* and would submit that the same analogy must be applied even to a construction of toilet within the suit premises. He would submit that a toilet/latrine being basic human need, utilization of some portion of *Mori* as a toilet by a tenant for beneficial use of suit premises cannot attract the folly under Section provisions of Section 16(1)(b) of the MRC Act. He would submit that the Central and the State Governments have increasingly encouraged the citizens to construct toilets under Swachh Bharat Mission and therefore an act of tenant of constructing a latrine /toilet within the suit premises cannot be construed as breach of terms of tenancy for ordering his eviction. He would submit that earlier construction of kitchen platform was also not permitted and it is only on account various judicial pronouncements including ***Pitambardas Kalyani Bakotiya V/s. Dattaji Krishnaji***² that construction of kitchen platform got excluded in exception to Section 13(1)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (**BRC Act**) and the said exception is continued in the MRC Act as well. He would therefore submit that latrine /toilet being part of basic human need, construction of toilet is also required to be excluded from purview of Section 16(1)(b) of the MRC Act. In support, he would rely upon judgment of this Court in ***Somnath Krishnaji Gangal Vs/. Moreshwar Krishnaji Kale***,³. He would also rely upon judgment of this Court in ***Ramchandra Dattatraya Gandhi (Tenant) V/s. Pushpabai Manohar Sheth (Landlady)***⁴ in support of his contention that construction of a

² AIR 1981Bom 388

³ 1995(1) Mh.L.J. 675

⁴ 1990 Mh.L.J. 485

gutter and putting pavements in front of the house has been held to be not a permanent structure within the meaning of Section 13(1)(b) of the BRC Act. The said judgment is also relied upon by Mr. Deo in support of his contention that when the construction is found to be made long back without any objection by landlord, it must be construed that the landlord has waived his right to file a Suit under Section 13(1)(b) by his conduct. Mr. Deo would further submit that report of the Court Commissioner was part of earlier round of litigation and Plaintiff's predecessor in title did not seek eviction of Defendant No.1-tenant on the ground of unauthorized construction but continued pursuing the litigation on the ground of *bonafide* requirement. That therefore, the Plaintiff is barred from now raising the ground of unauthorized construction after purchasing the suit premises in the year 2007. Thus, what is tolerated by the previous landlord is now sought to be made a ground for ensuring eviction of Defendant No.1. Mr. Deo would submit that the Trial and the Appellate Courts have not appreciated the above position in law and have erroneously proceeded to decree the Suit mechanically by terming construction of a toilet as an act covered by Section 16(1)(b) of the MRC Act. He would accordingly pray for setting aside the decree passed by the Trial Court and the Appellate Court.

8) Petition is opposed by Mr. Badigar, the learned counsel appearing for the Respondent No.1-Plaintiff. He would submit that the entire defence of Defendant No.1 about existence of *Mori* and construction of toilet in place of the *Mori* is factually incorrect. He would submit that as per the Court Commissioner's

report the size of the *Mori* is 2.5 ft X 2.5ft = 5 ft. and that it is impossible to construct both bathroom as well as the latrine in such a small room. That therefore, construction of a new toilet block by Defendant No.1 is conclusively proved in the present case. That there are apparent contradictions in the stands taken by Defendant No.1. That in paragraph 4 of the Petition, Defendant No.1 has contended that toilet is constructed 'in' the bathroom, which was already present in the suit premises, whereas in the affidavit of evidence, Defendant No.1 has clearly admitted that he has constructed both bathroom as well as toilet. Mr. Badigar would rely upon sale deed dated 30 July 1979 by which late Shri Vyankatesh Bhandari purchased the suit premises in which there was no *Mori* as well as toilet. That the whole case of Defendant No.1 about existence of *Mori* itself is fallacious. That therefore construction of *Mori* after purchase of the premises from late Mr. Bhandari is clearly proved in the present case. That Defendant No.1 adopted false defence of construction of toilet with consent of the heirs of late Shri Bhandari. That what is required under Section 16(1)(b) is 'consent in writing', which admittedly is not secured in the present case. Mr. Badigar would further submit that Petitioner has otherwise failed to comply with the order passed by the Appellate Court on 10 October 2017 by not depositing compensation of Rs.7875/- plus taxes after dismissal of his appeal. He would submit that considering the said conduct of Defendant No.1, this Court would be loath in entertaining his Petition. He would pray for dismissal of the Petition.

