

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

CIVIL REVISION APPLICATION NO.342 OF 2024

Smt. Shyampyari Baraichi Owrie & Ors. **....Applicants**

V/s.

Mr. Rajkumar Shivmurath Singh & Ors. **....Respondents**

Mr. Nisar Amir Ghatte *for Applicants.*

Mr. Tushar V. Dahibawkar *i/b M/s. Dahibawkar & Co. for
Respondent No.1 to 3.*

CORAM : SANDEEP V. MARNE, J.

DATED : 11 November 2024.

P.C. :-

1) Revisionary jurisdiction of this Court is invoked under Section 115 of the Civil Procedure Code, 1908 to set up a challenge to the Judgment and Decree dated 2 January 2024 passed by the Appellate Bench of the Small Causes Court in A1-Appeal No.42 of 2013 and confirming the eviction decree dated 22 February 2013 passed by the learned Judge of the Small Causes Court in R.A.E. Suit No.148/240 of 2001.

2) I have heard Mr. Ghatte, the learned counsel appearing for the Applicants and Mr. Dahibawkar, the learned counsel appearing for Respondents/ original Plaintiffs. I have also gone through the findings recorded by the Trial and the Appellate Courts and also the relevant documents placed on record.

3) Plaintiff's Suit is decreed by the Trial Court on three grounds of unlawful subletting, non-user and *bonafide* requirement. The

grounds of unlawful subletting and non-user are interlinked together as the Small Causes Court has held one Mr. Kailash Yadav to be in occupation of the suit premises, who is treated as unlawful subtenant. Since third party is found to be using the suit premises, Trial Court accepted the ground of non-user as well. Presence of Mr. Kailash Yadav is not disputed by Defendant No.1-tenant. He however, contended that Mr. Kailash Yadav is a servant employed by Defendant No.1 to look after his business and who was being paid salary of Rs.10,000/- per month. Apart from the fact that Defendant No.1 did not produce any evidence of payment of salary of Rs.10,000/- to Mr. Kailash Yadav, it became incumbent upon Defendant No.1 to prove that he himself was conducting some business in the suit premises. It appears that suit premises are being used for the purpose of business in timber. If that is the case and if Mr. Kailash Yadav is indeed a servant of Defendant No.1, it was necessary for Defendant No.1 to prove that Mr. Yadav was merely looking after business of Defendant No.1. To prove so it was necessary for Defendant No.1 to lead evidence by producing some documents to show purchase or sale of timber from the suit premises in his own name. Far from doing so, it was ultimately revealed that Defendant No.1 has settled down at his native place in Uttar Pradesh and his attorney received the said summons which could not be served at the address of the suit premises as Defendant No.1 was not found thereat. Considering this evidence on record, in my view the concurrent findings recorded by the Trial and the Appellate Courts about unlawful subletting of the suit premises in favour of Mr. Kailash Yadav do not suffer from any palpable error. Once presence of third party in the suit premises is admitted and once Defendant claimed that Mr. Kailash Yadav is a mere servant, it was incumbent for Defendant No.1 to plead and prove that he was actually

conducting business of timber in the suit premises. There is absolutely no evidence on record to prove that any timber was purchased or sold by Defendant No.1 from the suit premises. Therefore, presence of Mr. Kailash Yadav in the suit premises would undoubtedly lead to inference of he being an unlawful sublettee. Since Mr. Kailash Yadav is found in the suit premises and the suit summons is served on Defendant No.1 on his address in Uttar Pradesh, the ground of non-user of the suit premises, for the purpose for which they are let, is also conclusively proved. So far as the ground of *bonafide* requirement is concerned, both the courts have concurrently upheld the said ground. No interference is therefore warranted in exercise of revisionary jurisdiction of this Court in the concurrent findings recorded by the Trial Court and the Appellate Bench of the Small Causes Court..

4) Civil Revision Application is devoid of merits and is accordingly dismissed.

[SANDEEP V. MARNE, J.]