

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

CIVIL REVISION APPLICATION NO. 432 OF 2024

1. Javerchand Lalchand Kothari (Deceased)

through his Legal Heirs

1.1 Dhakubai Javerchand Kothari

1.2 Ayush Dinesh Kothari

1.3 Neelam Ayush Kothari

} **....Applicants
(Orig. Defendant)**

: Versus :

Ankushrao Tukaram Bidkar

} **....Respondent
(Orig. Plaintiff)**

Mr. Amey Kulkarni, for the Applicants.

CORAM : SANDEEP V. MARNE, J.

DATED : 21 AUGUST 2024.

JUDGMENT :

1) Applicants/Defendants have filed this Revision Application challenging the judgment and decree dated 19 July 2024 passed by District Court, Pune allowing Regular Civil Appeal No. 1132 of 2012 filed by Respondent-Plaintiff and setting aside the judgment and decree dated 29 August 2012 passed by the 4th Additional Small Causes Court, Pune in Civil Suit No.255/2006. The District Court has decreed Civil Suit No. 255/2006 and has directed Defendants to handover vacant possession of the suit premises to Plaintiff with further direction to conduct enquiry into mesne profits

from the date of the decree till delivery of possession of the suit premises.

2) Block No.13 comprising of three rooms with 2 balconies on third floor of the building bearing House property no. 885 + 886 situated at Bootee Street, Pune Cantonment, Pune are the 'suit premises'. Plaintiff is the owner of the building in which the suit premises are located. On 4 May 1976, Plaintiff's mother had created tenancy in favour of the suit premises in favour of original Defendant's mother. The original tenant passed away 25 years before filing of the suit and Defendant-Javerchand Lalchand Kothari claimed tenancy rights in respect of the suit premises. Defendant was residing in the suit premises alongwith his wife, sons-Rajesh and Dinesh, two daughters-in-law and grandchildren (total 12 persons). Plaintiff claimed that Defendant had three house properties for residence of himself and his family members viz; (i) Flat No.9 admeasuring 800 sq.ft. in Padamji Paradise, Bhavani Peth, Pune, (ii) Flat No.17 admeasuring 1000 sq.ft, in B-C2, 5th Floor, Bhavani Peth, Pune and (iii) Flat No.16 admeasuring 1000 sq.ft. in Building C-1, 4th Floor, Padamji Paradise, Bhavani Peth, Pune.

3) Plaintiff filed Civil Suit No.255/2006 seeking recovery of possession of the suit premises on the grounds of arrears of rent, non-user, erection of unauthorised additions and alterations and bonafide requirement. Plaintiff pleaded that Defendant was in arrears of rent and permitted increases of Rs. 24,420 together with interest at the rate of 15% of Rs.16,651/- (total Rs.41,071/-). Plaintiff pleaded carrying on various additions and alterations to the suit premises. Plaintiff pleaded that he was residing with his mother

and did not possess his own property. That Plaintiff had five members in his own family, in addition to families of his six brothers comprising of their wives and children. That the said residence was insufficient and this is how Plaintiff pleaded bonafide requirement in respect of the suit premises. Defendant appeared in the suit and filed Written Statement resisting the suit contending that since he suffered from paralysis and was bedridden, he was required to shift to his son's flat where lift facility was available. Defendant denied rest of the allegations in the plaint.

4) Both the sides led evidence in support of their respective contentions. After considering the pleadings, documentary and oral evidence, the Small Causes Court dismissed the suit answering all the grounds against Plaintiff. Plaintiff preferred Regular Civil Appeal No. 1132/2012 before the District Court, Pune. By judgment and decree dated 19 July 2024, the District Court has reversed the decree of the Trial Court and has decreed the suit on the sole ground of non-user. Aggrieved by the decree of the Appellate Bench dated 19 July 2024, the heirs of the Defendant have filed the present Revision Application.

5) I have heard Mr. Kulkarni, the learned counsel appearing for the Revision Applicants and have considered the submissions canvassed by him.