9) Rival contentions of the parties now fall for my consideration.

10) Plaintiff's Suit has been decreed on solitary ground of erecting structure of permanent nature without the consent of the landlord under the provisions of Section 16(1)(b) of the MRC Act. In the Complaint, Plaintiff pleaded essentially two types of unauthorized constructions viz. (i) construction of bathroom and latrine in the suit premises thereby joining the drainage thereof to the drainage line of the Municipal Corporation and (ii) illegal removal of existing windows on eastern side and construction of new window on southeast corner as well as construction of two more windows in cement and bricks with additional third window at illegally constructed bathroom and latrine.

11) Defendant No.1 has not altogether denied carrying out any construction in the suit premises. He took a defence in the written statement that Defendant No. 1 and his family had constructed a bathroom/*Mori* at the rear side of the premises after purchase thereof from late Shri Bhandari with his consent. At that time, Defendant No.1 and his family members were using toilet /latrine in nearby structure at House Property No.785, Mahatma Phule Peth and that there was no other toilet as the municipal toilet was located at a distance of 2 Kms. That landlord of the relative of Defendant No.1 at House Property No.785 Mahatma Phule Peth started obstructing Defendant No.1 and his family members from using the toilet in the said house

structure. Defendant No.1 further contended that he was proposing to purchase the suit premises at consideration of Rs.3,90,000/- and a draft Sale Deed was already prepared and Defendant No.1 had already kept ready demand drafts totaling Rs.90,000/- towards earnest money deposit. It was further pleaded that since Defendant No.1 was proposing to purchase the suit premises, he decided to construct toilet in the suit premises and accordingly requested the heirs of late Shri Bhandari for doing so. That the heirs of late Shri Bhadari granted permission of Defendant No.1 to construct a toilet at his own expenses. That Defendant No.1 accordingly constructed a toilet in the suit premises for better enjoyment thereof.

12) So far as allegations relating to construction of new windows is concerned, Defendant No.1 pleaded that since the suit premises were not in healthy condition, Defendant No.1 merely repaired the window. The relevant pleadings by Defendant No1 relating to the proposal for purchase of the suit premises and construction of toilet are as under:-

वडील मयत झाल्यामुळे व अपिलाचा निकाल विरोधात गेल्यामुळे व दाव्याचे कामकाज तब्बल 27 वर्षे चालून सुद्धा अपयश आल्याने कै. भंडारी यांच्या मुलांनी दावा मिळकत विकण्याचे ठरविले. या दाव्यातील प्रतिवादी नं. 1 यांचेशी दावा चालू असूनसुद्धा संबंध चांगले असल्याने दावा मिळकत तुम्हीच विकत घेता का? अशी कै. भंडारी यांच्या मुलांनी प्रतिवादी नं. 1 व्यंकटेश मॅडम यांना विचारणा केली. प्रतिवादी नं. 1 व्यंकटेश मॅडम यांनी किंमत विचारली असता कै. भंडारी यांच्या मुलांनी दावा मिळकतीची किंमत अंदाज अक्षय रु.4,90,000/- (अक्षरी रुपये चार लाख 90 हजार फक्त) इतकी सांगितली. त्यानंतर उभयतांचे दरम्यान विचार विनिमय होऊन दावा मिळकतीची किंमत रु. 3,90,000/- (अक्षरी रुपये चार लाख 90 हजार फक्त) इतकी ठरली व त्याप्रमाणे साठे खताचा मसुदा प्रतिवादी नं.1 व्यंकटेश मॅडम यांनी तयार केला व त्याची एक प्रत कै. भंडारी यांच्या मुलांना मंजुरीसाठी दिली. उभयतांचे दरम्यान साठे खतावर रक्कम रु. 90,000/- विसार म्हणून देण्याचे ठरले. साठेखताचा मसुदा तपासून, त्याचप्रमाणे अन्य आवश्यक बाबींची पूर्तता करणेसाठी, त्याचप्रमाणे राहिलेल्या रक्कमची व्यवस्था करण्यासाठी काही कालावधी लागणार होता व त्याची जाणीव उभयतांना होती. संपूर्ण व्यवहार 1 महिन्यात पूर्ण करण्याचे उभयतांचे दरम्यान ठरले होते.

