

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

**CIVIL REVISION APPLICATION NO.602 OF 2023
WITH
INTERIM APPLICATION NO.1061 OF 2024
IN
CIVIL REVISION APPLICATION NO.602 OF 2023
WITH
INTERIM APPLICATION NO.746 OF 2024
IN
CIVIL REVISION APPLICATION NO.602 OF 2023**

Nana Dattatraya Kurade
since deceased through legal heirs
Dilip Nana Kurade & Ors.

....Applicants

V/S

Abdul Hamid Aboobaker Coatwala

....Respondent

Mr. Shantanu Raktate i/b Mr. Ashish Vernekar *for the Applicant.*

Mr. Harshit Kabali i/b Mr. Rayyan Nasir *for Respondent.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 13 DECEMBER 2024.**

P.C.:

1 Leave granted to delete Appellant No.3 from array of parties. Accordingly Interim Application No.746 of 2024 is **disposed of**. Leave is also granted to delete occupation of Appellant No.2. Amendments to be carried out forthwith.

2 Revisionary jurisdiction of this Court is invoked under provisions of Section 115 of the Code of Civil Procedure, 1908

(**the Code**) for setting up a challenge to the judgment and decree dated 23 August 2023 passed by the Appellate Bench of Small Causes Court by which Appeal No.90 of 2017 filed by Respondent No.1/Plaintiff has been allowed and Judgment and decree dated 30 January 2017 passed by the Small Causes Court in RAE & R Suit No.1323/2038 of 2010 is set aside. The Appellate Court has decreed RAE & R Suit No.1323/2038 of 2010 on the grounds of unlawful sub-letting and non-use of suit premises and has directed Defendant Nos.2 to 4 to handover possession of the suit premises to the Plaintiff with further direction for conduct of enquiry into mesne-profits under provisions of Order 20 Rule 12 of the Code.

3 I have heard Mr. Raktate, the learned counsel appearing for the Revision Applicants and Mr. Kabali, the learned counsel appearing for the Respondent No.1/Plaintiff. I have also gone through the findings recorded by the Trial and the Appellate Courts as well as the oral and documentary evidence placed on record.

4 It appears that Plaintiff filed suit against Defendants seeking recovery of possession of the suit premises on the ground of arrears of payment of rent, unlawful sub-letting and non-use of the suit premises. Initially the Trial Court rejected all the three grounds and dismissed Plaintiff's suit by decree dated 30 January 2017. The Appellate Court has concurred with the findings of the Trial Court with regard to the ground of arrears

in payment of rent and has rejected the same. However the Appellate Court has reversed the findings of the Trial Court on the issues of unlawful sub-letting and non-use of the suit premises.

5 So far as the allegation of unlawful sub-letting is concerned, Plaintiff came out with the case that Defendant No.3-Madhu Yashwant Bhise was using the suit premises and was illegally residing therein as unlawful sub-lettee. Plaintiff accordingly addressed notice of termination of tenancy to Respondent No.2-Tenant as well as Respondent No.3 at the suit premises. It appears that the postmen left intimation of the said notice at the suit premises and Defendant No.3 finally collected the same. Thus presence of Respondent No.3 in the suit premises was established on account of receipt of demand notice by him. When it came to service of suit summons on Defendant No.2-tenant as well as Defendant No.3, the same were dispatched at the address of suit premises and as per the Bailiff report, the suit summons are again received by Defendant No.3 at the suit premises.

6 Faced with the situation that Defendant No.3 was found at the suit premises, Defendant No.2-tenant adopted a defence in the Written Statement that Defendant No.3 is his employee to whom he was regularly paying salary. Defendant No.2 further contended that Defendant No.3 used to work and reside in the office of Defendant No.2 and merely assisted Defendant No.2 in

his personal and household work. Defendant No.2 relied upon muster roll as well as examined the person who made entries in the muster roll to prove that Defendant No.3 is his employee. However when it came to proving payment of salary, Defendant No.2 produced only first page of passbook of Defendant No.3 with a view to demonstrate his residential address at the office of Defendant No.2. However while Defendant No.2 could have easily produced other pages of the passbook to prove payment of salary to Defendant No.3, the said pages were withheld from the Court. No document is produced, except hand-written entries on the muster roll as well as omnibus entry in income tax return of payment of salary to several employees, to demonstrate that Defendant No.3 was indeed paid any salary by the Defendant No.2. The best available evidence, as aforestated, was withheld from the Court.

7 Even it is assumed that Defendant No.3 could be the employee of Defendant No.2, suit premises are not let out for commercial purposes. Defendant No.2 is neither supposed to nor operates his office in the suit premises. Suit premises are let out for residential purposes. Therefore it becomes incomprehensible as to why Defendant No.3 is repeatedly found at the residential premises let out to Defendant No.2. In my view, sufficient material existed for the Appellate Bench to infer on the basis of presence of Defendant No.3 that he was actually residing in the suit premises at the relevant time. It is well settled position of law that for proving unlawful sub-letting, it is not necessary to

prove actual payment of rent. There is nothing to indicate that the Defendant No.2 and his family members were residing in a small premises located on a mezzanine floor (pot-mala) admeasuring only 65 sq. ft. and his employee in office was assisting him in household work. It appears quite probable that Defendant No.2 was allowing the suit premises to be used for the residence of one of his employees. Therefore, defence of Defendant No.2 about employment of Defendant No.3 does not make his case any better. Thus the ground of non-user is also clearly established as Defendant No.2 is found to be not using the premises for which the same are let out.

8 I am therefore unable to trace any element of perversity or jurisdictional error in the findings recorded by the Appellate Bench of Small Causes Court while decreeing the suit. Therefore there is no warrant for exercise of revisionary jurisdiction under Section 115 of the Code. Revision Application is accordingly **rejected**.

9 In view of disposal of the Civil Revision Application, nothing would survive in the Interim Application No.1061 of 2024 and the same is also **disposed of** accordingly.

(SANDEEP V. MARNE, J.)