6) As observed above, the suit has been decreed by the Appellate Court on the sole ground of non-user. The Appellate Court has found that the suit premises were not used, without a reasonable cause, for the purpose for which they were let for

continuous period of six months immediately preceding the date of the suit. However Mr. Kulkarni would contend that the Plaint did not contain a specific pleading about non-use of the premises without reasonable cause exceeding six months immediately preceding the date of filing of the suit. I am unable to agree. In para-5 of the plaint, Plaintiff pleaded thus:

प्रतिवादी वादीतील जागेत गेल्या ६ महिन्यांचापेक्षा जास्त काळ कोणत्याही सांस्कृतिक अथवा सबळ कारणाशिवाय नि. १ मधील मिळकतीत सतत व अखंडितपणे राहात नाहीत.

7) Thus, there is a specific pleading that the Defendant was not residing in the suit premises without a reasonable cause for 'last' six months. Therefore, the contention of absence of pleadings sought to be raised by Mr. Kulkarni deserves outright rejection. The Trial Court had erred in holding that Plaintiff proved non-use for a period of six months prior to the date of filing of affidavit of evidence dated 29 August 2009 and that he failed to prove such non-use for the period prior to the date of filing of the suit i.e. 5 June 2006. There are specific admissions by the Defendant's witness that the Defendant has been continuously residing alongwith his son-Rajesh outside the suit premises. Therefore, non-use of the suit premises for a period of six months immediately preceding the date of filing of the suit was admitted by Defendant himself and therefore there was nothing left to be proved by Plaintiff.

8) So far as reasonable cause is concerned, it is sought to be contended that shifting of Defendant to his son's flat was necessitated on account of the ailment suffered by him as he

remained bedridden on account of paralytic attack. However, it has come in evidence that the Defendant not only resided continuously with his son-Rajesh outside the suit premises, but he got his name included in the voter's list pertaining to the house of Rajesh. Usually, a person applies for shifting of name in voters list only when he intends to reside in the new premises for a reasonably long period of time. A person taking temporary shelter in another premises ordinarily does not get his name shifted in the voters' list. It therefore appears that the Defendant shifted lock, stock and barrel out of the suit premises without any intention of returning back.

9) It is sought to be contended by Mr. Kulkarni that the family of Defendant's son-Dinesh comprising of Dinesh's wife and son-Aayush continued to reside in the suit premises after the Defendant was required to shift to Rajesh's flat. He would invite my attention to the evidence of grandson-Aayush Dinesh Kothari, in which he deposed that his late father-Dinesh was residing alongwith his family in the tenanted premises after his grandfather (Defendant) shifted to Rajesh's flat. However, the Appellate Court has referred to the three documents at Exhibit-198, 199 and 200 in which the address of Dinesh, his wife and daughter is reflected at different premises other than the suit premises. Upon being enquired with Mr. Kulkarni as to what are these documents, he is unable to give any satisfactory answer. In fact, the said documents are not produced alongwith the Civil Revision Application. However, cross-examination of Aayush Dinesh Kothari would indicate that Exhibit-198 is the Birth Certificate of Aayush, Exhibit-199 is the Certificate issued by RTO and Exhibit-200 is the voters list

reflecting names of Poonam Dinesh Kothari and Pooja Dinesh Kothari. Thus, the defence of son-Dinesh residing in suit premises after shifting of Defendant on account of paralysis got conclusively disproved. No material is shown to me as to how the finding recorded by the Appellate Court, based on documents at Exhibit 198, 199 and 200, is perverse. Therefore, the evidence of Aayush Dinesh Kothari about residence in the suit premises by his father, Dinesh after shifting of the Defendant to Rajesh's flat does not appear to be believable.

10) It is thus conclusively proved that the Defendant himself did not reside in the suit premises since the year 1998 after he suffered paralysis attack. The theory of his son-Dinesh residing in the suit premises alongwith his family is proved to be false. In my view, therefore, it is conclusively proved that the Defendant was not using the premises for the purpose for which they were let without any reasonable cause, for continuous period of six months immediately preceding the date of filing of the suit. Defendant was a tenant in respect of the suit premises and if he was incapable of using the same owing to his ailment, he ought to have returned the same to the landlord.

11) The Appellate Court has rightly decreed Plaintiff's suit. I do not find any palpable error in the findings recorded by the Appellate Court on the issue of non-user for this Court to exercise revisionary jurisdiction under section 115 of the Code. The Civil Revision Application is accordingly **rejected**.

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signed by
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SHAILESH
SAWANT
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[SANDEEP V. MARNE, J.]