विसाराची रक्कम रु. 90, 000/- देण्यासाठी प्रतिवादी नंबर. 1 यांनी रु. 30,000/- रकमेचे तीन डिमांड ड्राफ्ट सुद्धा काढले होते.

दावा मिळकत ही फार जुनी असल्याने त्यामध्ये संडासची कोणतीही सोय नव्हती कै. भंडारी यांनी मिळकत विकत घेतल्यानंतर त्यांच्या संमतीने प्रतिवादी नं.1 व त्यांचे कुटुंबीय यांनी दावा मिळकतीतील मागील बाजूस म्हणजेच पश्चिमेकडील बाजूस बाथरूमचे काम त्यांच्या स्वतःचे खर्चाने करून घेतले होते त्यावेळी सदरचे प्रतिवादी नं. 1 व त्यांचे अन्य कुटुंबीय त्यांच्या जवळच असणाऱ्या वाड्यात म्हणजेच घर नं. 785 महात्मा फुले पेठ या वाड्यातील संडासाचा वापर करीत होते. या व्यतिरिक्त प्रतिवादी नंबर एक व त्यांचे कुटुंबीयांना संडासची अन्य कोणतीही सोय उपलब्ध होत नव्हती. पुणे मनपाचे संडास हे दावा मिळकती पासून साधारणपणे दोन किलोमीटरचे अंतरावर होते व त्यामुळे सदरच्या संडासाचा वापर करण्यास अशक्य होत. त्यानंतर घर नं. 785 महात्मा फुले पेठ येथील प्रतिवादी नंबर एक यांचे नातेवाईक रामचंद्र नीली यांचे घरमालक यांनी सुद्धा सन 2006-07 पासून प्रतिवादी नं. १ व त्यांचे कुटुंबीयांना त्यांच्या वाड्यातील संडास वापरण्यास प्रतिबंध सुरू केला. वरील सर्व गोष्टींचा विचार करून व दावा मिळकत आपणच खरेदी करणार असल्याने प्रतिवादी नं. १ यांनी कै. भंडारी यांच्या मुलांकडे संडास बांधण्याबाबत परवानगी मागितली. १ महिन्याचे कालावधीत खरेदीचा व्यवहार पूर्ण होणार असल्याने कै. भंडारी यांच्या मुलांनी तुम्ही तुमच्या खर्चाने काम करून घ्या असे सांगून परवानगी दिली. दावा मिळकतीत मोरी ही पहिल्यापासूनच असल्याने व त्याचा उल्लेख मुकदमा नं. १३०५/१९८० ह्या दाव्याचे कमिशनरचे रिपोर्टमध्ये नमूद असल्याने प्रतिवादी नं.१ यांनी मोरीचे कोणतेही नवीन काम केलेले नाही. संडासचे काम हे प्रतिवादी नं. १ यांनी कै. भंडारी यांच्या मुलांच्या परवानगीने केलेले असून सदरचे संडासचे काम हे अत्यंत आवश्यक व दैनंदिन गरजेचे असल्याने प्रतिवादी नं. १ व त्यांचे कुटुंबीयांना संडासची अन्य कोणतीही सोय उपलब्ध नसल्याने प्रतिवादी नं. १ यांनी नाईलाजास्तव मिळकतीचा उपभोग घेण्याचे दृष्टीने (Better enjoyment of the property) केलेले आहे. कै. भंडारी यांच्या मुलांनी सदर गोष्टीचा गैरफायदा घेऊन व साठेखतापोटी ठरलेल्या रकमेचे डिमांड ड्राफ्ट प्रतिवादी नं. १ यांनी काढलेले असतानासुद्धा सदरचा व्यवहार रद्द केला व प्रतिवादी नं. १ याला अंधारात ठेवून सदरील दाव्यातील वादीशी खरेदीचा व्यवहार पूर्ण केला. अशारितीने प्रतिवादी नं. १ यांनी मोरीचे कोणतेही नवीन बांधकाम केलेले नाही तर ती फक्त दुरुस्त केली आहे व संडासचे केलेले बांधकाम हे कै. भंडारी यांच्या मुलांच्या परवानगीने केलेले असल्याने वादींना आता त्याबाबत तक्रार करता येणार नाही. प्रतिवादी नं. १ यांनी पूर्वेकडील जुन्या खिडक्या काढून त्याठिकाणी कोणतेही नवीन खिडक्यांचे बांधकाम केलेले नाही. मुळातच दावा मिळकतीचे बांधकाम हे मातीत असल्याने व मिळकत ही अत्यंत जुनी असल्याने प्रतिवादी नं. १ यांनी खिडक्यांची फक्त दुरुस्ती केलेली आहे. प्रतिवादी नं. १ यांनी नवीन दोन खिडक्यांचे कोणतेही बांधकाम केलेले नाही. दावा मिळकतीची परिस्थिती ही जशी पूर्वी होती तशीच आजही आहे. प्रतिवाद नं. १ यांनी सदर जागेत फक्त दावा मिळकत जुनी असल्याने आवश्यक त्या दुरुस्त्या केल्या आहेत. कोणतेही कायमस्वरूपाचे नवीन बांधकाम केलेले नाही. वादींनी दावा कलम ५ मधील सर्व कथने वादी नं. १ यांना केवळ त्रास देण्याचे उद्देशाने केलेली आहे त्यामुळे वादींचा दावा रद्दबादल होणे न्यायाचे दृष्टीने गरजेचे आहे.

