

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

CIVIL REVISION APPLICATION NO.372 OF 2024

Avinash J. Narvekar
since deceased & Ors.

....Applicants

V/S

Hiranyakant Govind Samant

....Respondent

Mr. Ramgopal S. Tripathi with Mr. Jay Yadav i/b M/s. J.R. Vakil & Associates *for the Applicants.*

Mr. S.R. Ganbavale, *for Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATE : 16 JULY 2024.

P.C.:

1 Applicants have invoked revisionary jurisdiction of this Court challenging the decree dated 4 May 2024 passed by the Appellate Bench of the Small Causes Court dismissing the Appeal No.38 of 2018 filed by Applicants and confirming the decree dated 27 July 2017 passed by the Small Causes Court in RAE Suit No.138/233 of 2007.

2 Plaintiff instituted RAE Suit No.138/233 of 2007 against the tenant Shri Avinash J. Narvekar seeking recovery of the tenanted premises on the grounds of:

- i) Unauthorized additions and alterations of permanent nature without written consent of landlords;

- ii) Cause of waste and damage to the premises under section 108(o) of the Transfer of Property Act;
- iii) Non-use of the premises for a continuous period of six months preceeding the date of filing of the suit;

3 The tenanted premises comprise of flat No.3 situated on ground floor of building Sheela Sadan situated at Ceasor Road, Amboli, Andheri (West), Mumbai - 400 058. Defendant was inducted as Plaintiff's monthly tenant in respect of the suit premises. It was alleged in the Plaint that the Defendant removed kitchen platform from original place and converted kitchen into bedroom. That he encroached the balcony by putting doors with brick masonry wall and made a kitchen there. That he removed bathroom from kitchen room area and thereby caused damage to the drainage of the suit property. That he encroached the gallery by putting sliding doors and brick masonry wall. According to Plaintiffs all these works were executed without written consent of the Plaintiff. Plaintiff further averred in the Plaint that the Defendant had left the suit premises and shifted to his newly acquired premises on ownership basis at 105, Keshar Upawan Gavanbag, Pokharan Road No.2, Thane (West) 400 601 and that Defendant No.1 had kept the premises closed, locked and unused for a period of six months preceeding the date of filing of the suit.

4 Defendant appeared in the suit and filed Written Statement inter alia contending that the previous landlady (Plaintiff's mother) had given written consent vide a letter dated 23 January 1987 for enclosure of the balcony. The Defendant denied other allegations with regard to unauthorized additions and alterations and contended that the suit

premises were let in the same condition as they stood as on the date of filing of the suit. So far as the ground of non-user is concerned, Defendant took a defence that being a diabetic patient he lost his right toe which was required to be amputated on 23 March 2005 and that he was advised the rest during April and May 2005. He also relied upon treatments availed for other ailments relating to heart in various hospitals during February, March and April 2004. That suit premises had become dangerous to reside on account of heavy rains in Mumbai in July 2005 and therefore Defendant was required to shift at his son's place at Thane for temporary period for taking treatment from doctors. That the suit premises also required painting and fresh electrification due to extensive damage caused due to flooding. These were the broad defences taken to oppose the ground of non-user.

5 The Small Causes Court framed issues relating to unauthorized additions and alterations, cause of damage, non-user and Defendant's attempt to let-out the suit premises. It appears that during pendency of the suit original Defendant Avinash Narvekar passed away and his wife Ashwini and sons Ajay and Amey were impleaded as Defendant Nos.1(a) to 1(c) to the suit. Plaintiff examined himself in addition to Shri Ram Narayan Ramdev Nigam, an Architect. It appears that one more Architect Shri Deepak Patil was examined at the behest of Plaintiff. On behalf of Defendants Mrs. Ashwini Avinash Narvekar examined herself.

6 After considering the evidence on record the Trial Court proceeded to decree the suit on 27 July 2017 on all three grounds of unauthorised additions and alterations, cause of damage to the suit premises and non-

user. The Appellate Bench has dismissed Appeal No.38 of 2018 filed by Applicants by judgment and order dated 4 May 2024, which is the subject matter of challenge in the present Petition.

7 I have heard Mr. Tripathi, the learned counsel appearing for Applicants and Mr. Ganbavale, the learned counsel appearing for Respondent.

8 After having heard the submissions canvassed by the learned counsel appearing for parties, it is seen that there are concurrent findings of fact on all the three grounds of unauthorized additions and alterations, cause of damage to the suit premises and non-user.

9 So far as the ground of carrying out unauthorized additions and alterations to the suit premises, Defendant did not dispute the act of closing of balcony. However he relied upon letter dated 23 January 1987 (Exhibit-50) addressed by him to the then landlady (Plaintiff's mother) . In the said letter the Defendant informed Mrs. Charushila Govind Samant about his plans to enclose the balcony on account of frequent thefts and burglaries. The letter apparently bears the signature of Mrs. Charushila Govind Samant under the endorsement of grant of permission. Plaintiff has denied the signature of his mother on the said letter dated 23 January 1987. Since existence of the letter as well as contents thereof are proved and the letter is marked in evidence, it will have to be presumed that permission was obtained by Defendant from the then landlady for enclosure of the balcony. However this did not mean that the landlady had permitted conversion of balcony into kitchen. DW1 Ashwini admitted in her cross-

examination that kitchen platform is erected in the balcony. Thus under the garb of securing the permission of the then landlady for only closure of balcony, Defendant apparently converted the balcony into kitchen. It has also come in evidence that the original kitchen was converted by Defendant into bedroom. Plaintiff's Architect gave evidence about additions and alterations carried out in the suit premises. Construction of masonry wall dividing the veranda for creation of two rooms is also conclusively proved. Removal of kitchen platform from original place and construction of new kitchen platform in the balcony is also conclusively proved. Thus cause of destruction and injury to the premises within the meaning of section 108(o) of the Transfer of Property Act is clearly proved. Since no written consent was obtained for carrying out various additions and alterations (except enclosure of balcony) is not proved, it will have to be presumed the said additions and alterations are without landlady's consent. In my view therefore both the grounds cause of destruction/injury to the suit premises as well as unauthorized additions and alterations without landlady's consent are squarely proved.

10 So far as the ground of non-user is concerned there are two factors which undoubtedly proved non-use of the premises by the Defendant. The Small Causes Court has taken into consideration consumption of electricity at the suit premises during September 2006 to March 2007 and found that the electricity consumption was only 1, 3, 3, 2, 6, 5 and 0 units during the said period. Another vital fact is purchase of two wheeler bike by DW1 Ashwini in her name in the year 2007 reflecting the address of premises at Thane. Further more in the marriage invitation card of her son Ajay of April 2007 also reflected the address at Thane. It is thus

conclusively proved that Defendant did not use the premises for the purpose they were let continuously for a period of six months without reasonable cause immediately preceeding the date of filing of suit.

11 In my view therefore no interference is warranted in the concurrent findings recorded by the Small Causes Court and the Appellate Bench. The Civil Revision Application is accordingly **dismissed** without any orders as to costs.

(SANDEEP V. MARNE, J.)

12 After the order is pronounced, Mr. Tripathi would pray for continuation of interim stay granted by the Appellate Bench by order dated 4 May 2024. The request is opposed by Mr. Ganbavale. It appears that after the Appeal was dismissed on 4 May 2024 Applicants filed application seeking stay on execution of decree for a period of three months. By order passed on 4 May 2024 the Appellate Bench granted stay during Appeal period. Thus execution of the decree is stayed till 4 August 2024, in that view of the matter the said stay order shall continue to operate for a period of eight weeks from today.

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(SANDEEP V. MARNE, J.)