13) Thus, the Defendant admitted the act of construction of toilet but pleaded that he did so with permission of heirs of late Shri Bhandari. However, throughout the proceedings, Defendant No.1 was unable to produce any written permission given by heirs of late Shri Bhandari for construction of toilet. He also did not examine the said heirs of late Shri Bhandari in support of his

claim of permission. What is required under the provisions of Section 16(1)(b) is written permission of the landlord. The law does not contemplate carrying out any construction of permanent nature on the basis of oral or deemed permission. Thus, Defendant No.1 failed to prove that construction of the toilet was with written consent of the landlord.

14) Faced with the situation that construction of toilet within the suit premises is without written consent of the landlord, Mr. Deo has adopted a defence that the act of construction of toilet cannot amount to construction of permanent nature so as to attract a folly under Section 16(1)(b) of the MRC Act. He has relied upon exception under Clause (b) of Sub Section 1 of Section 16 in support of his contention that everything that is done by a tenant for beneficial use of the premises is required to be excluded from the expression 'permanent structure'. It would be apposite to reproduce provisions under Section 16(1)(b) of the MRC Act as under:-

16. When landlord may recover possession

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied -

(a) that the tenant has committed any act contrary to the provisions of clause (o) of section 108 of the Transfer of Property Act, 1882;

Explanation. - For the purposes of this clause, replacing of tiles or closing of balcony of the premises shall not be regarded as an act of a causing damage to the building or destructive or permanently injurious thereto; or

(b) that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure;

Explanation. - For the purposes of this clause, the expression "permanent structure" does not include the carrying out of any work with the permission, wherever necessary, of the municipal authority, for providing a wooden partition, standing cooking platform in kitchen, door, lattice work or opening of a window necessary for ventilation, a false ceiling, installation of air-conditioner, an exhaust outlet or a smoke chimney; or

15) Mr. Deo has also raised a plea that construction of the toilet is not completely independent of the existing *Mori* / bathroom and that what is done by Defendant No.1 is only to convert a part of *Mori* into a latrine /toilet for convenience and privacy. Before examining the contention about construction of toilet by a tenant not amounting to construction of permanent nature, it would be first necessary to put to rest factual controversies sought to be created by Mr. Deo about the manner in which the toilet has been constructed. In paragraph 4 of the present Petition, Petitioner has averred as under:

“4. ...The Petitioner states that their relatives in the adjacent property prohibited the Petitioner from using the toilet therein and the Petitioner sought permission from the son of the earlier landlord to construct a **toilet in the Bathroom, which was already present in the suit premises**. The petitioner states that the heirs of the earlier owner have given them permission to construct a toilet and accordingly the Petitioners have constructed the toilet in the already existing bathroom for better enjoyment of the property. ...

(emphasis and underlining added)

16) The above statement made by Petitioner/Defendant No.1 about construction of toilet in the existing bathroom does not match the pleadings in the written statement, which clearly talk of construction of toilet in addition to existing *Mori* / bathroom.

Furthermore, in the affidavit of evidence filed by Defendant No.1, he contended as under:-

अशारीतीने मी मोरीचे कोणतेही नवीन बांधकाम केलेले नाही तर ती फक्त दुरुस्त केली आहे व संडासचे केलेले बांधकाम हे कै. भंडारी यांच्या मुलांच्या परवानगीने केलेले असल्याने वादींना आता त्याबाबत तक्रार करता येणार नाही.

The above averments once again show that construction of toilet is not within the area of *Mori*.

17) As rightly contended by Mr. Badigar, the report of the Court Commissioner appointed in the Suit No.1305 of 1980 showed existence of *Mori* in the rear portion of the suit premises admeasuring 2.5 x 2.5 ft. The report was prepared by the Court Commissioner during the course of his visit on 11 December 1982. It is difficult to believe that within the area of 5 sq.ft. it is possible to fit both bathroom as well as toilet. Mr. Deo has attempted to salvage the situation by contending that the Court Commissioner report indicates existence of a small room behind the kitchen admeasuring 7ft. x 7ft. and that Defendant No.1 has constructed the toilet as well as converted *Mori* into covered bathroom in that room. In my view the said contention raised by Mr. Deo does not make the case for defendant No.1 any better. The Court Commissioner's report shows that the suit premises comprise of a hall, kitchen and a small room admeasuring 7 ft x 7 ft = 49 sq.ft, in which there was tiny bathing space (*mori*) of 5 sq.ft. By applying the ratio of judgment of this Court in ***Alisaheb Abdul Latif Mulla*** (supra) what is permissible is to cover the said *Mori* /bathroom by erecting walls around it for the sake of

privacy. Covering to a *Mori* /bathing space by construction of walls around the same may not, in each case, attract the folly under Section 13(1)(b) of the BRC Act as held by this Court in paragraph 26 as under:

26. The case which to my mind directly applies to the facts of the present case is, that decided in *Suku Ishram v. Ranchhoddas*. In that case, a lessee of a temporary shed had erected a brick wall with a foundation in brick and mortar on the side of the road where the shed was. Besides, he had also erected a partition wall in between the shed so that, one part of the shed could be used for the purposes of storing articles and the other was for the purposes of the shop. It had also a foundation 12 ft. x 22 ft. Nevertheless, it was held that neither the partition wall, nor the wall erected on the side of the street to the shed could be described as permanent structure. Merely because therefore, a wall is erected and that wall is built either in cement, sand or brick and mortar, it does not follow that the work must be styled as "permanent construction". If the work has been effected so as to enable the person using the premises for a better enjoyment and beneficial use of the same premises, if there is no change in the form of the structure, if there is no different use by the erection of the structure than the one which is already being carried out in the premises, then notwithstanding that the work was carried out in durable materials and is of such a type or nature as is done in cases of permanent structures, it would not follow that what was done was an erection of a permanent structure. If that test was applied, then the mere erection of a wall which is more of a screen to provide privacy to a person who had otherwise no privacy while bathing, in the absence of any foundation, in the absence of any evidence to show that the wall was so constructed are joined after cutting into the existing wall by removing the bricks of the existing wall for a better joint of the two walls would not make it a permanent structure. The addition of a wall in the nature of a screen could be easily removed by dismantling. It is difficult to see how any damage in the process except of a superficial nature will be caused to the existing premises. The quantum of damage which would be inflicted while removing the structure would certainly be different and can be a test to decide whether the structure is of a permanent nature or otherwise. The same can be said of the extension of the *mori*. I have already pointed out that there is no clear and satisfactory evidence as to the extent of the existing structure of the *mori*, whether it was 3½ ft. x 4 ft. or 6 ft. x 4 ft. Even if the work which was done amounts to extension of a *mori*, as pointed out, the three functions for which the *mori* which was formerly used are now divided and three separate portions are used for the three functions. That undoubtedly ensures better enjoyment and more satisfactory and efficient use of the premises without changing the purposes for which it was let and without changing the purposes for which the premises or facilities was used. As I pointed out, the existing facility was merely extended, the purposes which could have been achieved by a flimsy erection of a partition or screen. This has been done in the

present case by erecting a wall and extending the premises which limited their functional use.

18) Thus, if Defendant No.1 was to restrict his activities only to screen the bathing space by putting up walls around it for the purpose of privacy, such activity may not be covered by the expression 'permanent structure' appearing in Section 16(1)(b) of the MRC Act. However, it is conclusively proved that in addition to covering the said *Mori* /bathing space into a proper bathroom Defendant No.1, additionally constructed a toilet inside the suit premises. In my view, the judgment of this Court in ***Alisaheb Abdul Latif Mulla*** (supra) would not cover such an act on the part of the Defendant No.1-tenant in constructing an altogether new toilet when no toilet existed in the suit premises, particularly when he has also covered the existing *Mori* /bathing space by constructing walls around it and converting it into a proper bathroom. In ***M.B.K. Enterprises & Ors. Vs. Saidpur Jute Co. Ltd. & Ors.***⁵ and in ***Hemant Bharat Kachare Vs. Vasu Anna Shetty & Ors.***⁶, I have taken a view that construction of a new toilet within the suit premises amounts to erecting permanent structure either within the meaning of Section 13(1)(b) of the BRC Act or Section 16(1)(b) of the MRC Act. Also, in ***Laxman Pralhad Ganaji Dayme Vs. Vinayak Mahadeo Pradhan & Anr.***⁷ I have distinguished the judgment in ***Alisaheb Abdul Latif Mulla*** (supra) in the facts of that case. Thus it is not that in every case, where a *mori* is converted

⁵ 2024 SCCOnline Bom 3529

⁶ 2024 SccOnline Bom 3461

⁷ Writ Petition No. 6980 of 1998 decided on 2 December 2024

into a proper bathroom, the Court would tolerate such construction for rejecting the ground for eviction.

19) Thus, it is conclusively proved that Defendant No.1 carried out additional construction of a new toilet in the suit premises and that he did not secure written permission from the landlord for doing so. Faced with this situation, Mr. Deo would make a last attempt to urge before me that this Court must develop the law by excluding the act of construction of a toilet from the expression 'permanent structure' as has been progressively done by this Court in respect of various activities of a tenant. He has submitted that as early as in 1980 this Court in ***Pitambardas Kalyani Bakotiya*** (supra) held that construction of kitchen platform did not amount to permanent construction. That in the same year, this Court permitted covering of *Mori* /bathing space with walls for privacy by a tenant in ***Alisaheb Abdul Latif Mulla*** (supra). Applying the same analogy Mr. Deo has urged before me to recognise the act of tenant in constructing a toilet as an acceptable right not falling foul of Section 16(1)(b) of the MRC Act. He has relied upon judgment of this Court in ***Somnath Krishnaji Gangal*** (Supra), in which this Court has summarised the conclusions relating to structures, which could be covered by the expression 'permanent structure' and has held in paragraph 21 as under:-

"21. in view of the decisions of the Hon'ble Supreme Court and of this Court, my conclusions are as under :

(i) In deciding the question as to what is a "permanent structure", it is necessary to consider the mode and degree of annexation as also the intention of the party putting up the structure. The creation of such a work or addition thereof in order to amount to a permanent

structure must cause and bring about a substantial improvement and change in the nature and form of accommodation.

(ii) If what has been done is by way of minor repairs for the better enjoyment and use of the premises, it cannot be regarded as a permanent structure. Similarly, if the object and purpose of annexation was only to better the mode of enjoyment of the demised premises as in the case of construction of the kitchen platform, it does not amount to a permanent structure within the meaning of section 13(1)(b) of the said Rent Act.

(iii) The essential element which needs consideration is as to whether the construction is substantial in nature and whether it alters the form, front and structure of the accommodation.

(iv) If what the tenant does is large scale renovation like replacement of the entire roof, covering it with marble tiles, without obtaining permission of the landlord, it may amount to permanent structure within the meaning of section 13(1)(b) of the Rent Act.

(v) Similarly, if the tenant constructs a bathroom in the gallery which puts additional burden in the gallery which is harmful to the structure of the building, it would amount to a permanent structure.

20) Mr. Deo has accordingly contended that every act of the tenant committed for better enjoyment of the demised premises cannot amount to permanent structure within the meaning of Section 16(1)(b) of the MRC Act. He has relied upon the circumstances in which Defendant No.1 and his family members were forced to construct toilet as the landlord of neighbouring chawl objected to use of toilet therein and the municipal toilet was located at a distance of 2 kms. He has emphasised special measures adopted by the Government for encouragement of construction of toilets in order to arrest open defecation. While the submissions of Mr. Deo may appear to be attractive in the first blush, I am not impressed by the same. Defendant No.1 lived with the reality of absence of private toilet inside the suit premises for several years. According to him the toilet has been

constructed after the death of late Shri Bhandari and at the time when Defendant No.1 was contemplating the purchase of the suit premises. The construction is apparently carried out, according to Defendant's own case, sometime in the year 2006-2007. In the written statement filed by 23 September 2010 Defendant No.1 contended that he was occupying the suit premises for over 50 years. Thus, for about 46/47 long years Defendant No.1 and his family members used the suit premises without private toilet therein. If Defendant No.1 or his family members were finding it inconvenient to reside in the suit premises in absence of a toilet, they ought to have obtained written permission of the landlord for construction of toilet and in the event of refusal by the landlord to give such written permission, he ought to have searched for alternate convenient premises. Construction of a toilet in the suit premises amounts to addition of a new facility, which never existed and the same therefore cannot be construed to mean beneficial enjoyment of the suit premises. As opposed to mere enclosure of bathing space into a proper bathroom not requiring any fresh drainage connection, construction of a new toilet require additional drainage /sewerage lines as well as a water connection. Therefore, construction of a new toilet cannot be put on the same pedestal as that of enclosure of bathing space for the sake of privacy. In this connection, it would be apposite to reproduce findings in para 33 and 34 of judgment in ***Laxman Pralhad Ganaji Dayme*** (supra):

33. A tenant is supposed to occupy the premises as they are let out to him by the landlord. On account of protection from rent escalation and eviction, no tenant vacates the premises on his own

accord and continues to retain its possession notwithstanding the fact that the same becomes inconvenient to reside or carry on business. On account of long retention of the premises, its condition deteriorates. The premises need upkeep. Also, with passage of time, more convenient modes of living are adopted like cooking on a raised platform rather than a sitting kitchen or bathing in a private enclosed room than in open *mori* or having a smoother titled flooring than old rough stone or *koba*/cemented flooring. Sometimes tenant needs better security in a shop by installing rolling shutter. Recognizing these changing trends of living comforts, various judicial pronouncements excluded various activities such as replacement of titles, construction of kitchen platform, screening of open *mori* by walls for privacy, replacement of doors with rolling shutters, etc. Some of these living comforts received legislative recognition by amendment of 1987 to Section 13(1)(b). The issue however is whether a tenant, under the garb of making changes for better enjoyment of premises, bring about a wholesome change or overhaul it completely without landlord's consent ? Addition of couple of living comforts must be distinguished from carrying out wholesale renovation of the premises. If the tenant finds the premises wholly unsuitable for his residence or business and the landlord is not agreeable for renovation, it would be appropriate for the tenant to search for alternate premises rather than breaching the conditions of tenancy by carrying out wholesale renovations, additions and alterations in the premises. A tenant cannot enjoy protection for rent escalation and eviction, and at the same time, treat the premises as if they are his own by unilaterally altering its status without landlord's consent.

34. Though it is sought to be contended that minor repairs for better enjoyment and use of the premises cannot be regarded as erecting permanent structure, in the present case, it is difficult to believe that what is carried out by the Defendant is only minor repairs. He has virtually renovated the entire premises without the knowledge and consent of the landlord and has adopted a false plea that he had secured written permission of the previous landlord on 2 January 1986. In fact, the very defence of the Defendant that he had secured permission from the erstwhile landlord for carrying out the works, contains an implied admission that the works that were carried out, in law, required written permission of the landlord. Defendant has thus adopted contradictory stands to justify his acts, which cannot be countenanced. Defendant cannot be permitted to approbate and reprobate by first contending that he did not carry out any of the alleged constructions and thereafter sheepishly producing a document in the form of written permission of previous landlord dated 2 January 1986. The entire conduct of the Defendant throughout the proceedings does not inspire confidence in respect of his actions. In my view, therefore the Trial and the Appellate Courts have rightly rejected his contradictory defences by decreeing the suit. I therefore do not find any valid reason to

interfere in the concurrent findings recorded by the Trial and the Appellate Courts.

21) In my view, therefore, construction of a new toilet inside even a residential premises would amount to erecting permanent structure within the meaning of Section 16(1)(b) of the MRC Act.

22) Considering the overall conspectus of the case I am of the view that the Trial and the Appellate Courts have rightly accepted the ground under Section 16(1)(b) of the MRC Act. The concurrent findings recorded by the Trial and the Appellate Courts do not warrant any interference in exercise of extraordinary jurisdiction of this Court under Article 227 of the Constitution of India. Writ Petition is thus, devoid of merits and deserves to be dismissed.

23) The only correction that is required in the decree passed by the Trial Court is the date from which *mesne* profit enquiry is to be conducted. It is settled law by judgment of the Apex Court in ***M/s. Atma Ram Properties (P) Ltd. Vs. M/s. Federal Motors Pvt. Ltd.***⁸ that possession of a tenant governed by provisions of rent control legislation becomes unlawful from the date of the decree and not from the date of filing of the Suit. Therefore, the order of the Trial Court in directing conduct of enquiry into *mesne* profits from the date of the Suit is obviously erroneous. *Mesne* profits in respect of the suit premises would be payable from the date of eviction decree dated 3 April 2017. It is

⁸ (2005) 1 SCC 705

clarified accordingly. Except this clarification no other interference is warranted in the impugned decree. The Petition is accordingly **dismissed**. Rule is discharged.

24) Considering the facts and circumstances of the case, Petitioner/Defendant is granted time upto 28 February 2025 to vacate the possession of the suit premises subject to condition of not creating third party rights in respect thereof.

25) In view of disposal of the Writ Petition, the Interim Application does not survive and hence stands disposed of.

[SANDEEP V. MARNE, J.]